

permanent disturbance. For example, maintained clearing over a utility line is permanent disturbance. For the purposes of this section, installation of a utility line in scrub shrub or emergent wetlands shall not be considered permanent disturbance;

2. Permanently maintained clearing over the utility line shall be no wider than 20 feet unless a wider area is required by law;

3. The trench into which the utility line is placed shall be no wider than necessary to comply with the United States Occupational Safety and Health Administration safety standards for excavations, set forth at 29 CFR Part 1926, Subpart P;

4. Temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, such as temporary construction clearing or temporary storage of dirt or equipment, shall be the minimum size necessary for compliance with applicable laws;

5. The activities shall not cause any change in preconstruction elevation of a freshwater wetland, transition area, or State open water; and

6. Manholes and siphons for sewer lines shall be placed outside of wetlands, unless the Department's Municipal Finance and Construction Element determines under N.J.A.C. 7:22 and/or N.J.A.C. 7:14A:23 that there is no feasible alternative to placement in wetlands.

(d) In order to minimize environmental impact, a permittee shall:

1. Dispose of any excess soil or bedding material immediately upon completion of construction. This material shall be disposed of outside of freshwater wetlands, transition areas, State open waters, and areas regulated under the Department's Flood Hazard Area Control Act rules at N.J.A.C. 7:13;

2. Backfill the uppermost 18 inches of any excavation with the original topsoil material;

3. Replant the disturbed area with indigenous wetlands plants;

4. Stabilize the disturbed area in accordance with the requirements of the appropriate Soil Conservation District; and

5. Ensure that the activities do not interfere with the natural hydraulic characteristics of the wetland, such as the flow characteristics of groundwater on the site.

(e) Any pipes laid through wetlands, transition areas, or State open waters shall be:

1. Properly sealed so as to prevent leaking or infiltration;

2. Designed so as not to form or provide a conduit for groundwater to be discharged or drained from the wetland; and

3. Placed entirely beneath the pre-existing ground elevation in order to allow free passage of surface and ground water, unless the applicant shows that placing some or all of the pipe above ground would be more environmentally beneficial.

(f) Mitigation shall be performed for all permanent loss and/or disturbance of 0.1 acres or greater of freshwater wetlands or State open waters. Mitigation shall be performed for all permanent loss and/or disturbance of less than 0.1 acres of freshwater wetlands or State open waters unless the applicant demonstrates to the Department that all activities have been designed to avoid and minimize impacts to wetlands. For purposes of this subsection, "minimize" means that the project is configured so that most or all of it is contained in the uplands on the site, and that the wetlands are avoided to the greatest extent possible. An applicant is not required to reduce the scope of the project or to consider offsite alternatives to comply with this requirement.

1. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.5 and shall be submitted to the Department for review and approval no later than 120 days prior to the initiation of regulated activities authorized by this general permit. Mitigation shall be performed prior to or concurrently with general permit activities.

(g) Activities under general permit 2 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and 13.2, Establishing permit conditions.

Amended by R.1989 d.373, effective July 17, 1989.

See: 20 N.J.R. 1327(a), 21 N.J.R. 2024(a).

Added eight new Statewide General Permits, (a)10-17.

Amended by R.1990 d.446, effective September 4, 1990.

See: 22 N.J.R. 278(a), 22 N.J.R. 2753(a).

Expedited review process provided at (a)4 for hazardous waste remediation activities.

Public Notice: Request for public comments and public hearings.

See: 24 N.J.R. 975(a).

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.

Public Notice: Notice of action on adoption of statewide general permits pursuant to Freshwater Wetlands Protection Act.

See: 24 N.J.R. 2252(a).

Amended by R.1999 d.352, effective October 4, 1999.

See: 31 N.J.R. 1562(a), 31 N.J.R. 2964(a).

Rewrote (a).

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

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

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)1, substituted "0.5" for "one" and rewrote the last sentence; and in (f), inserted ", and 13.2, Establishing permit conditions".

Amended by R.2009 d.330, effective November 2, 2009.

See: 40 N.J.R. 5478(a), 41 N.J.R. 4090(a).

In (c)1, substituted "section" for "subsection"; added new (f); and recodified former (f) as (g).

### 7:7A-5.2A (Reserved)

New Rule, R.2001 d.312, effective September 4, 2001.

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

Repealed by R.2008 d.291, effective October 6, 2008.

See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

Section was "Combined general permit 2 and flood hazard area permit".

### 7:7A-5.3 General permit 3—Discharge of return water

(a) General permit 3 authorizes the discharge of return water from an upland, contained, dredged material disposal area into State open waters, and placement of a pipe above ground for the discharge through freshwater wetlands and/or transition areas. The dredging itself may also require other State and Federal permits.

(b) Activities under general permit 3 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and 13.2, Establishing permit conditions.

Amended by R.1989 d.373, effective July 17, 1989.

See: 20 N.J.R. 1327(a), 21 N.J.R. 2024(a).

Added eight new Statewide General Permits, (a)10-17.

Amended by R.1990 d.446, effective September 4, 1990.

See: 22 N.J.R. 278(a), 22 N.J.R. 2753(a).

Expedited review process provided at (a)4 for hazardous waste remediation activities.

Public Notice: Request for public comments and public hearings.

See: 24 N.J.R. 975(a).

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. Public Notice: Notice of action on adoption of statewide general permits pursuant to Freshwater Wetlands Protection Act.

See: 24 N.J.R. 2252(a).

Amended by R.1999 d.352, effective October 4, 1999.

See: 31 N.J.R. 1562(a), 31 N.J.R. 2964(a).

Rewrote (a).

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

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

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), inserted ", and 13.2, Establishing permit conditions".

### 7:7A-5.4 General permit 4—Hazardous site investigation and cleanup

(a) General permit 4 authorizes activities in freshwater wetlands, transition areas, and State open waters, which are undertaken by the Department or expressly approved in writing by the Department's Division of Remediation Management and Response, for the investigation, cleanup or removal of:

1. Hazardous substances as defined in the Department's rules governing hazardous substances at N.J.A.C. 7:1E, Appendix A; or

2. Pollutants, as defined in the New Jersey Water Pollution Control Act implementing rules at N.J.A.C. 7:14A.

(b) There is no acreage limit on activities under general permit 4. However, disturbance shall be the minimum that is necessary for compliance with the Department's technical requirements for site remediation, N.J.A.C. 7:26E, and mitigation shall be performed for all disturbances of freshwater wetlands or State open waters caused by a cleanup authorized under this general permit except that mitigation is not required to compensate for disturbance of wetlands or State open waters that have formed as a direct result of the remediation activities. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.

(c) The mitigation proposal required under (b) above may be incorporated into the document by which the Department approves the cleanup and/or it may be submitted as part of the General permit application. The Department shall not issue an authorization under general permit 4 until the mitigation proposal, or an equivalent document that ensures that the requirements of N.J.A.C. 7:7A-15 are met, is approved. Mitigation shall be performed prior to or concurrently with cleanup activities.

(d) Activities under general permit 4 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits, and 13.2, Establishing permit conditions.

Amended by R.1989 d.373, effective July 17, 1989.

See: 20 N.J.R. 1327(a), 21 N.J.R. 2024(a).

Added eight new Statewide General Permits, (a)10-17.

Amended by R.1990 d.446, effective September 4, 1990.

See: 22 N.J.R. 278(a), 22 N.J.R. 2753(a).

Expedited review process provided at (a)4 for hazardous waste remediation activities.

Public Notice: Request for public comments and public hearings.

See: 24 N.J.R. 975(a).

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. Public Notice: Notice of action on adoption of statewide general permits pursuant to Freshwater Wetlands Protection Act.

See: 24 N.J.R. 2252(a).

Amended by R.1999 d.352, effective October 4, 1999.

See: 31 N.J.R. 1562(a), 31 N.J.R. 2964(a).

Rewrote (a).

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

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

Amended by R.2008 d.291, effective October 6, 2008.

See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

In the introductory paragraph of (a), substituted "Division of Remediation Management and Response" for "Site Remediation Program"; and in (d), inserted ", and 13.2, Establishing permit conditions".

### 7:7A-5.5 General permit 5—Landfill closures

(a) General permit 5 authorizes activities in freshwater wetlands, transition areas and/or State open waters that are undertaken by the Department's Division of Solid and Hazardous Waste, or authorized through a solid waste facility

permit may authorize a disturbance, and require 10 acres of creation to compensate for that disturbance. If the disturbance is begun on January 1, 2001, but the mitigation is not performed prior to or concurrently with the disturbance and continued according to the approved schedule as required under (a)1 above, the acreage of creation required increases to 12 acres on January 1, 2002, in order to compensate for the absence of wetlands functions and values from the ecosystem during the time between the disturbance and the creation.

(c) In order to ensure compliance with (a) above, if mitigation is required for a publicly funded project, all work necessary to complete the mitigation shall be included in the contract awarded for the project, unless the applicant demonstrates that the mitigation will be performed by the applicant's staff and will not be awarded through a contract.

Amended by R.2008 d.291, effective October 6, 2008.  
See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

In (a)1, inserted "except that no regulated activities shall occur before the Department has approved a mitigation proposal".

#### **7:7A-15.4 Property suitable for mitigation and the criteria for addressing contaminated sites**

(a) Any offsite restoration, creation, enhancement, land donation, or upland preservation shall be carried out on private property, except that a government agency, as defined at N.J.A.C. 7:7A-1.4, may create, restore, or enhance on public land in accordance with this subchapter, as mitigation for a project funded solely with public monies, if the land was not acquired with Green Acres funding, as defined at N.J.A.C. 7:36-2.1, and any one of the following criteria is met:

1. The land is obtained or held by the government agency for mitigation;
2. The land is obtained by the government agency by default or operation of law, through a tax lien or other similar circumstance; or
3. The land obtained or held by the government agency is, or was formerly a wetland and the government agency is proposing to restore and/or enhance the wetland for mitigation.

(b) An improvement to a public facility which is intended for human use, such as a ball field, nature trail, or boardwalk, does not constitute mitigation.

(c) A person seeking property for a mitigation project under this subchapter shall review the applicable watershed management area plan, if any, approved by the Department under the Water Quality Management Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing rules at N.J.A.C. 7:15 to determine if suitable properties are listed, and shall also review the applicable county mitigation inventory, if any, prepared in accordance with N.J.S.A. 13:9C-1 et seq.

(d) The Department shall not approve mitigation through creation, restoration, or enhancement in an area that is already highly ecologically valuable, for example if the area contains

a mature, well developed, ecologically desirable natural community; a State open water that supports fish; a forested habitat; or significant cultural or historic resources, as identified in accordance with N.J.A.C. 7:7A-12.2.

(e) The Department shall approve mitigation through creation, restoration, or enhancement only on property that is owned in fee simple and under the full legal control of the person responsible for performing the mitigation, or the person responsible for performing the mitigation shall demonstrate that the person has legal rights to the property sufficient to enable compliance with all requirements of his chapter. If a property is affected by an easement or other encumbrance, the person responsible for performing the mitigation shall ensure that the encumbrance is extinguished.

(f) The Department shall require a habitat assessment if the Department deems such an assessment necessary to determine if an area is suitable for mitigation through enhancement. Any habitat assessment shall be performed in accordance with a scientific protocol approved by the Department.

(g) The Department shall not approve mitigation that would destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the continued existence of any local population of a threatened or endangered species.

(h) The Department shall not approve mitigation in an area that contains contamination until all potential contaminated areas have been identified, and all remediation of the area(s) is completed so that there is no potential for the mitigation activities to result in the reintroduction of contamination to ecological communities or exposure of humans to contamination, and there is no potential for the mitigation site to be contaminated by the belated discovery of new areas of contamination requiring remediation. The Department will determine on a case by case basis whether it is feasible on a site containing contamination to conduct onsite mitigation.

1. If the Department determines that there is reason to suspect contamination on the proposed mitigation area, the site must be properly characterized and assessed to ensure there is no ecological risk associated with the proposal. To obtain this characterization, the mitigator shall establish a memorandum of agreement with the Department's Division of Remediation Management and Response in accordance with N.J.A.C. 7:26C in order to obtain a review of the submitted data.

2. The applicant shall not submit a proposed mitigation bank containing known or suspected contamination to the Department for conceptual approval in accordance with N.J.A.C. 7:7A-15.25(a) until the site has been fully characterized in accordance with (h)1 above.

(i) Stormwater management facilities designed to treat stormwater shall not constitute mitigation.

Amended by R.2008 d.291, effective October 6, 2008.  
See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

Section was "Property suitable for mitigation". In the introductory paragraph of (a), substituted "any one" for "either"; in (a)1, deleted "or" from the end; in (a)2, substituted " or" for "either" for a period at the end; added (a)3; in (d), inserted " as identified in accordance with N.J.A.C. 7:7A-12.2"; in (e), deleted "or shall demonstrate that the encumbrance will not inhibit compliance with the mitigation requirements of this chapter" from the end; rewrote the introductory paragraph of (h); and added (h)1, (h)2 and (i).

#### 7:7A-15.5 Mitigation for a smaller disturbance

(a) This section governs, for a smaller disturbance, the mitigation alternative required and the location of mitigation in relation to the disturbance. (See Figure 4 below for an illustration of the information in this section.) However, if a smaller disturbance is a temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, it is governed by N.J.A.C. 7:7A-15.7. The acreage amount of mitigation required for both smaller and larger disturbances is determined under N.J.A.C. 7:7A-15.8.

(b) A smaller disturbance is:

1. A disturbance of 1.5 acres or less of freshwater wetlands or State open water; or
2. A disturbance affecting only ordinary resource value wetlands.

(c) The Department presumes that onsite mitigation for a smaller disturbance is not feasible. Therefore, mitigation for a smaller disturbance shall be performed through credit purchase in accordance with (d) below, unless the applicant demonstrates under (e) below that one of the following will be more environmentally beneficial:

1. Onsite restoration, creation or enhancement; or
2. Offsite restoration, creation, or enhancement, which is performed in the same HUC 11, as defined at N.J.A.C. 7:7A-1.4, as the disturbance, or performed in an adjacent HUC 11 within the same watershed management area as the disturbance.

(d) Mitigation through credit purchase shall be performed as follows:

1. Through the purchase of credits from either of the following:
  - i. A mitigation bank located in the same HUC 11 as the disturbance; or
  - ii. A mitigation bank approved by the Wetlands Mitigation Council prior to January 1, 1999, which includes the disturbance site in its bank service area. The service area for each mitigation bank is set forth in the Wetlands Mitigation Council approval for the bank;

2. If no credits are available from a bank listed in (d)1 above, through the purchase of credits from a mitigation bank located in a HUC 11 that is both adjacent to the HUC 11 in which the disturbance is located and within the same watershed management area, as defined at N.J.A.C. 7:7A-15.1, as the disturbance;

3. If no credits are available from a bank listed in (d)1 or 2 above, through the purchase of credits from a mitigation bank located anywhere in the same watershed management area as the disturbance; or

4. If no credits are available from a mitigation bank located in (d)1, 2, or 3 above, through the purchase of credits from a mitigation bank which includes the disturbance site in its bank service area.

(e) In determining if onsite or offsite mitigation for a smaller disturbance would be environmentally beneficial for the purposes of (c) above, the Department shall consider the following factors and any other relevant factors specific to the site or project:

1. Size. Generally, the larger a mitigation area, the greater its potential environmental benefit. A mitigation area that is associated with a large existing wetland complex is more likely to be environmentally beneficial for the purpose of (c) above;

2. Location in relation to other preserved open space. A mitigation area adjacent to public land or other preserved areas is more likely to be environmentally beneficial;

3. Habitat value. A mitigation area that will provide valuable habitat for critical wildlife species or threatened or endangered species is more likely to be environmentally beneficial; and

4. Interaction with nearby resources. A mitigation project is more likely to be environmentally beneficial if it complements existing nearby resources. For example, a mitigation project that adds riparian wetlands habitat adjacent to an existing stream enhances the environmental value of both the riparian area and the stream.

(f) If credit purchase under (d) above, and onsite or offsite mitigation under (c) above, are not feasible, mitigation shall be performed through a monetary contribution in accordance with N.J.A.C. 7:7A-15.21 or, if the Department determines that no other mitigation alternative is practicable or feasible, mitigation shall be performed through upland preservation, in accordance with N.J.A.C. 7:7A-15.9, or a land donation approved by the Wetlands Mitigation Council, in accordance with N.J.A.C. 7:7A-15.22.