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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, 1999 to March 16, 2000. See: 31 N.J.R. 871(b).

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Chapter 7A, Wetlands Management, was repealed by R.1984 d.164, effective May 7, 1984 (operative June 1, 1984).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).

Law Review and Journal Commentaries

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

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**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).

4. Photographs of the portion of the property for which authorization is being requested.

(b) In addition, a person proposing to engage in an activity covered by a Statewide General Permit shall provide verification that a certified mail notice with return receipt requested and a complete copy of the application has been forwarded to the clerk of the municipality and that a certified mail notice with return receipt requested (white receipts or green cards are acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, municipal planning board, county planning board, municipal construction official, and landowners within 200 feet of the legal boundary lines of the property(ies) on which the proposed activity will occur. Applicant must also provide a list of landowners within 200 feet. The notice shall contain:

1. A description of the proposed activity;
2. A description of the location of the activity including county, municipality, lot(s), block(s), and a plan of the site detailing existing structures, wetlands boundaries and proposed structures or activities, or both; and
3. The following statement:

“This letter is to provide you with legal notification that the referenced property owner is applying to the New Jersey Department of Environmental Protection, Land Use Regulation Element for a Statewide general permit.

A Statewide general permit will allow the property owner to conduct certain limited activities in freshwater wetlands or State open waters.

The complete Statewide general permit application package can be reviewed at either the municipal clerk's office or by appointment at the Land Use Regulation Element office at the address listed below. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the wetlands or open waters on the referenced parcel. Written comments should be submitted to the Department within 15 days of receiving notice. Comments will be accepted until the Department makes a decision on the application. Please submit your written comments along with a copy of this letter to:

New Jersey Department of Environmental Protection  
Land Use Regulation Element  
Bureau of Regulation  
PO Box 401  
5 Station Plaza  
Trenton, New Jersey 08625-0401

att: (County in which the property is located) Section Chief

As part of the review of this application, Department personnel may perform a site inspection on your property.

This site inspection will involve only that area within a maximum of 150 feet from the border of the applicant's property. This site visit will involve a visual inspection and possibly minor soil borings using a 4' diameter hand auger. The inspection will not result in any damage to the vegetation or improvements on your property.

The Department will notify your municipal environmental commission, planning board and the municipal construction official, as well as the county planning board of the Department's approval or denial of the Statewide general permit application.”

(c) If the proposed project involves a linear facility such as a pipeline or road of more than .5 miles, instead of notifying all landowners within 200 feet of the property(ies) lines, the applicant shall give public notice by publication of a display advertisement. The advertisement shall be a minimum of four column inches and be published in at least one newspaper of local circulation and one of regional circulation in the municipality. In addition, notice shall be given to owners of all real property within 200 feet of any above surface structure related to the linear facility, such as a pumping station or treatment plant, power substations, grade separated interchanges or similar structures. This does not include utility support structures or conveyance lines.

(d) The Department, within 30 days of receipt of this notification, shall either return the package as incomplete or accept the application as administratively complete and notify in writing the person proposing to engage in the activity covered by a general permit as to whether they are covered by the Statewide General Permit, or whether an individual permit is required for the activity pursuant to (e) below. Activities begun or carried out without this written notification shall be a violation of the Statewide General Permit, the Act and this chapter. Issuance of authorizations shall be published in the DEPE Bulletin.

(e) Upon receiving an application for a general permit, the Department may require that the owner apply for an individual permit. Cases where an individual permit may be required include, but are not limited to:

1. The activity has more than a minimal adverse environmental effect;
2. The cumulative effects on the environment of the authorized activities are more than minimal;
3. The applicant or project is not in compliance with the conditions of the general permit; or
4. Public comment indicates that the application does not meet general permit criteria.

(f) A person proposing to engage in activities pursuant to N.J.A.C. 7:7A-9.2(a)25, repair or alteration of malfunctioning individual subsurface sewage disposal systems, shall submit written notice containing a description of the proposed

activities to the Department at least 30 days prior to commencement of work. This notification shall include a description and plan of the activities and their location including municipality, county, block, and lot; and an approval from the Board of Health or its designated agent for the proposed activities. If the Department fails to notify the applicant within 30 days of receiving the notification, the activity shall be deemed to have been authorized, to the extent that the activity does not violate other statutes or regulations then in effect, and subject to any standard terms and conditions pursuant to N.J.A.C. 7:7A-9.3.

Amended by R.1992 d.117, effective March 16, 1992.  
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Changes initiated to create a program that is as stringent as that of the U.S. Army Corps of Engineers under the Clean Water Act (33 U.S.C. 1251 et seq.) in order to secure the assumption of the permit jurisdiction.

#### Case Notes

Man-made system part of route of wetland; wetland not excluded from surface water tributary system; developer not entitled to permit. *Emanuel v. Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 122.

#### 7:7A-9.6 Hearings and appeal

An applicant or other affected party may request an administrative hearing on any decision to issue or deny an authorization made by the Department pursuant to N.J.A.C. 7:7A-12.7.

New Rule: R.1992 d.117, effective March 16, 1992.  
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

#### 7:7A-9.7 Duration of permit authorizations

(a) Authorizations for Statewide general permits shall be effective for a fixed term not to exceed five years from the date of authorization.

(b) The term of an authorization shall not be extended beyond the maximum duration specified in this section. However, if necessary, an authorization may be renewed through the application process set forth in this chapter.

(c) If the term of the authorization exceeds the expiration date of the issued general permit, and the permit upon which the authorization is based is modified to include more stringent standards or conditions, or is not reissued, the applicant must comply with the requirements of the new regulations by applying for a new GP authorization or an Individual permit. For those applicants whose activities will no longer comply with the new regulations, if prior to the expiration date of the GP, the applicant is able to document that the activity was either under contract or under construction, the Department will allow the applicant one additional year, from the date of expiration of the issued general permit (not the authorization date), to complete the authorized activity. If the GP authorizing a particular activity is reissued without amendments, or with amendments expanding the authorized scope of activities, the authorization remains effective for the authorized five-year term.

New Rule: R.1992 d.117, effective March 16, 1992.  
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

#### 7:7A-9.8 Cancellation, withdrawal, resubmission and amendment of applications

(a) Applications may be cancelled by the Department; or withdrawn, amended, or resubmitted by an applicant.

(b) If an application is not complete for final review within 60 days of a request for additional information, the Department shall send a letter canceling the application and stating that the application will be purged from Department files and that a new application will be required to reactivate the Department's review. If the applicant sends the Department a letter documenting good cause for not supplying the requested information within the 60 day period the Department will grant an automatic extension of 30 days. The Department will grant additional 30-day extensions upon receiving a written request for such extension from the applicant.

1. All fees submitted with an application subsequently cancelled shall be non-refundable.

(c) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable when a significant portion of the review has been completed. In some cases however (see (d) below) the fees may be credited toward future applications.

(d) If an application is cancelled, denied or withdrawn, the applicant may resubmit an application for a revised project on the same site. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. A new fee will be required unless application is resubmitted within one year of the date of denial or withdrawal, in which case the original permit fee may be credited to the new application.

(e) A permit application may be amended at the applicant's discretion at any time as part of the permit review process. Copies of amendments and amended information shall be distributed by the applicant to the same person to whom copies of the initial application were distributed. All amendments to pending applications shall constitute a new submission and may at the Department's discretion require reinitiation of the entire review process.

New Rule: R.1992 d.117, effective March 16, 1992.  
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

#### 7:7A-9.9 through 7:7A-9.22 (Reserved)

#### 7:7A-9.23 Expansion of cranberry growing operations in the Pinelands

(a) General permit 23 authorizes the expansion of certain cranberry growing operations in the Pinelands. To be eligible for authorization under the general permit, the cranberry growing operation must be a single, discrete legal entity that, prior to the date general permit 23 becomes operative under (u) below:

1. Is located in the Pinelands, as defined at N.J.A.C. 7:50-2.11;

2. Is in active cranberry production; and

3. Was reported as a cranberry growing operation to the United States Department of Agriculture Cranberry Marketing Committee under the Federal Cranberry Marketing Order (7 C.F.R. Part 929, as amended).

(b) Activities authorized under general permit 23 include, but are not limited to, the construction or expansion of a bog, reservoir, canal, ditch, dike, tail water recovery system, water quality improvement system, or other similar support type facility. General permit 23 does not authorize:

1. Construction or expansion of maintenance or storage sheds;

2. Construction or expansion of housing; or

3. Establishment of new sites for storing or stockpiling sand or other materials.

(c) The Department shall authorize activities under general permit 23 only if the activities will be conducted on the area with the lowest number ranking on the list at (d) below, which is available and has the following characteristics:

1. The area is water accessible, that is, has direct access to free drainage and can be directly served by existing sources of water, or can feasibly be connected to a water source. The Natural Resources Conservation Service can assist the applicant in determining whether an area is water accessible. To minimize environmental impact, areas which can reasonably be served by existing infrastructure are preferred; and

2. Has access to a water supply with a minimum flow rate of 227 gallons per minute per acre (that is, one acre foot of water for every bog acre in production per day).

(d) For the purposes of general permit 23, State open waters and wetland types are ranked in the order that they shall be considered for use for the expansion of a cranberry growing operation, as follows:

1. State open waters;
2. Abandoned blueberry fields;
3. Abandoned cranberry bogs;
4. Abandoned agricultural fields;
5. Freshwater wetlands dominated by emergent vegetation;
6. Freshwater wetlands dominated by scrub/shrub vegetation;
7. Forested freshwater wetlands that are not Atlantic white-cedar wetlands; and
8. Atlantic white-cedar wetlands.

(e) For the purposes of general permit 23, if a freshwater wetlands area was forested, but the trees have been harvested within the five years immediately preceding submittal of an application for authorization, the area is considered forested.

(f) The Department shall not issue more than one authorization under general permit 23 per year to a single cranberry growing operation.

(g) The Department shall not issue an authorization under general permit 23 for activities that will cause a net loss of freshwater wetlands at a single cranberry growing operation.

(h) The Department shall limit authorizations issued to any single cranberry growing operation under general permit 23 so as to ensure that the loss and/or disturbance of freshwater wetlands and/or State open waters at that single operation meets all of the following criteria:

1. No more than 10 acres of freshwater wetlands and/or State open waters shall be lost and/or disturbed in any one year;

2. No more than 10 acres of forested freshwater wetlands shall be lost and/or disturbed over the five year term of general permit 23; and

3. No more than four of the 10 acres lost and/or disturbed under (h)2 above shall be Atlantic white-cedar wetlands.

(i) The Department shall limit authorizations issued Statewide so as to ensure that the total Statewide loss and/or disturbance of freshwater wetlands and/or State open waters under general permit 23 meets all of the following criteria:

1. No more than 60 acres of freshwater wetlands and/or State open waters shall be lost and/or disturbed in any one year that general permit 23 is operative, except that if the Department authorizes fewer than 60 acres of loss and/or disturbance in any year, up to 30 acres of unused loss or disturbance may be carried forward to a subsequent year, but in no case shall more than 90 acres of freshwater wetlands and/or State open waters be lost or disturbed in one year;

2. No more than 300 acres of freshwater wetlands and/or State open waters shall be lost and/or disturbed during the five year term of general permit 23;

3. No more than 80 of the 300 acres lost and/or disturbed under (i)2 above shall be forested freshwater wetlands; and

4. No more than 25 of the 80 acres of forested freshwater wetlands lost and/or disturbed under (i)3 above shall be Atlantic white-cedar wetlands.

(j) If an applicant proposes activities under general permit 23 that will result in the loss and/or disturbance of Atlantic white-cedar wetlands, the applicant shall, in addition to meeting all other requirements, demonstrate that there is no suitable upland area available, which is owned by the applicant, which the applicant could use in order to eliminate or minimize impacts to Atlantic white-cedar wetlands. For purposes of this subsection, a suitable upland area is an upland area which meets all of the following criteria:

1. The area is water accessible, as described at (c)1 above, and has adequate water as required at (c)2 above;
2. Soils of the area are composed of Klej, Lakehurst, Pemberton, Hammonton, Woodstown or other soil types that are somewhat poorly drained or moderately well drained, as defined in the applicable county soil survey, published by the United States Department of Agriculture's Natural Resources Conservation Service, as amended and/or supplemented;
3. The seasonal high water table is within 24 inches of the surface; and
4. All of the soil to be excavated can be used in the construction of new bogs and sanding operations, or, if the soil cannot be used for construction, a storage or disposal site is available.

(k) If an applicant proposes activities under general permit 23 in an Atlantic white-cedar wetlands that is larger than five acres, the applicant shall, in addition to meeting all other requirements of this section, submit a written statement from the Natural Resources Conservation Service that the activities will minimize, to the extent feasible, the impacts to the remaining Atlantic white-cedar wetlands.

(l) If an applicant proposes activities that will result in the loss and/or disturbance of more than one half acre of freshwater wetlands and/or State open waters, the applicant shall transfer Pinelands Development Credits (PDCs) to the Department in accordance with the following:

1. The applicant shall transfer PDCs in the following ratios to acres of loss and/or disturbance:
  - i. For Atlantic white-cedar wetlands, four tenths of a PDC for every acre of loss and/or disturbance;
  - ii. For forested freshwater wetlands that are not Atlantic white-cedar wetlands, fifteen one hundredths of a PDC for every acre of loss and/or disturbance;
  - iii. For emergent or scrub/shrub wetlands, one tenth of a PDC for every acre of loss and/or disturbance; and
  - iv. For wetlands that are abandoned blueberry, cranberry, or agricultural fields, or State open waters, zero PDCs;

2. Each portion of the site that is one quarter acre or larger shall be assigned its own PDC requirement, and these requirements shall be summed to calculate the PDC requirement for the entire site. A portion smaller than one quarter acre will be given the ranking of the area surrounding it. For example, an applicant may have three acres of State open waters, and one eighth acre of Atlantic white-cedar wetlands surrounded by eight and seven eighths acres of scrub/shrub wetlands. The disturbance of the State open waters requires no PDCs under (l)1iv above. The one eighth acre of Atlantic white-cedar wetlands is smaller than one quarter acre and therefore is treated as part of the surrounding scrub/shrub wetlands. Under (l)1iii above, nine tenths of a PDC are required for the disturbance of the scrub/shrub wetlands. This would be the total for the site; and

3. The total PDC requirement for the site shall be rounded up to the nearest one quarter PDC. Under the example at (l)2 above, the PDC requirement for the entire site is nine tenths of a PDC, which would then be rounded up to one PDC.

(m) The applicant shall transfer any PDCs required under (l) above to the Department, or to a nonprofit or governmental agency designated by the Department, prior to beginning activities authorized under general permit 23, and no later than 90 days after receiving the general permit authorization. The Department or its designee shall convey the PDCs to the Pinelands Development Credit Bank in accordance with the MOA established under (n) below, and shall use the resulting funds to establish and/or restore Atlantic white-cedar wetlands in the Pinelands.

(n) The Department shall enter into a memorandum of agreement (MOA) with the Pinelands Commission and the Pinelands Development Credit Bank. The MOA shall include a general plan for implementing the Atlantic white-cedar restoration program required by this section, and shall:

1. Identify at least one potential site for Atlantic white-cedar restoration;
2. Include a requirement for at least one acre of Atlantic white-cedar restoration for each acre of Atlantic white-cedar wetlands lost and/or disturbed under general permit 23;
3. Include clear success criteria for the Atlantic white-cedar restoration program; and
4. Ensure that Atlantic white-cedar restoration efforts will not adversely impact existing areas of forested wetlands.

(o) To minimize impacts to freshwater wetlands and/or State open waters, a permittee under general permit 23 shall:

1. Follow, to the maximum extent practicable, the management practices recommended by the Rutgers Cranberry and Blueberry Experiment Station;

2. Stabilize all disturbed areas in accordance with the New Jersey Field Office Technical Guide, 1998 edition, as amended and supplemented, issued by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), available from the NRCS at 1370 Hamilton Street, Somerset, New Jersey 08873;

3. Use only suitable, clean, non-toxic fill material;

4. Use integrated pest management techniques; and

5. Design and carry out the activities to avoid irreversible adverse impacts on the survival of any local populations of threatened or endangered plants of the Pinelands, consistent with the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50-6.27.

(p) The requirements of (c), (j), (k), (l), and (m) above shall not apply to the proposed activities under general permit 23 if the Department determines that the activities:

1. Will improve water conservation or water quality; and

2. Will result in a loss and/or disturbance of one half acre or less of freshwater wetlands and/or State open waters at that cranberry growing operation during the five year term of the general permit.

(q) Each year, the Commissioner shall make a finding as to whether the pace of impacts under the general permit is proportional to the pace of Atlantic white-cedar restoration efforts. The Commissioner shall consult with the Pinelands Commission, and shall consider, among other factors, whether restoration efforts are making reasonable progress towards the goals in the Department's overall plan for Atlantic white-cedar restoration. The Department shall publish the Commissioner's finding as a public notice in the New Jersey Register by October 31 of each year:

1. If the Commissioner finds that the pace of impacts is proportional to the pace of restoration efforts, the Department shall publish a finding of continuance of the general permit. A finding of continuance shall remain in effect until the next October 31 following the publication of the finding; or

2. If the Commissioner finds that the pace of impacts is out of proportion to the pace of Atlantic white-cedar restoration efforts, the Department shall publish a finding of temporary hold of general permit authorizations, and shall stop issuing authorizations under general permit 23. A finding of temporary hold shall remain in effect until the Commissioner determines that the pace of impacts under the general permit has again become proportional to restoration efforts, and the Department publishes a finding of continuance.

(r) The Commissioner reserves the right (that is, discretion) to modify, suspend, or revoke general permit 23 authorizations. Modification means the imposition of additional or revised terms or conditions on the authorization. Suspension means the temporary cancellation of the authorization while a decision is made to either modify, revoke, or reinstate the authorization. Revocation means the cancellation of the authorization. The Commissioner may assert discretionary authority by modifying, suspending, or revoking general permit 23 authorizations for a specific geographic area or class of waters, whenever the Commissioner determines sufficient concerns for the environment under the Freshwater Wetlands Protection Act or the Federal Section 404(b)(1) Guidelines, or if the Commissioner otherwise determines that the general permit would result in more than minimal adverse environmental effects either individually or cumulatively. Whenever the Commissioner determines that a proposed specific activity covered by general permit 23 would have more than minimal individual or cumulative adverse effects on the environment, the Commissioner shall either modify the general permit 23 authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the proposed activity is not authorized by general permit 23 and provide instructions on how to seek authorization under an individual permit. The Commissioner shall restore authorization under general permit 23 at any time that the Commissioner determines that the reason for asserting discretionary authority has been satisfied by a condition, project modification, or new information.

(s) An application for authorization under general permit 23 shall be submitted within 90 days after the general permit becomes operative under (u) below. Within 180 days after general permit 23 becomes operative, the Department shall make a final decision on all applications submitted within the 90-day deadline. Thereafter, applications shall be submitted to the Department by January 1 of each year. The Department shall issue decisions on applications by March 1 of each year.

(t) If the Department receives applications for authorization under general permit 23 which would, if approved, result in a total Statewide loss and/or disturbance of freshwater wetlands and/or State open waters that exceeds the limits at (i) above, the Department shall give priority to applications involving areas with the lowest number rankings on the list at (d) above, taking into consideration overall environmental impacts. If two or more applications involve similarly ranked land and similar environmental impacts, the Department shall give priority to the application submitted and determined complete under N.J.A.C. 7:7A-9.5(d) first.

(u) General permit 23 shall become operative as of the date that the Department publishes a notice in the New Jersey Register announcing that:

1. The Department has signed the Memorandum of Agreement required under (n) above; and

2. Twenty-five thousand dollars has been deposited from public sources to the fund established by the Department under the Memorandum of Agreement for the implementation of the Atlantic white-cedar restoration program.

(v) In order to ensure compliance with the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq., general permit 23 will be added to the list of general permits subject to coordination procedures with the U.S. Fish and Wildlife Service under the Department's Memorandum of Agreement regarding the Endangered Species Act and New Jersey's assumption of the Federal 404 program.

New Rule, R.1999 d.352, effective October 4, 1999.  
See: 31 N.J.R. 1562(a), 31 N.J.R. 2964(a).

## SUBCHAPTER 10. PRE-APPLICATION CONFERENCES

### 7:7A-10.1 Purpose

A pre-application conference is optional, but highly recommended. It allows the Department to inform potential applicants of the various procedures and policies which apply to the freshwater wetlands, open water fill, stream encroachment, and coastal program permitting process. Department staff will candidly discuss the apparent strengths and weaknesses of the proposed permit application at this conference, but the Department shall in no way commit itself to approval or rejection of a proposed project as a result of these discussions.

Amended by R.1992 d.117, effective March 16, 1992.  
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Added reference to stream encroachment and coastal program.

### 7:7A-10.2 Request for a pre-application conference

(a) Potential applicants may request a pre-application conference with the Department. A request for a pre-application conference shall be made in writing and shall include a project description, a tax lot and block designation of the site, the location of the project site, including the municipality and county, the general location of freshwater wetlands and State regulated waters, a copy of the appropriate United States Soil Conservation Service map(s) locating the project, and a United States Geological Survey quadrangle map showing the site. The Department encourages the applicant to obtain a letter of interpretation prior to the pre-application conference.

(b) The Department shall, within 15 days of receipt of such request, schedule a pre-application conference.

Amended by R.1992 d.117, effective March 16, 1992.  
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Further delineated information which should be part of the pre-application conference request.

### 7:7A-10.3 Discussion of information requirements

The Department shall candidly discuss the level of detail and areas of emphasis which will be necessary to allow the Department to review the application if one is submitted.

### 7:7A-10.4 Memorandum of record

(a) After the pre-application conference, the Department shall prepare a written memorandum of record summarizing the discussion of the apparent strengths and weaknesses of the proposed project, the apparent sensitivity of the land and water features of the site, and the level of detail and areas of emphasis necessary in the materials that the potential applicant may be required to submit as part of the application.

(b) The memorandum of record shall be mailed to the potential applicant or his or her agent, if designated in writing, and to the municipality, within 30 days after the pre-application conference. If the potential applicant submits an application, a copy of the memorandum of record shall be included with the application, and shall be included in the Department's file on the application.

(c) The memorandum of record shall not be construed as a decision of the Department. The Department is in no way bound by any information or statement recorded in the memorandum of record.

## SUBCHAPTER 11. APPLICATION PROCEDURE

### 7:7A-11.1 Application contents for Individual Freshwater Wetlands and Open Water Fill Permits

(a) The Element will issue joint permits for projects requiring more than one Element permit whenever possible. It is strongly recommended that an applicant requiring more than one Element permit submit all applications materials simultaneously to facilitate joint permit processing. For example, the submission of all information necessary for both a Freshwater Wetlands permit and a Stream Encroachment permit at the same time will facilitate the issuance of a joint permit.

(b) The application for a freshwater wetland permit or open water fill permit shall include 10 copies of the following information:

1. A completed freshwater wetlands permit or open water fill permit application form including the names and addresses of all owners of property adjacent to the property which is the site of the proposed project. All activities which the applicant plans to undertake which are reasonably related to the same project should be included in the same permit application and will be considered simultaneously with the review of the individual permit. Only one application fee will be required to review all regulated activities in freshwater wetlands, State open waters and transition areas associated with the project;

2. A folded preliminary site plan or subdivision map of the proposed regulated activities, or other map of the site if no preliminary site plan or subdivision map exists;

3. A written description of the proposed regulated activity, the total area to be used, filled or modified, the total area of the freshwater wetland or State open waters potentially affected, identification of the watershed in which the project is located, and the relationship of the area affected to the area of the entire freshwater wetland or State open waters complex, for example, one-half acre to be filled of a 15 acre freshwater wetland. In addition, project elements affecting transition areas should be detailed;

4. A description of the source of any fill material and a description of the type, composition and quantity of the material. For dredge projects, submit the information as listed at N.J.A.C. 7:7A-4.3(c)2;

5. A description of alternatives to the proposed activity or discharge, including alternative sites, construction methods, methods of discharge, and reasons for rejecting the alternatives pursuant to N.J.A.C. 7:7A-3, General Standards for Granting Individual Freshwater Wetlands and Open Water Fill Permits;

6. The purpose and intended use of the proposed activity, including whether it is water-dependent; a description of the uses of any structures to be erected; and a schedule for the progress and completion of the proposed activity;

7. A list of the approvals required by other Federal, interstate, State and local agencies for the activity, including all approvals or denials received;

8. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, PO Box 402, Trenton, NJ 08625-0402) showing the location of the property and its general vicinity, indicating and labeling the location of the proposed activity and the property boundaries, and a determination of the State Plane Coordinates for the center of the property. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects, the applicant shall provide State plane coordinates for the end-points of those projects which are 1,999 feet or less, and for those projects which are 2,000 feet and longer, additional coordinates at each 1,000 foot interval;

9. Verification that a complete copy of the application for an Individual permit, including all materials required by this subsection, has been submitted to the clerk of the municipality in which the proposed regulated activity will

occur. Verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a copy of the vicinity map in (a)8 above have been forwarded to the environmental commission or any other public body with similar responsibilities, and planning board of the municipality in which the proposed regulated activity will occur; the planning board, environmental commission and county mosquito control agency of the county in which the proposed regulated activity will occur; landowners within 200 feet of the property or properties on which the proposed regulated activity will occur (applicant shall also provide a list of all landowners within 200 feet), and all persons as identified by the Department who requested to be notified of proposed regulated activities (the Department will furnish a list of such persons upon request), which notice may, at the applicant's option, be filed concurrently with notices required pursuant to N.J.S.A. 40:55D-1 et seq. A copy of the notice shall be included in the application to the Department. The notice shall include the following:

i. The name and address of the applicant and, if different, the address or location of the activity or activities regulated by the permit;

ii. The name, address, and telephone number of the applicant or agent to contact for further information;

iii. A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills, and a description of the type, composition and quantity of materials to be discharged;

iv. A plan and elevation drawing showing the general and specific site location (drawings may be 8.5 by 11 inches);

v. Any other information which is necessary to evaluate the likely impact of the proposed activity;

vi. The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the New Jersey Department of Environmental Protection, Land Use Regulation Element for an Individual Freshwater Wetlands permit.

An Individual permit will allow the property owner to conduct activities in freshwater wetlands or State open waters.