

CHAPTER 7

DIVISION OF COASTAL RESOURCES: COASTAL PERMIT PROGRAM RULES

Authority

N.J.S.A. 12:5-1 et seq., 13:1D-1 et seq., 13:9A-1 et seq., 13:9B-1 et seq., and 13:19-1 et seq.

Source and Effective Date

R.1994 d.378, effective June 24, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Executive Order No. 66(1978) Expiration Date

Chapter 7, Division of Coastal Resources: Coastal Permit Program Rules, expires on June 24, 1999.

Chapter Historical Note

Originally, subchapter one of this chapter contained rules on Riparian Grants and Leases, which were adopted pursuant to N.J.S.A. 12:7-1 et seq. On October 7, 1980, R.1980 d.433 repealed this text. See: 12 N.J.R. 454(b), 12 N.J.R. 643(a). On August 26, 1980 rules concerning Waterfront Development Permits were adopted pursuant to N.J.S.A. 12:5-3 and 13:10-9 and filed as R.1980 d.375. This text was codified at subchapter two and became operative on September 26, 1980. See: 12 N.J.R. 252(a), 12 N.J.R. 576(a). Subsequently, amendments to this subchapter were filed as R.1981 d.355, effective July 9, 1981. See: 13 N.J.R. 73(c), 13 N.J.R. 401(b). On May 7, 1984 subchapter two was repealed by R.1984 d.164. See: 16 N.J.R. 1073(a). The chapter was substantially amended effective May 18, 1987 as R.1987 d.217. See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

The current Coastal Permit Program Rules are based on the CAFRA rules formerly found at N.J.A.C. 7:7D and include elements of the repealed Waterfront Development Permit rules (N.J.A.C. 7:7-2) and Wetlands Management rules (N.J.A.C. 7:7A-1). The wetlands maps listed at N.J.A.C. 7:7-2.2(c) were recodified from N.J.A.C. 7:7A-1.13. Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1989 d.309, effective May 12, 1989 (operative June 5, 1989). See: 21 N.J.R. 369(a), 21 N.J.R. 1526(a). Public Notice: Notice of Routine Program Implementation. See: 25 N.J.R. 1010(a).

Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1994 d.276 effective May 10, 1994. See: 26 N.J.R. 917(a), 26 N.J.R. 2413(a).

Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1994 d.378. See: Source and Effective Date: Subchapter 7, General Permits and Permits-By-Rule, was adopted as part of R.1994 d.378, effective July 18, 1994. See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a). See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 7:7-1.1 Purpose and scope
- 7:7-1.2 (Reserved)
- 7:7-1.3 Definitions
- 7:7-1.4 Standards for evaluating permit applications
- 7:7-1.5 Permits and permit conditions
- 7:7-1.6 Provisional permits
- 7:7-1.7 Emergency permit authorization
- 7:7-1.8 Procedure where more than one permit is required
- 7:7-1.9 Permit fees
- 7:7-1.10 Construction
- 7:7-1.11 Severability

SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

- 7:7-2.1 CAFRA
- 7:7-2.2 Wetlands
- 7:7-2.3 Waterfront development

SUBCHAPTER 3. PRE-APPLICATION REVIEW

- 7:7-3.1 Purpose
- 7:7-3.2 Request for a pre-application review
- 7:7-3.3 Discussion of information requirements
- 7:7-3.4 Memorandum of record

SUBCHAPTER 4. PERMIT REVIEW PROCEDURE

- 7:7-4.1 General
- 7:7-4.2 Application contents
- 7:7-4.3 Availability of application for examination by the public
- 7:7-4.4 Initial review of applications
- 7:7-4.5 Public hearings and public comment periods
- 7:7-4.6 Final review of the application
- 7:7-4.7 Timetable for final decisions
- 7:7-4.8 Publication of the final decision
- 7:7-4.9 Withdrawal, resubmission and amendment of applications
- 7:7-4.10 Requests for modifications
- 7:7-4.11 Suspension and revocation of permits
- 7:7-4.12 (Reserved)

SUBCHAPTER 5. APPEALS

- 7:7-5.1 Request for review on appeal
- 7:7-5.2 Response to appeal request
- 7:7-5.3 Action on appeal request
- 7:7-5.4 Review of revised application to settle appeal
- 7:7-5.5 (Reserved)

SUBCHAPTER 6. ENVIRONMENTAL IMPACT STATEMENTS

- 7:7-6.1 When an EIS is required
- 7:7-6.2 Formats and contents
- 7:7-6.3 Preparation

SUBCHAPTER 7. GENERAL PERMITS AND PERMITS-BY-RULE

- 7:7-7.1 General standards for issuing coastal General Permits and Permits-By-Rule
- 7:7-7.2 General Permit authorization
- 7:7-7.3 Application procedure for a General Permit authorization
- 7:7-7.4 Permits-By-Rule

SUBCHAPTER 8. ENFORCEMENT

- 7:7-8.1 Authority for N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)
- 7:7-8.2 Procedures for issuing an administrative order pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)
- 7:7-8.3 Procedures for assessment, settlement and payment of civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)
- 7:7-8.4 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative

- penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)
- 7:7-8.5 Civil administrative penalties for failure to obtain a permit for regulated activities pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA)
- 7:7-8.6 Civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA) other than failure to obtain a permit for regulated activities
- 7:7-8.7 Civil penalty for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)
- 7:7-8.8 Civil administrative penalties for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)
- 7:7-8.9 Civil administrative penalty for continuing violation of N.J.S.A. 12:5-1 et seq. (Waterfront Development)
- 7:7-8.10 Procedures for assessment, settlement and payment of civil administrative penalties pursuant to N.J.S.A. 12:5-1 et seq. (Waterfront Development)
- 7:7-8.11 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)
- 7:7-8.12 Civil penalties for violations of N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)
- 7:7-8.13 Civil actions for violations of N.J.S.A. 13:19-1 et seq. (CAFRA), N.J.S.A. 12:5-1 et seq. (Waterfront Development), and N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)
- 7:7-8.14 Severability

APPENDIX ADMINISTRATIVE HEARING REQUEST CHECKLIST AND TRACKING FORM FOR PERMITS

SUBCHAPTER 1. GENERAL PROVISIONS

7:7-1.1 Purpose and scope

(a) This chapter establishes the procedures by which the Department of Environmental Protection will review permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the Waterfront Development Law (N.J.S.A. 12:5-3). These procedures also govern the reviews of Federal Consistency Determinations issued pursuant to the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and Water Quality Certificates issued pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq., when the approvals are sought in conjunction with any of the foregoing permit applications.

(b) The following types of activities are regulated under each of these laws:

1. CAFRA: The construction of any development defined in Section 3 of the Act (N.J.S.A. 13:19-3) or in N.J.A.C. 7:7-2.1, within the coastal area described in Section 4 of the Act (N.J.S.A. 13:19-4).

2. Wetlands Act of 1970: The draining, dredging, excavation, or deposition of material, and the erection of any structure, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act of 1970. A list of these maps and a full list of regulated activities appears in N.J.A.C. 7:7-2.2.

3. Waterfront Development Law: The filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways outside the area regulated under CAFRA. These requirements are fully explained in N.J.A.C. 7:7-2.3.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Validity. In re Loveladies Harbor, Inc., 176 N.J.Super. 69, 422 A.2d 107 (App.Div.1980), certification denied 85 N.J. 501, 427 A.2d 588 (1981).

Regulated activity without permit prior to promulgated order. Loveladies Prop. Owners Ass'n v. Raab, 137 N.J.Super. 179, 348 A.2d 540 (App.Div.1975).

Power of D.E.P. to regulate use of marshes and wetlands. Sands Point Harbor, Inc. v. Sullivan, 136 N.J.Super. 436, 346 A.2d 612 (App.Div.1975).

7:7-1.2 (Reserved)

Repealed, R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).
This section "Authority" was repealed.

7:7-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Beach" means a gently sloping area of sand or other unconsolidated material found on tidal shorelines, including ocean, inlet, bay and river shorelines, that extends landward from the mean high water line to either: the vegetation line; a man-made feature generally parallel to the ocean, inlet, bay or river waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or the seaward or bayward foot of dunes, whichever is closest to the ocean, inlet, bay or river water.

"CAFRA" means the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.).

"City of the fourth class" means a city as defined at N.J.S.A. 40A:6-4d which borders on the Atlantic Ocean and which is a seaside or summer resort.

“Coastal Permit” means a CAFRA, Wetlands or Waterfront Development Permit.

“Commissioner” means the Commissioner of the Department of Environmental Protection or designated representative.

“Commercial development” means a development designed, constructed or intended to accommodate commercial or office uses. “Commercial development” shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food, beverage or other merchandise, or any establishment used for providing professional, financial, or other commercial services.

“Department” means the Department of Environmental Protection.

“Development” means any activity for which a Wetlands Act of 1970 or Waterfront Development permit is required, including site preparation and clearing. Development, for an application under the Coastal Area Facility Review Act, means the construction, relocation, or enlargement of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development, and public development. Development does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with expansions.

“Dune” means a wind- or wave-deposited or man-made formation of sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and the foot of the most inland slope of the dune. Dune includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist. A small mound of loose, windblown sand found in a street or on part of a structure as a result of storm activity is not considered to be a dune.

“Dwelling unit” means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a patient/client room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home, or any other habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

“Educational facility” means an elementary or secondary school.

“Excavation” means the extraction of sand, gravel, earth or any other material.

“Filling” means the depositing of sand, gravel, earth or any other material.

“Floating home” means any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.

“Footprint of development” means the vertical projection to the horizontal plane of the exterior of all exterior walls of a structure.

“Governmental agency” means the Government of the United States, the State of New Jersey, or any other state, or a political subdivision, authority, agency or instrumentality thereof, and shall include any interstate agency or authority.

“Habitable structure” means a structure that is able to receive a certificate of occupancy from the municipal construction code official, or is demonstrated to have been legally occupied as a dwelling unit for the most recent five year period.

“Industrial development” means a development that involves a manufacturing or industrial process, and shall include, but is not limited to, electric power production, food and food by-product processing, paper production, agricultural production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products.

“Intervening development” means a development with an aboveground structure, excluding any shore protection structure or sand fencing, and includes houses, garages, commercial, industrial or public buildings that are either completed or under active construction as of July 19, 1994 and that have received all necessary Federal, State, and local approvals prior to July 19, 1994. “Intervening development” does not include seawalls, bulkheads, retaining walls, revetments, fences, boardwalks, promenades, patios, decks, carports, prefabricated sheds, docks, piers, lifeguard stands, bath houses, gazebos, swimming pools, utility lines, culverts, railroads, roadways, sewage pump stations, or cabanas. An “intervening development” will be determined by looking at the vertical plane of the exterior walls of the structure extended landward and perpendicular to the mean high water line or landward limit of a beach or dune.

“Mean high water” (MHW) is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey shore, the two high waters of each tidal day are included in the mean. This datum is available from the Department’s Bureau of Tidelands.

"Mean high water line" (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the ocean front and the tidal bays and streams in the coastal zone.

(Note: For the above two definitions, for practical purposes, the mean high water line is often referred to as the "ordinary" high water line, which is typically identified in the field as the limit of wet sand or the debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Act, the surveyed mean high water elevation will be utilized.)

"Permit" means any legal instrument constituting permission to undertake construction pursuant to CAFRA (N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), or the Waterfront Development Law (N.J.S.A. 12:5-3). Permits shall be issued with conditions including requirements that shall, at the discretion of the Department, be satisfied prior to commencement of construction and long term post construction requirements such as monitoring and maintenance.

"Person" means any corporation, company, association, society, firm, partnership, individual, government agency, or joint stock company.

"Pesticide" means any substance defined as a pesticide pursuant to the provisions of N.J.A.C. 7:30.

"Program" means the Land Use Regulation Program in the Department of Environmental Protection.

"Public development" means a solid waste facility, including incinerators and landfills, wastewater treatment plant, public highway, airport including single or multi-air strips, an above or underground pipeline designed to transport petroleum, natural gas, or sanitary sewage, and a public facility, and shall not mean a seasonal or temporary structure related to the tourism industry, an educational facility or power lines. "Public development" does not have to be publicly funded or operated.

"Public highway" means a "public highway" as defined in section 3 of P.L. 1984, c.73 (N.J.S.A. 27:1B-3), namely public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, and any facilities, equipment, property, rights-of-way, easements and interests therein needed for the construction, improvement and maintenance of highways.

"Qualifying municipality" means those municipalities defined in urban aid legislation, N.J.S.A. 52:27D-178, qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. The municipalities meeting this definition in 1993 are: Asbury Park, Bridgeton, Keansburg, Lakewood, Long Branch, Millville, Neptune, Pleasantville, and Salem City.

"Reconstruction" means the repair or replacement of a building, structure, or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the area of impervious coverage associated with the development, and does not result in a change in the use of the development. Reconstruction does not include repairs or maintenance, such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with expansions.

"Regulated activity" or "activity" means any activity for which a permit is required under CAFRA, the Wetlands Act of 1970 or Waterfront Development Law, and shall also include the terms "project" and "development".

"Regulated wetland" means any wetland which has been mapped and the map promulgated pursuant to the Wetlands Act of 1970.

"Residential development" means a development that provides one or more dwelling units.

"Seasonal or temporary structures related to the tourism industry" means lifeguard stands and associated temporary equipment storage containers, picnic tables, benches and canopies, beach badge sheds with a footprint not exceeding 64 square feet in area, wooden walkways, stage platforms, and portable rest rooms, which remain in place only during the period from May 1 through September 30, and provided that the placement of such structures does not involve the excavation, grading or filling of a beach or dune.

"Site" means the land or area upon which a proposed development is to be constructed.

"Site preparation" means physical activity which is an integral part of a continuous process of land development or redevelopment for a particular development which must occur before actual construction of that development may commence. It does not include the taking of soil borings, performing percolation tests, or driving of less than three test pilings.

"Structure" means any assembly of materials above, on or below the surface of the land or water, including but not limited to buildings, fences, dams, pilings, footings, breakwaters, culverts, pipes, pipelines, piers, roads, railroads, bridges, and includes floating structures.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Amended Division and Permit; added pesticide.
Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-1.4 Standards for evaluating permit applications

All applications for coastal permits (as defined in N.J.A.C. 7:7-1.3), water quality certificates, and Federal consistency determinations shall be approved, conditionally approved or denied pursuant to the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E. In addition, applications for water quality certificates will be reviewed on the basis of other applicable State laws, including the State water quality standards.

Amended by R.1987 d.217, effective May 18, 1987.
Sec: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Deleted Policies from text.

Amended by R.1994 d.378, effective July 18, 1994.
Sec: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Conditional approval of construction permit for large scale development, permitting no construction until statutory standards satisfied, improper (citing former N.J.A.C. 7:7D-2.3). *Crema v. Dept. of Environmental Protection*, 182 N.J.Super. 445, 442 A.2d 630 (App.Div. 1982), affirmed as modified 94 N.J. 286, 463 A.2d 910 (1983).

7:7-1.5 Permits and permit conditions

(a) No person shall undertake or cause, suffer, allow or permit any regulated activity without a permit issued by the Department in accordance with this chapter.

(b) The following standard procedural conditions shall apply to all coastal permits. Failure to comply with any of the following shall constitute a violation.

1. A permittee shall notify the Department in writing, at least three working days prior to the beginning of construction on the site or site preparation.

2. A permittee shall notify the Department in writing within five working days prior to commencement of operation of a CAFRA development. At this time, the permittee shall also certify that all conditions of the permit that must be met prior to operation of the development have been met.

3. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction, structure or structures. Neither the State nor the Department shall, in any way, be liable for the loss of life or property which may occur by virtue of the activity or development resulting from any permit.

4. A permittee shall allow the authorized representatives of the Department free access to the site at all times when construction activity is taking place, and at other times upon notice to the permittee. The permittee shall provide free of charge to the Department all of its equipment reasonably necessary for inspection of the site.

5. No change in plans or specifications upon which a permit is issued shall be made except with the prior written permission of the Department, in accordance with N.J.A.C. 7:7-4.10.

6. The notice of authorization shall be posted prominently at the site during construction and a copy of the permit and approved plans shall be kept on the construction site and shall be exhibited upon request to any person.

7. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit, pursuant to N.J.A.C. 7:7-4.11.

8. Plans and specifications in the application and conditions imposed by a permit shall remain in full force and effect so long as the proposed development or any portion thereof is in existence, unless modified pursuant to N.J.A.C. 7:7-4.10.

9. If any condition of a permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect the public interest.

10. A permit is subject to suspension or revocation for violations of its terms and conditions. A permittee shall, upon receipt of a notice of suspension or revocation, comply with the terms of such notice and shall, if required, cease such construction.

11. The Department may issue a modified permit for good cause when circumstances warrant minor changes in the original permit which will not result in additional adverse environmental impacts.

12. If a permit condition requires the dedication of land to a political subdivision for open space and/or recreational or other uses, the permittee shall, within 45 days of the political subdivision's decision whether or not to accept the land, furnish proof to the Department of the political subdivision's decision with respect to such dedication, or the permit may be revoked as provided in N.J.A.C. 7:7-4.11.

13. In the event of rental, lease, sale or other conveyance of the site by the permittee, the permit shall be continued in force and shall apply to the new tenant, lessee, owner or assignee so long as there is no change in the site, proposed construction or proposed use of the development, as described in the original application. No such change shall be implemented unless an application for a permit modification is filed pursuant to N.J.A.C. 7:7-4.10.

14. If a permit contains a condition that must be satisfied prior to the commencement of construction, the permittee must comply with such condition(s) within the time required by the permit or, if no time specific requirement is imposed, then within six months of the effective date of the permit, or provide evidence satisfactory to the Department that such condition(s) cannot be satisfied.

15. If required by the Department as a permit condition, the permit shall be filed with the clerk of the county court in which the project site is located as notice to prospective purchasers.

(c) The following standard substantive conditions shall apply to all coastal permits, where appropriate:

1. A permittee shall employ appropriate measures to minimize noise where necessary during construction, as specified in N.J.S.A. 13:1G-1 et seq. and N.J.A.C. 7:29 (Noise control).

2. Development which requires soil disturbance, the creation of drainage structures, or changes in natural contours shall conduct operations in accordance with the latest revised version of "Standards for Soil Erosion Sediment Control in New Jersey," promulgated by the New Jersey State Soil Conservation Committee, pursuant to the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-42 et seq. and N.J.A.C. 2:90-1.3 through 1.14. These standards are hereby incorporated by reference.

(d) A permit shall be valid authority to commence construction of a development for a period of five years from its date of issuance. Where construction has commenced within this five year period, the permit, with the exception of permits issued for activities located below the mean high water line, shall upon written authorization of the Department be valid, as long as construction continues, until the project is completed subject to the provisions of (d)1 and 2 below.

1. If construction continues beyond the five year period, and then, prior to completion of the project, stops for a cumulative period of one year or longer the permit shall expire, except for projects of unusual size or scope or for projects for which are delayed due to circumstances beyond the permittee's control (such as a delay in the financing of a public works project), in which case, upon the request of the applicant prior to the expiration of the original permit, the permit may be extended for a total of 10 years from the original effective date.

2. All requests for authorization to continue construction beyond the expiration of a permit shall be submitted to the Department no later than 20 business days prior to the expiration date of the permit.

3. All permits issued for activities occurring below the mean high water line shall be effective for a fixed term not to exceed five years.

4. All water quality certificates and Federal consistency determinations issued in conjunction with a State permit will be in effect for the lifetime of the associated State permit.

5. A water quality certificate not issued in conjunction with other State permits shall be effective for five years or for the original duration of the underlying Federal permit (without renewals), whichever is shorter.

(e) The Department may, after public notice, issue a general permit for activities which are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. The process for issuance of General Permits and the process for authorizing various activities under the issued General Permits is detailed at N.J.A.C. 7:7-7.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Substantially amended.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Permit granted while permit application was still pending was invalid. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Conditional approval of construction permit for large scale development, permitting no construction until statutory standards satisfied, improper (citing former N.J.A.C. 7:7D-2.5). *Crema v. Dept. of Environmental Protection*, 182 N.J.Super. 445, 442 A.2d 630 (App.Div. 1982), affirmed as modified 94 N.J. 286, 463 A.2d 910 (1983).

7:7-1.6 Provisional permits

(a) The Department may issue a provisional permit if it finds that the beginning of construction prior to the completion of the full permit review process is necessary to meet the regulatory or funding requirements of a Federal or State agency.

(b) The issuance of a provisional permit shall not exempt the permittee from any of the requirements of this chapter. A permit application must be submitted before a provisional permit can be issued, and all permit review procedures shall be complied with following issuance of the provisional permit.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-1.7 Emergency permit authorization

(a) The Department may issue an emergency permit authorization if it determines that there is an imminent threat to lives or property if regulated construction activities are not immediately commenced. Potential for severe environmental degradation will also constitute a basis for issuing an emergency permit authorization. The procedure for obtaining an emergency permit authorization is as follows:

1. The requesting party shall notify the Department's Bureau of Coastal and Land Use Enforcement by telephone of any situation which may constitute an imminent threat to lives, property or the environment. In response to this notification, the Bureau of Coastal and Land Use Enforcement will inspect the subject site whenever feasible to determine the condition of the property, and the extent of the imminent threat. The determination of imminent threat will be made solely by the Department, based on the condition of the property at the time of inspection. The findings of the inspection will be provided to the Land Use Regulation Program, together with a recommendation regarding the request for emergency permit authorization.

2. The requesting party shall notify the Administrator of the Land Use Regulation Program, in writing, of the imminent threat, including details of the condition of existing structures, the vulnerability of people and/or property, or the imminent threat to the environment, and the proposed construction activities for which the emergency permit authorization is being sought. This written notification shall concurrently be provided to the Department's Bureau of Coastal and Land Use Enforcement.

3. The Land Use Regulation Program will make the final determination on the issuance of an emergency permit authorization. The emergency permit authorization may be oral or in writing. If oral authorization is given, the Department shall issue a subsequent written authorization within five working days. In the event that the construction activities deviate from those which have been approved by the oral or written emergency permit authorization, prior authorization of those deviations must be obtained from the Land Use Regulation Program. Any unauthorized deviation in construction from that which has been authorized will constitute a violation of this section, and may be cause for suspension and revocation of the authorization, and/or other enforcement actions.

4. Within 10 working days of the issuance of an emergency permit authorization, the property owner shall submit a complete coastal permit application to the Land Use Regulation Program. This application must include the standard application (CP-1) form, appropriate permit fee, construction plans, compliance statement, and public notice, pursuant to N.J.A.C. 7:7-4.2. Upon receipt and review of the permit application in accordance with these rules and the Rules on Coastal Zone Management, N.J.A.C. 7:7E, the Land Use Regulation Program shall issue a coastal permit, or permits, for the activities covered by the emergency permit authorization. This permit may contain conditions which must be satisfied by the permittee in accordance with the time frames established in the permit.

New Rule, R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-1.8 Procedure where more than one permit is required

(a) When a proposed development or project requires more than one coastal permit, the Department will require only one application, but that application must comply with the requirements of each applicable permit program. This does not preclude an applicant from submitting separate applications if the timing or magnitude of a project requires it.

(b) The Department shall assess a single permit fee for a project which requires more than one of the following permits, if the permit applications are submitted and processed simultaneously: CAFRA permits; waterfront development permits; coastal wetlands permits; stream encroachment permits; or freshwater wetlands permits (including individuals permits, general permits, and transition area waivers) issued under N.J.A.C. 7:7A. The permit fee for the project shall be calculated in accordance with N.J.A.C. 7:1C-1.5(c).

Amended by R.1993 d.111, effective March 1, 1993.

See: 24 N.J.R. 2768(a), 25 N.J.R. 924(a).

Deleted "... the highest of any ..." and added "calculated in accordance with ...".

Recodified from 7:7-1.7 and amended R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-1.9 Permit fees

Permit fees are established by the Department pursuant to the 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and are published at N.J.A.C. 7:1C-1.5. The Department will maintain a printed fee schedule for public use.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added text "(N.J.S.A. 13:1D-29 et seq.)".

Recodified from 7:7-1.8 and amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-1.10 Construction

This chapter shall be liberally constructed to effectuate the purpose of the Acts under which it was adopted. The Department may, in its discretion and if consistent with statutory requirements, relax the application of any of the procedures contained in this chapter when necessary and in the public interest.

Recodified from 7:7-1.9 and amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-1.11 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Recodified from 7:7-1.10 by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

7:7-2.1 CAFRA

(a) A CAFRA permit shall be required for:

1. Any development located on a beach or dune;
2. A development located in the CAFRA area between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result either solely or in conjunction with a previous development, in:
 - i. A development if there is no intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;
 - ii. A residential development having three or more dwelling units if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;
 - iii. A commercial development having five or more parking spaces or equivalent parking area if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters; or
 - iv. A public development or industrial development;
3. A development located in the CAFRA area between a point greater than 150 feet landward of the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:
 - i. A residential development having 25 or more dwelling units;

ii. A commercial development having 50 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development;

4. A development located in the CAFRA area beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

i. A residential development having 75 or more dwelling units;

ii. A commercial development having 150 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development; and

5. Except as otherwise provided above, a development in the CAFRA area at a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development in:

i. A residential development having 25 or more dwelling units;

ii. A commercial development having 50 or more parking spaces or equivalent parking area; or

iii. A public development or industrial development.

(b) The Department interprets its obligation and responsibility to regulate development as defined by CAFRA to include review of the potential impacts of any development, if at least part of that development is located within the area in which a CAFRA permit is required. Therefore, if any development requires a CAFRA permit, the Department will review all of the components of the development, not just those that triggered the regulatory thresholds of CAFRA. In addition, the Department will review all the components of a development that spans the zones in (a) above if the total development exceeds a regulatory threshold. The Department interprets the statutory intent as excluding developments with relatively minor impacts. To that end, the following statutory terms are interpreted to mean the following, for the purposes of this section.

1. Public development, for the purposes of (a)3, 4, and 5 above only, does not include:

- i. The construction of a new road, sanitary sewer pipeline, storm sewer system, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length or the extension of a road, sanitary sewer pipeline, storm sewer system, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length, not to exceed a cumulative total of 1,200 feet in any one municipality at any one site, unless the construction is located within a development requiring a CAFRA permit in which case it shall be considered part of the development for which a permit is required;
 - ii. The maintenance, repair or replacement of existing water, petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, and electrical substations, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area;
 - iii. The repair, modification, or replacement of sanitary system components, including upgrading of systems from primary to secondary treatment, provided that an increase in design effluent flow will not result;
 - iv. The construction, maintenance, repair or replacement of water lines, telecommunication lines and cable television lines; or
 - v. The maintenance, repair or replacement of existing and functional railroads and related structures located completely within cleared and maintained rights-of-way.
2. Public development, for the purposes of (a)2 above, does not include:
- i. The maintenance, repair or replacement of existing water, petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, and electrical substations, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area;
 - ii. The repair, modification, or replacement of sanitary system components, including upgrading of systems from primary to secondary treatment, provided that an increase in design effluent flow will not result;
 - iii. The maintenance, repair, replacement, or connection of telecommunication lines and cable television lines; or
 - iv. The maintenance, repair or replacement of existing and functional railroads and related structures located completely within cleared and maintained rights-of-way.
3. For the purposes of (a)2, 3, 4, and 5 above, facilities which provide government services and are not specifically included in the definition of public development at N.J.A.C. 7:7-1.3 or provide recreational areas will be regulated in accordance with the thresholds for commercial developments.
 4. Equivalent parking areas will be calculated at 270 square feet per parking space, including one half of the associated aisle area, excluding access drives.
 5. For the purposes of (a)2 through 5 above, development or expansion of existing developments "either solely or in conjunction with a previous development" means:
 - i. The construction of any residential or commercial development on contiguous parcels of property, regardless of present ownership, where there is a proposed sharing of infrastructure constructed to serve those parcels including, but not limited to, roads, utility lines, drainage systems, open spaces or septic drain fields;
 - ii. The construction of any residential or commercial development on contiguous parcels of property which were under common ownership on or after September 1, 1973 (the effective date of CAFRA), regardless of present ownership, or any subdivision or resubdivision of a parcel of land which occurred after September 19, 1973;
 - iii. The construction of any residential or commercial development on contiguous parcels of land where there is some shared pecuniary, possessory, or other substantial common interest by one or more individuals in the units;
 - iv. The mooring of 25 or more floating homes in a marina. For the purposes of this subparagraph, a floating home is defined as a waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, and which will remain stationary for more than 10 consecutive days;
 - v. The addition of one or more parking spaces or dwelling units or equivalent to any existing dwelling units or parking spaces or equivalent parking area for which construction had commenced subsequent to September 19, 1973 where such addition, when combined with the existing dwelling units or parking area, results in a total exceeding the regulatory threshold. Any dwelling units or parking areas in existence on or before September 19, 1973 which have been determined by the Department to be exempt from the requirements of this subchapter due to on-site construction on or before September 19, 1973 will not be counted when determining if a new or expanded development exceeds the regulatory threshold.
 - vi. The total number of dwelling units or parking spaces in a new or expanded development need not be

restricted to any single municipal tax block nor to any one period in time in order to require a permit;

vii. The construction of a development below the regulatory threshold as defined in this section, where such construction is part of a larger planned development in which the total development will exceed the regulatory threshold.

6. Contiguous parcels shall include, but not be limited to, those land areas which directly abut or are separated by a general access roadway or other right of way, including waterways, or those land areas which are part of a subdivision existing and under common ownership on or after September 19, 1973.

(c) This subchapter shall not apply to developments which meet one of the following criteria specified at N.J.S.A. 13:19-5:

1. A development which has received preliminary site plan approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) or a final municipal building or construction permit on or before July 19, 1994, provided that construction begins by July 19, 1997, and continues to completion with no lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project depicted on the approved site plan or described in the building or construction permit.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this subsection, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

iv. In the event that the final municipal building or construction permit expires and the permit is renewed or a new permit is obtained for the same project, the development will remain exempt provided construction begins by July 19, 1997. In cases where the municipal approval expires and is renewed or a new permit is issued, the Department will require documentation that the new permit authorizes exactly the same construction as the original permit.

2. A residential development which has received preliminary subdivision approval or minor subdivision approval pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) on or before July 19, 1994 where no subsequent site plan approval is required, provided that construction begins by July 19, 1997, and continues to completion with no lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project depicted on approved plans or described in the approving resolution or construction permit.

ii. Any development that required a permit pursuant to P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.) prior to July 19, 1994 shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this subsection, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

3. The reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law; and further provided that such reconstruction does not result in:

i. The enlargement or relocation of the footprint of the development; or

ii. An increase in the number of dwelling units or parking spaces within the development.

- iii. A relocation landward or laterally may be exempt from (c)3i above if the Department determines, in writing, that such a relocation would result in less environmental impact than the damaged or destroyed development.
 - iv. Any person requesting a determination concerning relocation landward shall follow the procedures for an exemption determination at (e)2 below.
4. The enlargement of any development provided that such enlargement does not result in:
- i. The enlargement of the footprint of the development; or
 - ii. An increase in the number of dwelling units or parking spaces within the development.
5. The construction of a patio, deck or similar structure at a residential development.
- i. For the purposes of this subsection, "similar structure" includes porches, balconies and verandas. The exemption for the construction of a patio, deck, porch, balcony or veranda only remains in effect as long as the patio, deck, porch, balcony or veranda remains unused for the purpose that it was originally constructed. The conversion of such a structure into a new room or additional dwelling unit will require Department review.
 - ii. For the purposes of this subsection, the following shall also be allowed at a residential development, provided that such construction does not include the placement of pilings or placement of a structure on a beach or dune, open fences, open carports, flower boxes, gardens, gazebos, satellite dishes and antennas, sheds, wooden boardwalks and gravel or brick/paver block walkways, showers/spa/hot tubs which do not discharge to surface waters or wetlands.
 - iii. The construction of timber dune walker structures constructed in accordance with Department specifications found at N.J.A.C. 7E, Rules on Coastal Zone Management shall also be allowed at a residential development.
 - iv. For the purposes of this subsection, "similar structure" does not include the construction of swimming pools, garages, retaining walls, bulkheads, revetments, driveways and associated parking areas, paved yard areas, or outbuildings.
6. Services provided, within the existing public right-of-way, by any governmental entity which involve:
- i. The routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways. The paving of an existing unpaved roadway is not considered to be a substantially similar functional replacement;
 - ii. Public highway lane widening, intersection and shoulder improvement projects which do not increase the number of travel lanes;
 - iii. Public highway signing, lighting, guide rail and other nonintrusive safety projects, including traffic control devices; or
 - iv. Re-striping of public highways and the addition of toll booths provided that these activities do not result in any increase in impervious coverage.
7. Any development that has an existing, valid CAFRA permit provided that construction begins prior to the expiration date of the permit and continues with no cumulative lapses in construction activity of more than one year.
- i. "Construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if a development or part of a development has begun construction by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.
8. The expansion of an existing, functional amusement pier, provided such expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent, and provided such expansion is located in the area beyond 150 feet landward of the mean high water line, beach or dune, whichever is most landward.
- (d) Any exemption based upon on-site construction on or before September 19, 1973 shall expire on July 19, 1997.
- (e) Development that is exempt from CAFRA requires no certification or approval from the Department, except as may be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this subchapter.
- 1. For an exemption pursuant to (c)1 and 2 above, the following shall be submitted:
 - i. A folded copy of the preliminary local approval of the site plan or subdivision, including a copy of the approved site plan or subdivision itself, a copy of the resolution approving the site plan or subdivision, or a

copy of the building permit with approved plan and soil conservation district approval where required;

ii. In the event that the final municipal building or construction permit expires and the permit is renewed or a new permit is obtained for the same project, the development will remain exempt provided construction begins by July 19, 1997. To make such a determination, the Department will require documentation that the new permit authorizes exactly the same construction as the original permit, such as a copy of the original building permit with approved plan and soil conservation district approval where required and a copy of the new building permit with approved plan depicting the exact development as the original; and

iii. The fee specified at N.J.A.C. 7:1C-1.5(a)3v.

2. For an exemption pursuant to (c)3, 4 and 5, above the following shall be submitted:

i. Plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing;

ii. Photographs of the site; and

iii. The fee specified at N.J.A.C. 7:1C-1.5(a)3v.

3. For an exemption pursuant to (c)8 above, the following shall be submitted:

i. A description of the location of the amusement pier including county, municipality, lot(s) and block(s);

ii. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;

iii. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;

iv. Photographs of the site; and

v. The fee specified at N.J.A.C. 7:1C-1.5(a)3v.

Amended by R.1986 d.461, effective November 17, 1986.

See: 18 N.J.R. 1772(a), 18 N.J.R. 2326(a).

(b)4viii added.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Substantially amended.

Amended by R.1988 d.136, effective March 21, 1988.

See: 19 N.J.R. 807(a), 20 N.J.R. 643(b).

(b)6 substantially amended.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Petition for Rulemaking.

See: 27 N.J.R. 769(a), 27 N.J.R. 1696(b).

Case Notes

Department of Environmental Protection's asserted jurisdiction over development in upland areas of a coastal region was preempted by a Coastal Area Facility Review Act exemption. Last Chance Development Partnership v. Kean, 232 N.J.Super. 115, 556 A.2d 796 (A.D.1989) certification granted 117 N.J. 135, 564 A.2d 860, affirmed 119 N.J. 425, 575 A.2d 427.

Proposed paved parking lot of more than three acres in coastal area constituted "public facility" and "road, airport, or highway construction" under Act and project was therefore subject to review. In Re: DEP Reg. N.J.A.C. 7:7-2.1(b)1.iii, 214 N.J.Super. 579, 520 A.2d 794 (App.Div.1987) certification denied 107 N.J. 134, 526 A.2d 199 (1988).

CAFRA definition of "facilities" includes cabanas. State, Dept. of Environmental Protection v. Stavola, 206 N.J.Super. 213, 502 A.2d 63 (App.Div.1985) reversed 103 N.J. 425, 511 A.2d 622 (1986).

7:7-2.2 Wetlands

(a) Wetlands permits are required for all activities in coastal wetlands delineated and mapped pursuant to the Wetlands Act of 1970 including, but not limited to:

1. The cultivation and harvesting of naturally occurring agricultural or horticultural products. This provision shall not apply to the continued production of commercial salt hay or other agricultural crops on lands utilized for these purposes on or before April 13, 1972;

2. The excavation of an individual mooring slip;

3. The maintenance or repair of bridges, roads, highways, railroad beds or the facilities of any utility or municipality. This provision shall not apply to emergency repairs necessitated by a natural disaster or a sudden and unexpected mechanical, electrical or structural failure. Written notification of such repairs shall be provided to the Division within seven days after their initiation;

4. The construction of catwalks, piers, docks, landings, footbridges and observation decks;

5. The installation of utilities;

6. Excavation of boat channels and mooring basins;

7. The construction of impoundments;

8. The construction of sea walls;

9. The diversion or appropriative use of water;

10. The use of pesticides, except those applied to the skin or clothing for personal use;

11. Driving or causing to pass over or upon wetlands, any mechanical conveyance which may alter or impair the natural contour of the wetlands or the natural vegetation; and

12. Filling, excavation or the construction of any structure.

(b) The following activities are prohibited on regulated wetlands:

1. Placing, depositing or dumping any solid waste, garbage, refuse, trash, rubbish or debris;

2. Dumping or discharging treated or untreated domestic sewage or industrial wastes, either solid or liquid;

3. Applying any pesticide on areas containing significant stands of high vigor *Spartina alterniflora* (Saltmarsh cordgrass), *Zizania aquatica* (Wildrice), *Typha* sp. (Cattail), and *Scirpus americanus* (common threesquare) as shown generally on wetlands maps;

4. The storage or disposal of pesticides;

5. The application of persistent pesticides.

(c) The Wetlands Order promulgated by the Commissioner of Environmental Protection in April 1972, any amendments thereto, and these rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the following wetlands maps:

1. Middlesex County:

- 574-2082
- 574-2088
- 581-2082
- 581-2088
- 581-2100
- 581-2106
- 581-2112
- 581-2118
- 588-2076
- 588-2082
- 588-2106
- 588-2112
- 588-2118
- 595-2070
- 595-2076
- 595-2082
- 595-2088
- 595-2094
- 595-2106
- 602-2064
- 602-2070
- 602-2076
- 602-2082
- 602-2088
- 602-2094
- 602-2100
- 602-2106
- 609-2094
- 609-2100
- 609-2106

2. Monmouth County:

- 455-2160
- 455-2166
- 462-2160
- 462-2166
- 462-2172
- 462-2154
- 469-2160
- 469-2172
- 469-2178
- 476-2166
- 476-2172
- 476-2178
- 483-2172
- 490-2166
- 490-2172
- 490-2178
- 497-2166

- 497-2172
- 518-2184
- 532-2178
- 539-2154
- 539-2160
- 539-2166
- 539-2172
- 539-2178
- 539-2184
- 539-2190
- 546-2154
- 546-2160
- 546-2172
- 546-2178
- 546-2184
- 546-2190
- 553-2160
- 553-2166
- 553-2172
- 553-2178
- 553-2184
- 553-2190
- 560-2166
- 560-2172
- 560-2178
- 560-2184
- 560-2190
- 567-2172
- 567-2178
- 567-2184
- 567-2190
- 574-2118
- 574-2124
- 574-2160
- 574-2166
- 574-2172
- 574-2178
- 574-2184
- 574-2190
- 581-2112
- 581-2118
- 581-2124
- 581-2130
- 581-2136
- 581-2142
- 581-2148
- 581-2154
- 581-2160
- 581-2166
- 581-2184
- 588-2118
- 588-2124
- 588-2130
- 588-2136
- 588-2142
- 588-2184
- 595-2178
- 595-2184

3. Ocean County:

- 245-2088
- 245-2094
- 245-2100
- 245-2106
- 252-2076
- 252-2088
- 252-2094
- 252-2100
- 252-2106
- 252-2112
- 259-2070
- 259-2076
- 259-2082

259-2088	336-2154
259-2094	343-2130
259-2100	343-2148
259-2106	343-2154
259-2112	343-2160
259-2118	350-2130
266-2070	350-2136
266-2076	350-2148
266-2082	350-2154
266-2088	357-2124
266-2094	357-2130
266-2100	357-2136
266-2106	357-2142
266-2112	357-2154
266-2118	357-2160
273-2076	359-2160
273-2088	364-2130
273-2094	364-2136
273-2100	364-2142
273-2112	364-2160
273-2118	371-2136
273-2124	371-2142
280-2088	371-2148
280-2094	371-2160
280-2100	378-2142
280-2106	378-2148
280-2112	378-2160
280-2118	385-2142
280-2124	385-2148
280-2130	385-2160
287-2094	392-2136
287-2100	392-2142
287-2106	392-2148
287-2112	392-2154
287-2124	392-2160
287-2130	399-2124
294-2100	399-2130
294-2106	399-2136
294-2112	399-2142
294-2118	399-2148
294-2124	399-2154
294-2130	399-2160
294-2136	406-2118
301-2112	406-2124
301-2118	406-2130
301-2124	406-2148
301-2130	406-2154
301-2136	406-2160
301-2142	413-2118
308-2118	413-2148
308-2124	413-2154
308-2130	413-2160
308-2136	420-2142
308-2142	420-2148
315-2124	420-2154
315-2130	420-2160
315-2136	420-2166
315-2142	427-2142
315-2148	427-2148
322-2124	427-2154
322-2130	427-2160
322-2136	434-2148
322-2142	434-2154
322-2148	434-2160
329-2124	434-2166
329-2130	441-2148
329-2136	441-2154
329-2142	441-2160
329-2148	441-2166
329-2154	441-2172
336-2124	448-2142
336-2130	448-2148
336-2142	448-2154
336-2148	448-2160

448-2166
 448-2172
 455-2154
 462-2166
 462-2154
 462-2172
 469-2154

4. Burlington County:

252-2064
 259-2046
 259-2052
 259-2058
 259-2064
 259-2070
 266-2034
 266-2040
 266-2046
 266-2052
 266-2058
 266-2064
 266-2070
 273-2022
 273-2028
 273-2034
 273-2040
 273-2046
 273-2052
 273-2058
 273-2064
 273-2070
 273-2076
 280-2004
 280-2010
 280-2016
 280-2022
 280-2028
 280-2040
 280-2046
 280-2052
 280-2058
 287-2004
 287-2010
 287-2016
 287-2040
 287-2046
 294-2040
 413-1896
 413-1902
 420-1890
 420-1896
 420-1932
 420-1938
 420-1944
 427-1926
 427-1932
 427-1938
 434-1908
 434-1914
 434-1920
 434-1926
 434-1932
 448-1944
 448-1950
 448-1956
 462-1968
 469-1974
 476-1980
 476-1986
 483-1986
 483-1992
 490-1986
 490-1992

5. Atlantic County:

161-1980
 161-1986
 161-1992
 161-2004
 168-1956
 168-1962
 168-1968
 168-1974
 168-1980
 168-1986
 168-1992
 168-1998
 168-2004
 168-2010
 168-2016
 168-2022
 168-2028
 168-2034
 175-1974
 175-1980
 175-1986
 175-1992
 175-1998
 175-2004
 175-2010
 175-2016
 175-2022
 175-2028
 175-2034
 175-2040
 182-1980
 182-1986
 182-1992
 182-1998
 182-2004
 182-2010
 182-2016
 182-2022
 182-2028
 182-2034
 182-2040
 182-2046
 182-2052
 189-1974
 189-1980
 189-1986
 189-1992
 189-1998
 189-2022
 189-2028
 189-2034
 189-2040
 189-2046
 189-2052
 189-2058
 196-1974
 196-1980
 196-1986
 196-2034
 196-2040
 196-2046
 196-2052
 196-2058
 196-2064
 196-2070
 203-1980
 203-1986
 203-2040
 203-2046
 203-2052
 203-2058
 203-2064

203-2070	273-2026
203-2076	273-2022
210-1974	273-2028
210-1980	273-2034
210-1986	280-2004
210-2040	280-2010
210-2046	280-2016
210-2052	280-2022
210-2058	287-1998
210-2064	287-2004
210-2070	287-2010
210-2076	287-2040
210-2082	
210-2088	
217-1974	
217-1980	
217-1986	
217-2040	
217-2046	
217-2052	
217-2058	
217-2064	
217-2070	
217-2076	
217-2082	
217-2088	
217-2094	
224-1980	
224-2052	
224-2058	
224-2064	
224-2070	
224-2076	
224-2082	
224-2088	
224-2094	
231-2058	
231-2064	
231-2070	
231-2076	
231-2082	
231-2088	
231-2094	
231-2100	
238-2058	
238-2064	
238-2070	
238-2076	
238-2082	
238-2088	
238-2094	
245-2046	
245-2052	
245-2058	
245-2064	
245-2070	
252-2046	
252-2040	
252-2052	
252-2058	
252-2064	
252-2070	
259-2034	
259-2040	
259-2046	
259-2052	
259-2058	
259-2064	
259-2070	
266-2022	
266-2028	
266-2034	
266-2040	
273-2016	

6. Cape May County:

035-1914
035-1920
035-1926
035-1932
035-1938
042-1914
042-1920
042-1926
042-1932
042-1938
042-1944
049-1914
049-1926
049-1932
049-1938
049-1944
049-1950
056-1914
056-1920
056-1932
056-1938
056-1944
056-1950
056-1956
063-1938
063-1944
063-1950
063-1956
063-1962
070-1920
070-1926
070-1944
070-1950
070-1956
060-1962
070-1968
077-1920
077-1926
077-1932
077-1950
077-1956
077-1962
077-1968
084-1926
084-1932
084-1938
084-1950
084-1956
084-1962
084-1968
084-1974
091-1932
091-1938
091-1944
091-1956
091-1962
091-1968
091-1974
091-1980

098-1932	161-1974
098-1938	161-1980
098-1944	161-1986
098-1950	161-1992
098-1962	161-1998
098-1968	161-2004
098-1974	161-2010
098-1980	161-2016
098-1986	161-2022
105-1932	168-1956
105-1938	168-1962
105-1944	168-1968
105-1968	168-1974
105-1974	168-1980
105-1980	168-1986
105-1986	168-1992
112-1932	168-1998
112-1938	168-2016
112-1944	168-2022
112-1950	
112-1956	
112-1968	
112-1974	
112-1980	
112-1986	
112-1992	
119-1926	
119-1932	
119-1938	
119-1944	
119-1950	
119-1874	
119-1980	
119-1986	
119-1992	
126-1926	
126-1932	
126-1938	
126-1944	
126-1950	
126-1956	
126-1980	
126-1986	
126-1992	
126-1998	
133-1926	
133-1932	
133-1986	
133-1992	
133-1998	
133-2004	
140-1926	
140-1932	
140-1974	
140-1980	
140-1992	
140-1998	
140-2004	
140-2010	
147-1980	
147-1986	
147-1992	
147-1998	
147-2004	
147-2010	
154-1980	
154-1986	
154-1992	
154-1998	
154-2004	
154-2010	
154-2016	
161-1962	
161-1968	

7. Cumberland County:

119-1926
126-1860
126-1866
126-1896
126-1902
126-1908
126-1914
126-1920
126-1926
133-1854
133-1860
133-1866
133-1872
133-1878
133-1884
133-1890
133-1896
133-1902
133-1908
133-1914
133-1920
133-1926
140-1854
140-1860
140-1866
140-1872
140-1878
140-1884
140-1890
140-1896
140-1902
140-1908
140-1914
140-1926
147-1848
147-1854
147-1860
147-1866
147-1872
147-1878
147-1884
147-1890
147-1896
147-1902
147-1908
154-1836
154-1842
154-1848
154-1854
154-1860
154-1866
154-1872

154-1878
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 154-1896
 154-1902
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 161-1818
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 161-1836
 161-1842
 161-1848
 161-1854
 161-1860
 161-1866
 161-1872
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 161-1884
 161-1896
 161-1902
 161-1908
 161-1914
 168-1812
 168-1818
 168-1824
 168-1830
 168-1836
 168-1842
 168-1848
 168-1854
 168-1902
 168-1908
 168-1914
 175-1812
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 175-1896
 175-1902
 175-1908
 175-1914
 182-1800
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 182-1842
 182-1896
 182-1902
 182-1908
 182-1914
 189-1794
 189-1800
 189-1806
 189-1812
 189-1818
 189-1824
 189-1830
 189-1890
 189-1902
 196-1782
 196-1788
 196-1794
 196-1800
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 196-1824
 196-1830
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196-1842
 196-1890
 196-1896
 203-1782
 203-1788
 203-1794
 203-1800
 203-1806
 203-1812
 203-1818
 203-1824
 203-1836
 203-1842
 203-1890
 210-1782
 210-1788
 210-1794
 210-1800
 210-1836
 217-1782
 217-1788
 217-1794
 217-1836
 224-1788
 224-1794
 224-1800

8. Salem County:

196-1782
 196-1788
 203-1776
 203-1782
 203-1788
 210-1776
 210-1782
 210-1788
 217-1764
 217-1770
 217-1776
 217-1782
 217-1788
 224-1752
 224-1758
 224-1764
 224-1770
 224-1776
 224-1782
 224-1788
 224-1794
 224-1800
 231-1752
 231-1758
 231-1764
 231-1770
 231-1776
 231-1782
 231-1788
 238-1752
 238-1758
 238-1764
 238-1770
 238-1776
 238-1782
 245-1752
 245-1758
 245-1764
 245-1770
 245-1776
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 245-1752
 252-1758
 252-1764
 252-1770

252-1776
252-1782
252-1788
259-1752
259-1758
259-1764
259-1770
259-1776
259-1782
259-1788
259-1794
259-1800
266-1758
266-1764
266-1770
266-1776
266-1782
266-1788
266-1794
266-1800
273-1746
273-1752
273-1758
273-1764
273-1770
273-1776
273-1782
273-1788
273-1794
280-1746
280-1752
280-1758
280-1764
180-1770
280-1776
280-1782
280-1788
280-1794
287-1746
287-1752
287-1764
287-1770
287-1776
287-1782
287-1788
294-1746
294-1752
294-1764
294-1770
294-1776
294-1782
294-1788
294-1794
301-1764
301-1770
301-1776
301-1782
301-1788
301-1794
308-1770
308-1776
308-1782
315-1764
315-1770
315-1776
315-1800
315-1806
322-1770
322-1788
322-1794
322-1800
329-1770
329-1776
329-1782

329-1788
329-1794
329-1800
336-1770
336-1776
336-1788
336-1794
343-1782
343-1788
343-1794

9. Gloucester County:

315-1800
315-1806
322-1794
322-1800
329-1794
329-1800
329-1806
329-1818
329-1824
336-1788
336-1794
336-1800
336-1806
336-1812
336-1818
336-1860
343-1782
343-1788
343-1794
343-1800
343-1806
343-1824
343-1848
343-1854
343-1860
350-1794
350-1800
350-1806
350-1812
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350-1842
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350-1860
350-1878
357-1794
357-1800
357-1806
357-1812
357-1818
357-1824
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357-1836
357-1842
357-1848
357-1854
357-1878
364-1806
364-1812
364-1818
364-1824
364-1830
364-1836
364-1842
364-1848
364-1854
364-1860
364-1872
364-1878

371-1848
 371-1854
 371-1860
 371-1872
 371-1878
 378-1866

10. Camden County:

364-1878
 371-1872
 371-1878
 378-1866
 378-1872
 413-1896
 413-1902
 420-1890
 420-1896

11. Mercer County:

476-1980
 476-1986
 483-1980
 483-1986
 483-1992
 490-1974
 490-1980
 490-1986

Amended by R.1986 d.262, effective July 7, 1986.

See: 17 N.J.R. 1710(a), 18 N.J.R. 1374(a).

Added maps and amended maps in (c)3 Ocean County.

Amended by R.1986 d.349, effective August 18, 1986.

See: 18 N.J.R. 1026(a), 18 N.J.R. 1700(a).

Amended maps in (c)5.

Amended by R.1987 d.217, effective May 17, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Amended maps in (c)5 and (c)7.

Amended by R.1988 d.570, effective December 19, 1988.

See: 19 N.J.R. 2090(b), 20 N.J.R. 3135(b).

(c)9 Gloucester County had maps altered and added new maps.

Amended by R.1989 d.137 effective March 20, 1989.

See: 20 N.J.R. 349(b), 21 N.J.R. 750(b).

(c)8 Salem County maps altered: 266-1770, 266-1776, 273-1764, 273-1776, 294-1746, 294-1764, 315-1764, 329-1770, 329-1788.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-2.3 Waterfront development

(a) The waterfront area regulated under this subchapter is divided into three sections, and will vary in width in accordance with the following rules:

1. Within any part of the Hackensack Meadowland Development District delineated at N.J.S.A. 13:17-4.1, the area regulated by this section shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

2. Within the "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:9-4), the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

3. In all other areas of the State (that is in those areas outside of the "coastal area" defined by CAFRA and outside of the Hackensack Meadowlands Development District), the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line, and an adjacent upland area extending landward from the mean high water line to the first paved public road, railroad or surveyable property line existing on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line.

(b) This subchapter shall apply to all man-made waterways and lagoons subject to tidal influence.

(c) The following development activities will require a permit in that portion of the waterfront area at or below the mean high waterline:

1. The removal or deposition of sub-aqueous materials (for example, excavation, dredging or filling).

2. The construction or alteration of a dock (fixed or floating), wharf, pier, bulkhead, breakwater, groin, jetty, seawall, bridge, piling, mooring dolphin, pipeline, cable, or other similar structure.

3. The mooring of a floating home for more than 10 consecutive days. Floating homes in use within the waters of this state prior to June 1, 1984 shall not require a permit. (See N.J.A.C. 7:7-2.1(b) for definition of floating home.)

4. The installation of temporary aids to navigation by any person, if they remain in place for more than 10 consecutive days.

(d) A permit shall be required for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filling of any area, any portion of which is in the waterfront area as defined in (a) above, with the exceptions listed below:

1. In the waterfront area defined in a(3) above, the construction, alteration, expansion or reconstruction of an individual single family dwelling unit or addition to such unit, if constructed more than 100 feet inland from the mean high water line;

2. In the waterfront area defined in a(3) above, the reconstruction, conversion, alteration or enlargement of any existing structure located more than 100 feet inland from the mean high water line, provided that no change in land use results, and that enlargements do not exceed 5000 square feet;

3. In the waterfront area defined in (a)3 above, minor additions to or changes in existing structures or manufacturing operations that do not increase the amount of impervious cover, where such changes or additions do not result in a change in the present land use of the site;

4. The repair, replacement or renovation of any legally existing dock, wharf, pier, bulkhead or building provided that the repair, replacement or renovation will not have any additional permanent adverse effects on any natural resources on-site, including, but not limited to, wetlands, shallow water habitat, submerged vegetation, and natural shoreline configuration, and provided the repair, replacement or renovation does not increase the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels;

5. The repair, replacement or renovation of any legally existing floating dock, mooring raft or similar temporary or seasonal improvement or structure provided that the repair, replacement or renovation will not have any additional permanent adverse effects on any natural resources on-site, including, but not limited to, wetlands, shallow water habitat, submerged vegetation, and natural shoreline configuration, and provided the improvement or structure does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking or servicing of pleasure vessels.

(e) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed development does not require a permit under (d) above.

1. The requesting party shall provide the Department with two copies of a map depicting the project site in a scale of not less than 1:2,400 (one inch equals 200 feet) and depicting the mean high water line, and with a project description. When the applicability determination request is based on a proposed facility's location in accordance with (a)3 above, the map shall also depict that property line as it is depicted on the official local tax map as of September 26, 1980, and shall graphically depict the proposed project.

(f) A Waterfront Development permit is required for the filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands grant, lease or license by the Department of Environmental Protection and Tidelands Resource Council or their predecessor agencies, even where such lands extend beyond the landward boundary of the upland area defined in (a)3 above, or up to and including the mean high water line in the areas defined in (a)1 and 2 above.

1. A Waterfront Development permit application submitted under this subsection must be submitted in conjunction with an application for a Tidelands grant, lease or license.

(g) A Waterfront Development permit shall not be required for any development or activity in the upland area defined in (a)3 above and in manmade waterways and lagoons for which on-site construction, excluding site preparation, was in progress on or prior to September 26, 1980. For the purpose of this section, "construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction or structures. For the purposes of this section, "construction, excluding site preparation" does encompass improvements which include, but are not limited to, paved roads, curbs, and storm drains.

1. Any person who believes that a proposed development is exempt from the requirements of this subchapter due to on-site construction may request in writing a determination of exemption from the Department in accordance with (g)2 below.

2. Exemptions shall be applied for and considered upon submission of information sufficient for the Department to determine that the physical work specified in (g)1 above necessary to begin the construction of the proposed development, was actually performed prior to September 26, 1980 in the area defined in (a)3 above.

i. Any lapse in construction activity of more than one year may be cause for denial of an exemption request, or where previously exempted, it may be cause for revocation of such exemption, by the Department.

ii. A finding that a proposed development is exempt from the requirements of this subchapter shall apply only to the development as conceived and designed prior to September 26, 1980. Any modification which expands or substantially changes the exempted development shall require a permit.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Substantially amended.

Emergency amendment, R.1988 d.518, effective October 14, 1988 (expired December 3, 1988).

See: 20 N.J.R. 2815(a).

Development of waterfront area within the "coastal area" added. Adopted concurrent proposal R.1989 d.8, effective January 3, 1989.

See: 20 N.J.R. 2815(a), 21 N.J.R. 34(a).

Provisions of emergency amendment R.1988 d.518 readopted without change.

Amended by R.1989 d.243, effective May 1, 1989.

See: 21 N.J.R. 4(a), 21 N.J.R. 1141(a).

Limited inland scope of regulated area to 1000 feet; exempted shore protection structures in the 1,500-foot expansion exception calculation; in (d) excepted single-family residential dwelling units for which municipal permits and approvals had been obtained before October 3, 1988 and in (g) further defined "construction, excluding site preparation" and "in progress".

Emergency amendment R.1990 d.403, effective July 17, 1990 (expired September 15, 1990).

See: 22 N.J.R. 2361(a).

Definition of waterfront, types of development requiring permits, and permitting process for development amended to comply with N.J. Supreme Court decision in *Last Chance Development Partnership v. Thomas H. Kean* (Dkt. No. A-102, decided June 20, 1990). Adopted concurrent proposal R.1990 d.503, effective September 14, 1990.

See: 22 N.J.R. 2361(a), 22 N.J.R. 3222(a).

Provisions of emergency amendment R.1990 d.403 readopted without change.

Administrative Correction: Added (a)3.

See: 23 N.J.R. 60(b).

INVALIDITY ANNOTATION: See 23 N.J.R. 406(b).

N.J.A.C. 7:7-2.3(a)2, as amended effective September 14, 1990 (see 22 N.J.R. 2361(a) and 3222(a)), held invalid. *Long Beach Township Oceanfront Property Owners Association v. New Jersey Department of Environmental Protection, et al.*, 245 N.J.Super. 143, Dkt. Nos. A-6697-89T2 and A-783-90T2 (App. Div. December 26, 1990). Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Amendments to waterfront development rules extending permit requirement to previously exempt properties were invalid. *Long Beach Tp. Oceanfront Property Owners Ass'n v. New Jersey Dept. of Environmental Protection*, 245 N.J.Super. 143, 584 A.2d 820 (A.D.1990).

Department of Environmental Protection's asserted jurisdiction over development in upland areas of a coastal region exceeded its statutory authority. *Last Chance Development Partnership v. Kean*, 119 N.J. 425, 575 A.2d 427 (1990).

Department of Environmental Protection did not have jurisdiction over development in upland areas of a coastal region. *Last Chance Development Partnership v. Kean*, 232 N.J.Super. 115, 556 A.2d 796 (A.D.1989) certification granted 117 N.J. 135, 564 A.2d 860, affirmed 119 N.J. 425, 575 A.2d 427.

Department of Environmental Protection's asserted jurisdiction over development in upland areas of a coastal region was preempted by a Coastal Area Facility Review Act exemption. *Last Chance Development Partnership v. Kean*, 232 N.J.Super. 115, 556 A.2d 796 (A.D.1989) certification granted 117 N.J. 135, 564 A.2d 860, affirmed 119 N.J. 425, 575 A.2d 427.

SUBCHAPTER 3. PRE-APPLICATION REVIEW

7:7-3.1 Purpose

A pre-application review is an optional service especially recommended for major development. At this review the Department will discuss apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The review is intended to provide guidance and does not constitute a commitment to approve or deny a permit application for the development.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-3.2 Request for a pre-application review

(a) Potential applicants for major projects are encouraged to request a pre-application review with the Department at the earliest opportunity. A request for a pre-application review shall be made in writing and shall include a conceptual proposal for the proposed development.

1. The conceptual proposal shall include:

i. A written description of the site and the proposed development including the dimensions, number, and uses of proposed structures;

ii. Maps indicating the site's location and rough internal plan of development; and

iii. A tax lot and block designation of the site and a United States Geological Survey quadrangle map or county road map showing the site.

(b) The Department shall, within 10 days of receipt of such request, schedule a pre-application conference. Alternatively, the Department may suggest a telephone conversation if only a small number of relatively straightforward issues need discussion. A pre-application review will not be considered a declaration of intent to submit an application to the Department as defined in N.J.A.C. 7:1C-1.3 of the 90-Day Construction Permit rules.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added text "and shall include showing the site".

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-3.3 Discussion of information requirements

(a) The Department shall discuss the information, including the level of detail and areas of emphasis, which must be included in a permit application for the proposed development to allow the Department to review the application if one is submitted. This does not preclude the Department from requesting additional information based upon review of the formal application submittal.

(b) The Department shall also make available to the potential applicant current information on nearby projects in the Department's files. This information may be incorporated, by reference, in the applicant's EIS if agreed to by the Department.

Recodified from 7:7-3.4 and amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Prior text at 7:7-3.3, Conceptual proposal, repealed.

7:7-3.4 Memorandum of record

(a) After the pre-application review, the Department shall, upon request, prepare a written memorandum of record or policy compliance checklist summarizing the discussion of the proposed development, the apparent sensitivity of the land and water features of its site, and the level of detail and the areas of emphasis necessary in the information that would be required as part of an application.

(b) The memorandum of record shall be mailed to the potential applicant within 20 days of the pre-application review. If an application is submitted, a copy of the memorandum of record or policy compliance checklist shall be included.

(c) The memorandum of record shall not be construed as a decision of the Department and shall not have any binding effect on the final decision of the Department on any permit application.

Recodified from 7:7-3.5 and amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

SUBCHAPTER 4. PERMIT REVIEW PROCEDURE

7:7-4.1 General

(a) The provisions of CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law are supplemental to other laws, including the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq., P.L. 1975, Chapter 291). Early consultation with the Department by a prospective applicant can avoid unnecessary duplication and delay in development review at the state and local levels for the same development, if applications for proposed developments are processed at the same time at the State and local levels.

(b) Applicants for projects which require review or approval of a county-wide or area-wide planning agency or development, transportation or improvement authority shall consult with that agency on a regular basis to insure that the project and any changes to it are acceptable.

(c) The 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and its implementing regulations (N.J.A.C. 7:1C) establish certain uniform permit review requirements for five types of construction permits issued by the Department, including CAFRA, Wetlands Act of 1970 and Waterfront Development permits. This chapter incorporates and is consistent with those requirements.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Federal Clean Water Act and State Water-Front and Harbor Facilities Act were not intended to preempt municipality's authority to regulate land use within its borders. *Anfuso v. Seeley*, 243 N.J.Super. 349, 579 A.2d 817 (A.D.1990).

Municipality's zoning districts do not end at mean high water level where state-owned land begins and private property ends. *Anfuso v. Seeley*, 243 N.J.Super. 349, 579 A.2d 817 (A.D.1990).

Type B permit application hearing. *In re Triarch Corp.*, 139 N.J.Super. 514, 354 A.2d 652 (App.Div.1976).

7:7-4.2 Application contents

(a) Applications shall contain the following:

1. A completed DEP Standard Construction Permit (CP-1) form;

2. A check, money order, or government voucher in the amount of the appropriate fee (see N.J.A.C. 7:1C-1.5);

3. Verification (green card is required) that a complete copy of the application package has been submitted to the clerk of the municipality in which the proposed development will occur, and to the planning board and environmental commission of the municipality in which the proposed development would occur. Applications for CAFRA permits within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the application package has been submitted to the Pinelands Commission;

4. Verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a copy of the siteplan and CP-1 form have been forwarded to the planning board and environmental commission of the county in which the proposed development would occur and to all landowners within 200 feet of the property or properties on which the proposed development would occur, along with a certified list of all landowners within 200 feet. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location.

i. An application for a linear development shall include verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a copy of the site plan and CP-1 form have been forwarded to the planning board and environmental commission of the county in which the proposed development would occur and to all landowners within 200 feet of the proposed development rather than to all landowners within 200 feet of the property or properties on which the proposed development would occur. If the 200 foot area falls within the right-of-way, the applicant must notify those landowners within 200 feet of the outer edges of the right-of-way, along with a certified list of all landowners within this 200 feet. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. For the purposes of this subsection, "linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission

lines and the rights-of-way therefor, which have a basic function of connecting two points. Linear development shall not mean residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads;

5. A copy of a public notice shall be included in the application to the Department. The notice shall read as follows:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a permit for the development shown on the enclosed plan.

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the DEP's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter. In your letter, you may request a hearing if you believe one is necessary. Requests for a public hearing should state the specific nature of the issues proposed to be raised at the hearing. Both comments and hearing requests should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection
Land Use Regulation Program
CN 401
5 Station Plaza
Trenton, New Jersey 08625
Attn: (County in which the property is located)
Section Chief;

6. Proof that notification of filing of an application for a CAFRA permit was published in the DEP Bulletin. The application shall be submitted to the Department within two weeks of publication of the notice of filing in the DEP Bulletin;

7. Photographs showing the project site;

8. Fifteen copies of development plans. (Plans must be folded if larger than 8½ inches by 11 inches in size.)

i. For CAFRA applications, Waterfront Development applications for activities occurring above the mean high water line, and for Wetlands applications for activities other than catwalks, docks and piers:

(1) The set of plans must include, but not be limited to, the following information:

(A) All existing structures, roads, utilities, topography, vegetation, and coastal and freshwater wetlands, and any proposed structures, filling, grading, excavation, clearing, roads, utilities, sewers, landscaping and lighting, and soil erosion and sediment control devices.

(B) Any additional information specified in the "Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA".

(2) Plans for any development consisting of more than one single family dwelling or duplex must be signed and sealed by a Professional Engineer or Land Surveyor. Plans for activities proposed on public park lands may be prepared, signed and sealed by a State Certified Landscape Architect instead of a Professional Engineer or Land Surveyor.

ii. For Waterfront Development applications for activities occurring below the mean high water line and for Wetlands applications for catwalks, docks or piers:

(1) The set of plans must include, but not be limited to, the following information specified in the "Checklist for Administrative Completeness for Waterfront Development, Tidal Wetlands, and CAFRA":

(A) The lot;

(B) All existing waterfront structures (piers, bulkheads, pilings, etc.) on the lot and all immediately adjacent lots;

(C) Locations and dimensions of structures, lots, wetlands, mean high water line, upland property, road and utilities;

(D) The proposed work area and construction/development area clearly labelled and showing all distances and dimensions;

(E) The general site location of the development, which may be on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;

(F) The scale of the survey or map, and a north arrow;

(G) The name of the person who prepared the plan and the date it was prepared;

(H) The name of the applicant, lot and block number, and municipality, leaving a margin of one inch on the top and left hand sides of the plan; and

(1) The location of upper and lower wetlands boundary. The "upper" wetlands boundary refers to the upland or landward limit of wetlands, and the "lower" wetlands boundary refers to the waterward limit of wetlands.

(2) Dredging plans must show the area to be dredged, existing depth, proposed depth, adjacent depths, the amount of material to be dredged, the method of dredging, the exact location of the dredge material dewatering and disposal site by municipal block and lot, and the means of containing spoils. A dredge material analysis may also be required.

(3) Dock plans must show channel location, location and orientation of proposed mooring areas, mooring area depths at mean low water, including the method, time, and date of soundings, cross sections of the dock including height and width of any wetlands crossing(s).

(4) Development plans for activities in an area subject to a Tidelands conveyance (grant, lease or license) shall be prepared by a professional engineer or land surveyor, and must depict the limits of the conveyance. All activities in areas except man-made lagoons are subject to this requirement. Development plans for activities in man-made lagoons do not have to be prepared by a professional engineer, unless required by N.J.S.A. 45:8-27 et seq.;

9. Copies of an Environmental Impact Statement (EIS) or Compliance Statement, prepared in accordance with N.J.A.C. 7:7-6, as follows:

i. CAFRA permit applications shall include 15 copies. The applicant may submit either 15 complete copies with all attachments and appendices or may submit five complete copies of the EIS along with 10 additional copies, one of which shall have appended thereto only an archaeological survey, if appropriate; and one of which shall have appended thereto only a traffic analysis if appropriate.

ii. Waterfront Development and Wetlands applications shall include 10 copies of a Compliance Statement with the Rules on Coastal Zone Management, N.J.A.C. 7:7E, prepared in accordance with N.J.A.C. 7:7-6. This Statement of Compliance shall address all coastal rules applicable to the proposed project;

10. Applications for development in an area under the jurisdiction of Pinelands Commission must also submit either a Certificate of Filing, Notice of Filing, or a Certificate of Compliance from the Pinelands Commission along with the other required application materials; and

11. Any additional information requested by the Department to clarify or provide further information regarding information already submitted on the proposed development.

(b) Waterfront Development and Wetlands applications shall also include a copy of any Tidelands Grant, Lease or License previously approved for the property in question. Permit applications will not be accepted for filing without verification that a tidelands instrument has been previously issued, applied for, or is unnecessary for the site.

(c) Development plans for activities in an area which requires a Tidelands (Riparian) Grant, Lease or License, shall be prepared by a professional surveyor or professional engineer licensed by the State of New Jersey and shall depict the limits of the area for which the Tidelands instrument will be sought.

(d) An application for a Waterfront Development or Wetlands permit proposing the discharge of dredge or fill material shall also constitute an application for a State Water Quality Certificate under Section 401 of the Federal Clean Water Act.

(e) If the regulated activity would occur on wetlands as defined by N.J.A.C. 7:7E-3.27(a) then the applicant may submit a mitigation plan as part of the application.

1. The Department requires an approved mitigation proposal as a condition precedent to engaging in a regulated activity in a wetland.

2. The Division may, upon the request of the applicant, determine that a mitigation plan will not be required to be a part of a permit application for the construction of catwalks, piers, docks, landings, footbridges and observation decks provided that the applicant shows, to the satisfaction of the Division, that vehicles and equipment will not be placed on the wetlands in order to construct the structure and that the structure will comply with the acceptability conditions provided by N.J.A.C. 7:7E-4.2(e). The Division may, however, require mitigation notwithstanding the applicant's compliance with the terms of this paragraph, if it has determined, on an individual case basis, that mitigation is necessary.

3. Any mitigation proposal submitted pursuant to this section shall include, but shall not be limited to, the following:

i. A description of the wetland mitigation proposal, which shall include the specific goals of the mitigation proposal and a discussion of how the mitigation proposal will satisfy those goals;

ii. A description (for example, size, type, vegetation, hydrology, etc.) of the wetlands to be destroyed or disturbed;

iii. Photographs of the proposed mitigation site;

iv. The names and addresses of current and proposed owner(s) of the mitigation project site;

v. A description of the existing ecosystem of the mitigation site, including a discussion of the vegetation, soils, hydrology, wildlife and adjacent land use;

vi. A discussion of the proposed hydrology of the mitigation site. The discussion should focus on the sources of water for the mitigation project, and should provide seasonal high water table information as well as the projected elevation of final grade of the mitigation project in relation to mean sea level (MSL), along with slope percent;

vii. The tidal range of the mitigation site and the salinity range of adjacent inundating waters;

viii. Existing soil types with soil borings to document seasonal high water tables, and a discussion of the created substrate of the proposed mitigation site describing how the substrate of the site will be prepared, whether the pH is appropriate, and any other pertinent factors;

ix. A planting scheme of the proposed vegetative community depicted on the mitigation site plans, including spacing of all plantings, stock type (bare root, potted, seed), size, and the source of the plant material;

x. A copy of a proposed deed restriction providing that no regulated activities will occur in the wetland mitigation area or its associated transition area and that it will remain as a natural area in perpetuity. Proof that the deed restriction has been registered with the County Clerk (the Registrar of Deeds and Mortgages if applicable) is required prior to the start of construction;

xi. A metes and bounds description of the proposed mitigation site which forms the basis for the deed restriction. The metes and bounds description shall include the transition area;

xii. New Jersey Wetlands Map/Tidelands Map number(s) for the development site (and mitigation site if at a different location) as well as block and lot numbers and ownership of the mitigation site;

xiii. An actual cost estimate of the mitigation proposal. The cost estimate should include the cost of land, site preparation, engineering costs, plantings and any other items incidental to the mitigation proposal;

xiv. Five folded copies of a site plan for the mitigation project which includes:

- (1) Project location within the region;
- (2) The lot and block number of the mitigation project location;
- (3) Existing and proposed elevations and grades of the mitigation site in one foot intervals; and
- (4) Plan views and cross sectional views;

xv. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and the property boundaries, and a determination of the State Plan Coordinates for the center of the mitigation site. The accuracy of these coordinates should be within 50 feet of the actual center point. For linear mitigation projects, the applicant shall provide State Plan 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; and

xvi. A mitigation plan must include a secured bond, or other financial surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the permittee default. The financial surety for the construction of the mitigation project shall be posted in an amount equal to 115 percent of the estimated cost of construction. In addition, financial surety to assure the success of the mitigation project shall be posted in an amount equal to 30 percent of the estimated cost of construction. The financial surety will be reviewed annually and shall be adjusted to reflect current economic factors. For a mitigation plan submitted by a public agency, the Department will not require a secured bond provided that the construction of the development and mitigation are provided for in a single bid and contract.

(f) All application sets including charts, plans and other large documents submitted to the Department pursuant to this chapter shall be collated and folded flat to a size that is suitable for interoffice distribution.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-4.3 Availability of application for examination by the public

(a) Copies of all coastal permit applications, and subsequent submissions, will be available for public scrutiny by interested persons in the offices of the Department in Trenton by appointment and in the municipal clerk's office during normal business hours. On a case-by-case basis, the Department may make arrangements for copies of coastal permit applications and subsequent submissions to be available for public review in a municipality outside normal business hours.

(b) The status of all permit applications shall be published in the DEPE Bulletin pursuant to N.J.A.C. 7:1C-1.6, and this publication shall constitute notice to all interested persons except as provided in N.J.A.C. 7:7-4.8.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added cross reference cites.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-4.4 Initial review of applications

(a) Within 20 working days of receipt of the application, the Department shall take one of the following actions:

1. Declare the application complete for final review, assign an agency project number, and proceed to review on the merits.

2. Assign an agency project number and accept the application, but request in writing that the applicant submit additional information within a specific period of time to assist in its review. In such cases, the application will not be considered complete for final review or public hearing until all the additional information has been received and deemed acceptable for review.

i. In the case of all CAFRA permit applications and those other coastal permit applications or CAFRA permit modification applications for which the Department has determined that additional information is necessary to assist in its review and that this information can only be obtained by public hearing, the application shall be declared complete for public hearing.

ii. No application shall be declared complete for final review unless and until the applicant has possession of all tidelands conveyances required for the riparian land. The Department may in its discretion issue a permit decision prior to receipt of the conveyance.

3. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.

(b) Within 15 days of the receipt of any additional information submitted pursuant to (a)2 above, the Department shall issue notification to the applicant regarding whether the amended application is considered complete.

1. Such notification shall either:

i. Specify which deficiencies still remain;

ii. If no public hearing is to be held, declare the application complete for final review; or

iii. If a public hearing is to be held, declare the application complete for the public hearing.

2. Copies of information submitted in response to deficiency letters shall be submitted to the municipal clerk and at the discretion of the Department, be distributed by the applicant to the same persons to whom copies of the initial application were distributed.

(c) Applications for which a public hearing will be held shall go on to the public hearing phase of the permit review process. Wetland and Waterfront Development applica-

tions which do not require a public hearing and which are complete for final review shall begin the 90 day review period established pursuant to the 90 Day Construction Permit Law on the date of receipt of the additional information which completed the application.

(d) If an application is not complete for final review or for the public hearing within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

1. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is within one year of the date of cancellation.

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5.

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

(e) Once an application is declared complete for final review or for the public hearing, whichever occurs later, the Rules on Coastal Zone Management, N.J.A.C. 7:7E et seq., in effect at that time will govern the staff review of the permit application pursuant to the 90 Day Law, N.J.S.A. 13:1D-29 et seq.

(f) Once the application for which a public hearing is required has been declared complete for public hearing, the Department shall prepare a preliminary analysis of the project, based upon the staff analysis and recommendations, as well as upon comments from other agencies to whom copies of the application were distributed and comments from interested persons.

1. To be assured of incorporation in the preliminary analysis, such comments must be received within 20 days after the applicant has been notified of completeness for public hearing.

2. The Department will provide copies of the preliminary analysis to the applicant and to any person requesting a copy.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added (b)2i.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-4.5 Public hearings and public comment periods

(a) Public hearings shall be convened in accordance with the following:

1. The Department may, in its discretion, hold a non-adversarial public hearing for a CAFRA permit when the Department determines that additional information is necessary to assist in its review and that this information can be best obtained by providing an opportunity for a public hearing. The Department may initiate public hearings on its own or in response to public requests identifying specific issues which the Department believes warrant a public hearing.

i. The Department may issue or deny a permit without a public hearing, unless there is a significant degree of public interest in the application and the Department receives written request(s) for a hearing. Requests for a public hearing must be received within 20 days of the date of publication of the notice of filing of an application for a CAFRA permit in the DEP Bulletin.

ii. In the event that the Department does not hold a public hearing on a CAFRA permit application, the Department will provide for a 30-day public comment period which begins on the date of publication of the notice of filing of an application for a CAFRA permit in the DEP Bulletin. Public comments must be submitted within 30 days of the date of publication of the notice of filing of an application for a CAFRA permit in the DEP Bulletin.

2. The Department may, in its discretion, hold a non-adversarial public hearing for Wetlands and Waterfront Development permit applications and for coastal permit modification applications when it determines that additional information is necessary to assist it in its review and that this information can be obtained only by providing an opportunity for a public hearing. Such a determination will be made within 20 working days of the filing of the application.

(b) If a hearing is to take place, the Department shall, within 15 days of declaring the application complete for public hearing, set a date, place, and time for the public hearing and shall so notify the applicant.

1. The date for the hearing shall be not later than 60 days after the application has been declared complete for public hearing.

2. The hearing shall, if possible, be held in the municipality in which the development is proposed.

(c) The Department shall publish a notice announcing the date, place, and time of the public hearing in the DEPE Bulletin.

(d) The applicant shall give public notice of the public hearing, pursuant to Section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12). The newspaper display advertisement shall be a minimum of four inches in width.

1. Such notice shall describe the proposed development, identify its agency project number, announce the date, place, and time of the public hearing on the application, and indicate that comments on the application may be made to the Land Use Regulation Program, New Jersey Department of Environmental Protection, CN 401, Trenton, New Jersey 08625 at or within 15 days after the public hearing, or until the application is declared complete for review (see N.J.A.C. 7:7-4.6), whichever occurs last.

2. If the development is a linear development such as a pipeline or road, the applicant shall give public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper, and to owners of all real property within 200 feet of an above surface structure related to a linear development, such as a pumping station or treatment plant, rather than to owners of real property within 200 feet of the entire linear development.

3. Such notice shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

4. Proof of notice shall be submitted to the Department at least three days prior to the public hearing. In cases where proof of publication is unavailable 3 days prior to the hearing, the applicant may submit a notarized affidavit stating that notice of the hearing has been published, and specifying the date and newspaper in which such notice was published.

(e) The Department shall maintain a copy of the hearing transcript and of all written comments received for public inspection in its Trenton Office.

(f) The applicant shall provide a court reporter, bear the cost of the hearing and provide the Department with the original transcript, as required by N.J.A.C. 7:1C-1.5(e).

(g) The presiding official at the public hearing shall have broad discretion with respect to oral and written presentations by interested persons. This discretion shall be exercised to allow every person the opportunity to speak, to reasonably limit the length of individual testimony, and insure the maintenance of an orderly forum. At the conclusion of statements of interested persons, the applicant shall be afforded the opportunity to respond to the statements offered by interested persons.

(h) Any interested person may submit information and comments, in writing, concerning the application and the preliminary analysis at or within 15 days after the hearing or during the public comment period. Additional comments received after this date will also be included in the application file and may be considered by the Department in the review process if relevant to the application.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Additional text added to (a)2 "it determines that . . . of the application".

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Public hearings on CAFRA permit applications are not required to be conducted under contested case rules (citing former N.J.A.C. 7:7A-1.8 and 7:7A-4.6). 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).

7:7-4.6 Final review of the application

(a) In the case of CAFRA applications, the Department shall, within 15 days after the public hearing, if one is held, or 15 days after the close of the public comment period if no hearing is held, either declare the application complete for final review or issue notification to the applicant that additional information is required for the complete review of the application. The request for additional information shall be made in writing, or if made at the hearing, confirmed in writing.

i. If a public hearing was held and no additional information is required, the date of the public hearing shall be the date the application was considered complete for review.

ii. If no public hearing was held, and no additional information is required, the date of the close of the public comment period shall be the date the application was considered complete for final review.

(b) The Department shall, within 15 days of the receipt of any required additional information, either declare the application complete for final review effective the date of receipt of the additional information or issue notification to the applicant that the application is still not complete for final review and specify which deficiencies remain.

(c) In the case of a non-CAFRA application for which a public hearing was held, the application shall be declared complete for final review on the date of the public hearing.

(d) If an application for which a public hearing or public comment period has been held is not complete for review within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, further extensions in which to submit the information will be granted. Failure to submit the information by the mutually agreed date of extension will be cause for the Department to cancel the application without further notice.

1. All fees submitted with an application that is cancelled shall be non-refundable but will be applied toward re-submission of the application provided that such re-submission is made within one year of the date of cancellation.

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5.

3. A re-submission of an application shall be required to meet the application requirements specified at N.J.A.C. 7:7-4.2.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

(c) added.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-4.7 Timetable for final decisions

(a) The Department shall act on CAFRA applications within 60 days of the public hearing, or within 60 days of the date the application was declared complete for final review if no hearing is held, unless additional information was required, in which case the Department shall act on the application within 90 days of the date it was declared complete for final review.

(b) The Department shall act on all Wetland and Waterfront Development applications within 90 days after the application was declared complete for final review.

(c) If the Department fails to act within the prescribed time period, the application shall be deemed to have been approved, subject to the standard conditions set forth in N.J.A.C. 7:7-1.5, with the exception of any application for a permit which has not received all required riparian conveyances setting forth the person's right to use or occupy the land.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added "final review"; deleted text in (b) "unless a public . . . complete for review".

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Permit granted while permit application was still pending was invalid. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Failure of the Department of Environmental Protection to notify developer of its action in disapproving developer's application within 90 days did not result in automatic approval of the application; failure of the Department to act within the required time, rather than failure to notify the applicant of its action, constitutes approval (citing former N.J.A.C. 7:7C-1.8 and 7:7D-2.3). DiDonato v. Wildwood Municipal Body Corporate and Politic, 194 N.J.Super. 83, 476 A.2d 297 (App.Div. 1984).

7:7-4.8 Publication of the final decision

(a) The Department shall notify the applicant of the decision by mail, shall publish notice of the decision in the DEP Bulletin, and shall also notify all interested persons who specifically requested notice.

(b) The permittee may, if it chooses not to wait for the decision to be published in the DEP Bulletin, publish notice of the final decision in a newspaper of regional circulation which includes the municipality in which the project site is located, and by certified mail to any person who commented on the application during the review process or requested such notice, in writing, during the application review period. The Department shall maintain a list of such newspapers. Such notice shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

1. Publication of notice by the permittee by publication of a display advertisement of at least four inches in width in a newspaper of general circulation in the municipality shall begin the 10 day appeal period (see N.J.A.C. 7:7-5) if publication takes place prior to publication of notice of the final decision in the DEPE Bulletin.

2. Proof of such publication and of mailing shall be submitted the Department.

(c) The permit application review process may be extended pursuant to the provisions of N.J.A.C. 7:1C-1.8(e) or by mutual agreement.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Failure of the Department of Environmental Protection to notify developer of its action in disapproving developer's application within 90 days did not result in automatic approval of the application; failure of the Department to act within the required time, rather than failure to notify the applicant of its action, constitutes approval (citing former N.J.A.C. 7:7C-1.8 and 7:7D-2.3). *DiDonato v. Wildwood Municipal Body Corporate and Politic*, 194 N.J.Super. 83, 476 A.2d 297 (App.Div. 1984).

7:7-4.9 Withdrawal, resubmission and amendment of applications

(a) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable following the conclusion of the initial 20 working day review period except that the fee may be credited for the same project within one year of the date of the notice of withdrawal.

(b) If an application is denied, the applicant may resubmit an application for a revised project of the same or reduced scope on the same site within one year without additional fees. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. An applicant who wishes to appeal the denial, and at the same time revise the application may do so in accordance with procedures in N.J.A.C. 7:7-5.1.

(c) Permit applications may be amended at any time as part of the permit review process. Copies of amendments and amended information shall be distributed by the applicant to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

(d) Amended applications submitted within 30 days of the deadline for final decision must be accompanied by a request to extend the decision date by 30 days or by a period agreed to by the applicant and the Department.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added text "public hearing or final review."

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-4.10 Requests for modifications

(a) A permittee may apply for a modification to an issued permit for projects which do not result in a significant change in the scale, use or impact of the project as approved. The determination as to what constitutes a significant change is within the sole discretion of the Department and will be based on a review of the original application file and new information submitted by the applicant. A change that will result in less environmental impact than the original approved development will not constitute a significant change. Significant changes generally include, but are not limited to, increased clearing, grading or filling or impervious coverage, reduction in buffers, and change in footprint location.

1. Permits may only be modified during the initial five year term of the permit or beyond this five year period if the permit is still active pursuant to N.J.A.C. 7:7-1.5(d). At the Department's discretion, a modification may be granted to a permit for which approved construction has been completed to allow additional minor construction to occur on-site.

(b) Modifications shall require an application to amend the issued permit, including a new CP-1 form, notice requirements pursuant to N.J.A.C. 7:7-4.2, a copy of the original permit, summary report, and approved plans, and any additional information necessary to review the proposed modification.

(c) A fee shall be required for any modification and shall be in accordance with the provisions of N.J.A.C. 7:1C (90 day Construction Permits).

(d) The status of an application to amend an issued permit shall be published in the DEP Bulletin.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added "minor".

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-4.11 Suspension and revocation of permits

(a) A permit is suspendable for good cause, such as, but not limited to, violations of permit condition, significant changes in the plan for the development which occur after a permit is issued which are not explicitly authorized in writing by the Department, the applicant's failure to correctly identify project impacts, or unanticipated adverse effects caused by the development.

1. Prior to the suspension, the Department shall furnish written notice to the permittee by certified mail, providing 10 days within which to either remedy the violations, provide an explanation of why such violations cannot be remedied, offer a plan to remedy these violations, or demonstrate to the Department that good cause for suspension does not exist. Any remedial plan shall indicate the time necessary to implement the remedy.

2. If the above requirements have not been met, the permit shall be suspended. Construction may not commence, or if underway, shall then cease until the Department has lifted the suspension.

3. A permittee may appeal suspension of a permit according to the provisions of N.J.A.C. 7:7-5 only if construction has ceased.

(b) A suspended permit is revocable for good cause.

1. Prior to revocation, the Department shall provide the permittee with written notice, by certified mail, of intent to revoke the permit and of the permittee's right to a hearing pursuant to the provisions of N.J.A.C. 7:7-5. A request for a hearing shall be addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402.

2. If such a hearing is not requested within 10 days of receipt of said notice, the permit shall automatically be revoked.

3. Should a permit be revoked, the permittee shall make all reasonable efforts to restore the site to its pre-construction condition.

Administrative change to (b)1.

See: 23 N.J.R. 3325(b).

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-4.12 (Reserved)

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added "final review or public hearing".

Repealed by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Section was "Expedited application process".

SUBCHAPTER 5. APPEALS

Law Review and Journal Commentaries

Administrative Procedure—Environmental Law. Steven P. Bann, 137 N.J.L.J. No. 1, 67 (1994).

7:7-5.1 Request for review on appeal

(a) Any interested persons who consider themselves aggrieved by a final decision of the Land Use Regulation Program may, within 10 days of publication of notice of the final decision in the DEP Bulletin or within 10 days of publication of notice by the permittee pursuant to N.J.A.C. 7:7-4.8(b), whichever occurs first, appeal to the DEP Commissioner by requesting a hearing by addressing a written request to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, CN 402, Trenton, New Jersey 08625-0402 and including a completed "Administrative Hearing Request Checklist and Tracking Form for Permits" incorporated herein by reference as an Appendix.

1. The notice of request for a hearing on appeal shall include the appropriate agency project number and, where the appeal is taken by someone other than the applicant, evidence that a copy of the request has been mailed to the applicant.

2. The appellant shall, within 14 days of the date on which the initial hearing request was postmarked, submit an additional statement describing, in detail, how that person is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.

(b) Copies of an appeal request from a decision on a CAFRA permit application shall also be mailed to the clerk of the county and the municipality in which the project site is located, and evidence of such mailing shall be included with the appeal request.

(c) A hearing request may include a request that the permit be stayed.

Administrative change to (a)1.

See: 23 N.J.R. 3325(b).

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Issuance of waterfront development permit during pendency of application did not entitle marine conservation group to a review hearing. In re Waterfront Development Permit No. WD88-0443-1, Lincoln

Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Marine conservation group had standing to seek judicial review of grant of waterfront development permit. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Two avenues of appeal of permit decision are an appeal to the Department Commissioner or to the Coastal Area Review Board (citing former N.J.A.C. 7:7D-1 and 7:7D-2.8). In re Egg Harbor Associates, 185 N.J.Super. 507, 449 A.2d 1324 (App.Div.1982), affirmed 94 N.J. 358, 464 A.2d 1115 (1983).

Noted that conceptual approval permit not granted and additional evidence from objectors not permitted by Coastal Area Review Board (citing former N.J.A.C. 7:7D-1.9). *Crema v. Dept. of Environmental Protection*, 94 N.J. 286, 463 A.2d 910 (1983).

7:7-5.2 Response to appeal request

(a) Any interested person may, within 10 days of receiving notice of a hearing request or appeal statement, submit a written response.

(b) If the responding party contends that the appeal request should be denied, the answer should fully explain the basis for that contention.

(c) Any person or entity having a significant interest in the outcome of a hearing request may, in addition to filing a response, request permission to participate in the appeal process. A request to participate must be postmarked within 10 days of publication of notice of the original hearing request in the DEP Bulletin, and must specify the requesting party's interest in the matter being appealed.

(d) Where the request to participate is filed by someone other than the applicant, evidence that a copy of the request has been mailed to the applicant shall be submitted.

7:7-5.3 Action on appeal request

(a) The Department shall publish notice of all appeal requests in the DEP Bulletin.

(b) The Commissioner shall act on any appeal which complies with the requirements of this subchapter within 21 days of its receipt.

(c) The Commissioner may, upon request and for good cause shown, stay any or all of the conditions of the permit pending a final decision on the appeal.

(d) Requests for which a hearing is granted shall be referred to the Office of Administrative Law which shall assign an administrative law judge to conduct a hearing on the matter in the form of a contested case hearing pursuant to 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.

(e) Within 45 days of receipt of the administrative law judge's decision, the Commissioner shall accept, reject, or modify the decision.

(f) The Commissioner's action shall be considered final agency action for the purposes of the Administrative Procedure Act, and shall be subject only to judicial review as provided in the Rules of Court.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Case Notes

Permit granted while permit application was still pending was invalid. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Appeal by interested persons of decision granting CAFRA permit does not require a contested case evidentiary hearing; hearing received was fair and adequate; permit decision supported by ample credible evidence; Commissioner not required to hold hearing in considering appeal (citing former N.J.A.C. 7:7D-2.8). *Normandy Beach Improvement Assn. v. Dept. of Environmental Protection*, 193 N.J.Super. 57, 472 A.2d 156 (App.Div.1983) certification denied 96 N.J. 305, 475 A.2d 596 (1984).

7:7-5.4 Review of revised application to settle appeal

(a) Any applicant who has appealed a decision or has had a decision appealed by a third party pursuant to this subchapter may, at any time prior to the rendering of a decision by the Office of Administrative Law, submit a revised application for the purpose of negotiating a settlement of the appeal.

(b) Applicants will be required to submit information adequate to allow the Department to fully assess any proposed revisions to the project.

(c) Notice of a proposed settlement which is arrived at pursuant to this section shall be published in the DEP Bulletin, and shall be provided to any interested third party who commented on the project in writing or at the public hearing (if one was held), and any interested person shall have 10 days from the date of publication in the DEP Bulletin to comment on a proposed settlement.

(d) Any permit which is issued as a result of a settlement may be appealed by an affected party not a party to the settlement, in the manner provided for in this subchapter.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-5.5 (Reserved)

Repealed by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).
Section was "Coastal Area Review Board procedures".

Case Notes

Two avenues of appeal of permit decision are an appeal to the Department Commissioner or to the Coastal Area Review Board (citing former N.J.A.C. 7:7D-1 and 7:7D-2.8). In re Egg Harbor Associates, 185 N.J. Super. 507, 449 A.2d 1324 (App.Div.1982), affirmed 94 N.J. 358, 464 A.2d 1115 (1983).

**SUBCHAPTER 6. INFORMATION
REQUIREMENTS FOR ENVIRONMENTAL
IMPACT STATEMENTS AND COMPLIANCE
STATEMENTS**

7:7-6.1 When an EIS is required

(a) An Environmental Impact Statement (EIS) or Compliance Statement, which shall provide the information needed to evaluate the effects of the proposed development on the environment of the coastal area, is required for all CAFRA permit applications. The Department also requires an EIS for all major Wetlands and Waterfront Development permit applications.

(b) The purpose of the EIS or Compliance Statement is to assist the applicant and the Department in assessing the probable effects of a proposal on the natural resources and human activities at the project site and surrounding region and in determining the proposed development's compliance with the Rules on Coastal Zone Management, N.J.A.C. 7:7E.

1. Both the Environmental Impact Statement and Compliance Statement are intended to provide a discussion of a proposed project in terms of the specific rules which apply to the proposed development. An EIS is required for major projects, including those projects which, based on site conditions and/or the surrounding area, are anticipated to have greater environmental impacts. A Compliance Statement is required for minor projects.

2. A Compliance Statement is an abbreviated form of an EIS which may be submitted for minor projects. All applicable rules which apply to a proposed development or development site must be addressed in the Statement.

3. In cases where a proposed project appears to be neither major or minor scale, prospective applicants are encouraged to contact the Department's Land Use Regulation Program prior to submission of the permit application to determine what type of information is required. The goal of the Department is to have all applicable rules or policies addressed and all potential impacts clearly discussed in the permit application.

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-6.2 Formats and contents

(a) The applicant shall prepare and submit the EIS or Compliance Statement in the form and manner set forth in this subchapter. Failure to comply with these requirements may result in a determination that an application is not complete for public hearing or final review, depending on its status (see N.J.A.C. 7:7-4.1 and 4.4).

(b) The applicant shall include in the EIS or Compliance Statement the following:

1. Summary: A brief one or two page summary shall preface the EIS or Compliance Statement, and shall contain:

i. A description of site, including location, tax map designation, and existing conditions;

ii. A description of the size, nature and location of the proposed development;

iii. A description of the major environmental impacts associated with the proposed development, including possible areas of controversy or significant issues to be solved; and

iv. A list of any other municipal, state or federal approvals required or received, if any;

2. Project description: The project description consists of eight elements which, when taken together, describe what the applicant proposes to do, where it will be done, how it will be constructed, and how it will be operated.

i. The description shall consist of written and graphic material and development plans as specified in N.J.A.C. 7:7-4.2(a)7.

ii. The eight elements are: the development description, site plan, structure description, housing plan, transportation plan, utilities plan, public services plan, and outdoor recreation plan (as appropriate);

3. Environmental assessment and compliance with the Rules on Coastal Zone Management. This section shall include an environmental inventory assessment as described below, a detailed statement of compliance with the Rules on Coastal Zone Management (N.J.A.C. 7:7E), and a listing of adverse impacts, mitigation and alternatives; and

4. Appendices as needed.

(c) The EIS or Compliance Statement shall contain an environmental inventory and assessment which describes and documents, in narrative form, environmental conditions at the site and the surrounding region, and then assesses the probable impacts of the development on the built and natural environment.

(d) The inventory and assessment is to be made with reference to the most current Rules on Coastal Zone Man-

agement, N.J.A.C. 7:7E. It should contain sufficient detail to enable an evaluation of the development, to provide a basis for the applicant's assessment of environmental impacts, and to enable the Department to make the necessary findings for permit approval.

1. Specific requirements will vary depending on the magnitude and complexity of the project, and on the sensitivity of the land and water features of the site.

2. An EIS contains a more thorough review of a proposed development's impacts than a Compliance Statement, including such data as traffic analyses, storm-water management calculations, archaeological surveys, environmental resource inventories, habitat assessment, and detailed design specifications for the proposed construction. In most cases, an EIS will address a greater number of rules since the proposed development and associated impacts will be larger in scope. The EIS will also contain more information regarding project alternatives and mitigation measures designed to reduce the overall impact of the proposed development on the environment.

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

(b)4-6 added.

Recodified from 7:7-6.3 and amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Prior text at 7:7-6.2, Distribution of EIS to other agencies, repealed.

7:7-6.3 Preparation

(a) The level of detail and areas of emphasis in an EIS will vary depending upon the nature and complexity of the facility and the nature of the site and its surrounding regions.

1. The EIS should be concise, and should contain the facts and analyses necessary to evaluate the application with reference to the Department's Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E.

2. The information should be presented in an analytic, rather than an encyclopedic format.

(b) If the applicant believes that specific elements of the EIS or Compliance Statement are not applicable to the proposed development, the applicant may indicate "not applicable" under the appropriate heading. The reason why the information is not required should be indicated.

(c) The EIS shall be bound or in loose-leaf form, on 8½ by 11 inch paper. All maps, plans and aerial photographs shall specify a north point, graphic scale, name of preparer, date of preparation (including all revisions), and source of information. All appendices shall be labelled on the cover page so that they can be identified.

(d) The EIS or Compliance Statement should be prepared using an interdisciplinary approach, and the qualifications of the persons who prepared each element shall be identified in a separate section. References to information, reports or treatises not contained in the EIS shall be cited throughout the text as appropriate, and in a consistent manner.

(e) The Department recognizes that some or all of the EIS requirements set forth below in (f) may be addressed in an EIS prepared to meet requirements of another governmental agency or body. Such an EIS may be submitted under this subchapter, but must be supplemented in order to comply with (f) below.

(f) The EIS or Compliance Statement must discuss the applicability of the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E, to the proposal. This information is to be submitted in both map form and as part of the environmental inventory and assessment.

Recodified from 7:7-6.4 and amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

SUBCHAPTER 7. GENERAL PERMITS AND PERMITS-BY-RULE

7:7-7.1 General standards for issuing coastal General Permits and Permits-By-Rule

(a) This section contains the procedures and substantive standards governing the issuance of new General Permits in accordance with N.J.S.A. 13:14 et seq. and contains the procedures and substantive standards for the issuance of permits-by-rule. N.J.A.C. 7:7-7.2 and 7.3 contain the procedures and substantive standards for authorizing various developments under the issued General Permits. N.J.A.C. 7:7-7.4 describes the activities authorized by Permit-by-Rule.

(b) Before reissuing a General Permit or Permit-By-Rule, or adopting a new General Permit or Permit-By-Rule, the Department will propose a draft General Permit for public comment in the form of a rule proposal pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(c) The Department may issue General Permits or Permits-By-Rule only if all of the following conditions are met:

1. The Department determines that the regulated development will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and is in keeping with the legislative intent to protect and preserve the coastal area from inappropriate development;

2. The Department determines that the development will be in conformance with the purposes of CAFRA; and

3. The Department has provided public notice and an opportunity for a public hearing with respect to the proposed General Permit or Permit-By-Rule. After a General Permit has been issued by the Department, the Department will not hold hearings on individual applications for a General Permit.

(d) Each General Permit or Permit-By-Rule shall contain a specific description of the type(s) of development which are authorized, including limitations for any single operation, to ensure that the requirements of (a), (b) and (c) above are satisfied. At a minimum, these limitations shall include:

1. The size and type of the development that may be undertaken; and
2. A precise description of the geographic area to which the general permit or permit-by-rule applies.

(e) The Department will include in each general permit or permit-by-rule issued pursuant to this subchapter appropriate conditions applicable to particular types of sites or development which must be met in order for a proposed development or activity to qualify for authorization under the general permit or permit-by-rule.

1. The Department may add special conditions which must be met in order for a specific proposed development to qualify for a general permit.

(f) The Department may, by proposing and adopting regulations, rescind a category of general permits or permits-by-rule, and thereafter require individual CAFRA permits for development previously covered by the general permit or permit-by-rule, if it finds that the general permit or permit-by-rule no longer meets the purposes of N.J.S.A. 13:19-1 et seq. and of this chapter.

(g) The Department shall review each general permit and permit-by-rule a minimum of once every five years in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. This review shall include public notice and an opportunity for public hearing. Upon completion of this review, the Department shall either modify, reissue or revoke each general permit and permit-by-rule previously adopted.

(h) If a general permit or permit-by-rule is not modified or reissued within five years of initial publication in the New Jersey Register, it shall automatically expire.

7:7-7.2 General Permit authorization

(a) The following development in the CAFRA area is authorized under the following General Permits provided

that the activity is in compliance with specific conditions contained in the General Permit:

1. Single Family Home or Duplex: The construction of a single family home or duplex on a bulkheaded lagoon lot, provided that the proposed project complies with all of the following:

- i. The site is located on a man-made lagoon;
- ii. All waterfront portions of the site are protected by a currently serviceable legal bulkhead;
- iii. There are no wetlands on site upland of the bulkhead;
- iv. The project consists solely of the construction of a single family home or duplex and associated improvements and is not part of a larger development being conducted by the property owner;
- v. The dwelling and all other permanent structures, exclusive of a deck, are set back a minimum of 15 feet from the waterward face of the bulkhead;
- vi. A silt fence is erected upland of the bulkhead with a 10 foot return on each end prior to construction. This fence must remain in place until all construction and landscaping activities are completed;
- vii. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners must be made of filter cloth or other permeable material;
- viii. The driveway is covered with a permeable material or is pitched to drain all runoff onto permeable areas of the site;
- ix. The lowest habitable floor of the proposed structure is at or above the base flood elevation for the site as established by the Federal Emergency Management Agency and designated on the Flood Insurance Rate Map; and
- x. The proposed dwelling will be serviced by an existing municipal sewer system.

2. Amusement Pier Expansion: The expansion of an existing, functional amusement pier, provided that the proposed expansion complies with the following:

- i. The amusement pier was existing and functional as of July 19, 1993 and contained game, ride and food concessions;
- ii. The proposed expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent;
- iii. The proposed expansion is located more than 150 feet landward of the mean high water line;
- iv. The proposed expansion is constructed at the same elevation as the existing, functional amusement pier;

v. The proposed expansion will not eliminate or affect existing, direct public access from the boardwalk to the beach, unless another access point is provided immediately adjacent to the expanded pier for each access point eliminated; and

vi. The proposed expansion includes a provision for public sitting and viewing at the terminal end of the expansion.

3. Beach and Dune Maintenance Activities: Beach and dune maintenance activities provided they are conducted in accordance with Best Management Practices as defined by the Department in the Rules on Coastal Zone Management, N.J.A.C. 7:7E-3A. Activities which may be authorized under this general permit include dune creation projects, sand transfers using mechanical equipment, and the construction of beach access ways.

4. Voluntary Reconstruction: The voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development within the same footprint, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law and provided:

i. The reconstruction does not result in the enlargement or relocation of the footprint of the development; and

ii. The reconstruction does not result in an increase in the number of dwelling units or parking spaces or equivalent parking area within the development.

iii. A relocation landward may qualify for this general permit if the Department determines that such a relocation would result in less environmental impact than the prior development.

iv. This General Permit authorization is not required for repairs or maintenance, such as replacing siding, windows or roofs, unless such repair or maintenance is associated with an expansion.

(b) The Department may require an application for an individual CAFRA permit instead of a General Permit if the Department finds that additional permit conditions would not be sufficient, or that special circumstances make this action necessary to ensure compliance with statutory requirements. The Department retains discretionary authority to require, on a case-by-case basis, submission of an individual CAFRA permit application for any proposed activity when it is determined that such a review would be in the public interest and that the proposed activity has the potential to cause significant impacts on environmental resources. In addition, when a project in its entirety does not qualify for a general permit, then the entire project shall require an individual CAFRA permit application. The Department will require an individual CAFRA permit application for a development that has already received a General Permit.

(c) All General Permits shall be valid for a term not to exceed five years from the date of receipt from the Department. If the term of a General Permit applicable to a specific development exceeds the expiration date of the General Permit issued by rule, and the General Permit upon which the authorization was based is modified by rule to include more stringent standards or conditions, the permittee must comply with the requirements of the new regulations by applying for a new General Permit authorization unless construction is already underway. If the General Permit is not reissued, the applicant must apply for an individual CAFRA permit unless construction pursuant to the prior General Permit is already underway.

1. For the purposes of this section, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

7:7-7.3 Application procedure for a General Permit authorization

(a) A person proposing to engage in an activity covered by a General Permit shall submit the following to the Department:

1. A completed DEP Standard Construction Permit (CP-1) form;

2. Photographs of the site for which authorization is being requested;

3. Verification that a complete copy of the application has been forwarded to the clerk of the municipality (green card is required) 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, as well as to municipal planning board, county planning board, municipal construction official, and to all landowners within 200 feet of the property or properties on which the proposed activity will occur. The applicant shall also provide a certified list of all landowners within 200 feet as part of the application. The notice shall read as follows:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a General Permit authorization for (describe the proposed development).

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the DEP Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter. Your comments should be sent along with a copy of this letter to:

New Jersey Department of
Environmental Protection
Land Use Regulation Program
CN 401

5 Station Plaza
Trenton, New Jersey 08625

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

4. A fee pursuant to N.J.A.C. 7:1C-1.5(a)3iii; and
5. Any additional information as outlined in (b) through (e) below.

(b) A person applying for a General Permit to construct a single family home or duplex on a bulkheaded lagoon lot pursuant to N.J.A.C. 7:7-7.2(a)1 shall also submit three copies of site plans demonstrating that the proposed development complies with the criteria listed above at N.J.A.C. 7:7-7.2(a)1.

(c) A person applying for a General Permit to expand an existing, functional amusement pier pursuant to N.J.A.C. 7:7-7.2(a)2 shall also submit written documentation containing:

1. A description of the location of the activity including county, municipality, lot(s) and block(s);
2. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;
3. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;
4. Plans showing the existing and proposed direct public access points from the boardwalk to the beach; and
5. Plans showing the proposed public sitting and viewing area at the terminal end of the expansion.

(d) A person applying for a General Permit for beach and dune maintenance activities pursuant to N.J.A.C. 7:7-7.2(a)3 shall also submit:

1. A description of the location of the proposed activities, including county, municipality, lot(s) and block(s);
2. A plan showing the specific location of all proposed activities;
3. A description of the specific activities proposed for each location;
4. A statement from the applicant which details how the proposed activities will be conducted in compliance with the standards set forth in the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E;
5. The name, title, address and phone number of the person(s) responsible for supervising the proposed activities to ensure compliance with the referenced standards; and
6. The schedule for conducting the specific activities.

(e) A person applying for a General Permit for voluntary reconstruction of an undamaged, legally constructed, serviceable structure or habitable residential or commercial development pursuant to N.J.A.C. 7:7-7.2(a)4 shall also submit:

1. Development plans clearly depicting the existing site and the proposed site, including size and location of the current and proposed footprint; and
2. Documentation that there will not be an increase in the number of dwelling units or parking spaces or equivalent parking area associated with the proposed reconstruction.
3. A person wishing to relocate landward shall also submit plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing.

(f) Except as otherwise provided in this section, an application for a General Permit authorization will be reviewed following the procedures set forth at N.J.A.C. 7:7-4.4, and 4.7 through 4.11.

7:7-7.4 Permits-By-Rule

(a) This section details the activities authorized by Permit-by-Rule.

1. Single Family Home or Duplex Expansion: The expansion of a legally constructed, habitable single family or duplex dwelling on the non-waterward sides of the dwelling, provided that the expansion does not exceed a cumulative surface area of 400 square feet, and provided that such expansion is not proposed on a beach, dune, or wetland.

2. Expansion of a Single Family Home or Duplex on a bulkheaded lagoon lot: The expansion of a legally constructed, habitable single family or duplex dwelling on a bulkheaded lagoon lot, provided that the expansion does not exceed a cumulative surface area of 400 square feet, such expansion is not proposed on a wetland, and provided that such expansion is set back a minimum of 15 feet from the waterward face of the bulkhead.

(b) A person wishing to engage in an activity covered by a Permit-By-Rule shall submit notification to the Department at least 30 days prior to commencement of the proposed work. Such notification shall be sent to: Administrator, DEP—Land Use Regulation Program, CN 401, Trenton, New Jersey 08625, and shall include:

1. A description of the location of the proposed activity including county, municipality, lot(s) and block(s);
2. A description of the proposed expansion including its dimensions and location; and
3. A copy of the issued building permit for the proposed development.

SUBCHAPTER 8. ENFORCEMENT

Source and Effective Date

R.1994 d.413, effective August 1, 1994.
See: 26 N.J.R. 1745(a), 26 N.J.R. 3188(a).

7:7-8.1 Authority for N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, pursue the remedies specified in 1 through 4 below. Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

1. Issue an order requiring the person found to be in violation to comply in accordance with N.J.A.C. 7:7-8.2;
2. Bring a civil action for injunctive and other relief in accordance with N.J.A.C. 7:7-8.13;
3. Levy a civil administrative penalty in accordance with N.J.A.C. 7:7-8.5 or 7:7-8.6; and/or
4. Bring an action for a civil penalty in accordance with N.J.A.C. 7:7-8.7.

(b) Any development or improvement enumerated in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., or included within any rule or regulation adopted pursuant thereto, which is commenced or executed without first obtaining approval, or contrary to the conditions of approval, as provided in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., shall be deemed to be a purpresture, a public nuisance and a violation of N.J.S.A. 12:5-1 et seq. and shall be abated in the name of the State by one or more of the following actions:

1. The issuance of an administrative order in accordance with N.J.A.C. 7:7-8.2;
2. The commencement of a civil action by the Department in Superior Court for injunctive or other appropriate relief in accordance with N.J.A.C. 7:7-8.13; and/or
3. The levying of an administrative penalty by the Department in accordance with N.J.A.C. 7:7-8.10 and 8.11.

(c) The Department has the power, as enumerated in N.J.S.A. 13:1D-9, and consistent with constitutional requirements, to enter and inspect any building or place for the purposes of ascertaining compliance or noncompliance with any codes, rules and regulations of the Department.

7:7-8.2 Procedures for issuing an administrative order pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., the Department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his or her right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:7-8.4. After the hearing and upon finding that a violation has occurred, the Department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

(b) Any development or improvement commenced or executed in violation of the Waterfront Development Act, N.J.S.A. 12:5-1 et seq., may be abated by the State by the issuance of an administrative order by the Commissioner specifying that there has been a violation of the provisions of this section, or any applicable rule, regulation or permit; setting forth the facts forming the basis for the issuance of the order; and specifying the course of action necessary to correct the violation. Procedures to request a hearing on an administrative order issued pursuant to this subsection are contained in N.J.A.C. 7:7-8.11.

7:7-8.3 Procedures for assessment, settlement and payment of civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To assess a civil administrative penalty under N.J.S.A. 13:19-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment (NOCAPA) shall:

1. Identify the section of the statute, rule, administrative order or permit violated;
2. Concisely state the alleged facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed and the fact that interest may be due in accordance with (c) below; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.4, a notice of civil administrative penalty assessment becomes a final order and is deemed received on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
2. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(b), a notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
3. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(c), a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial; or
4. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey. Interest shall accrue on the amount of the civil administrative penalty due and owing from the date the payment is due and continuing until the civil administrative penalty is paid in full with interest if:

1. A violator does not pay a civil administrative penalty imposed pursuant to a final order within 30 days of the date that payment is due; or

2. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department within 30 days of the date that payment is due.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.5 or 8.6 according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:7-8.5(g)4, 8.6(g)5 or 8.8(h)6;
2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.5(f)1i or 8.6(g)3, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;
3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or
4. Any other terms or conditions acceptable to the Department.

7:7-8.4 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 13:19-1 et seq., the violator shall submit the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the findings of fact stated in short and plain terms;
3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the

violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being contested, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:7-8.5 Civil administrative penalties for failure to obtain a permit for regulated activities pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.A.C. 7:7-2.1.

(b) Each violation of N.J.A.C. 7:7-2.1 shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section, the Department shall identify the civil administrative base penalty within the table in (e) below by determining the number of points pursuant to (d) below. The civil administrative penalty shall be the amount within the table in (e) below, unless adjusted pursuant to (f) and/or (g) below.

(d) The Department shall determine the number of points assigned to each violation by summing the points according to (d)1 through 3 below.

1. Conduct of violator:

Minor	1 point
Moderate	2 points
Major	3 points

i. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

ii. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

iii. Minor shall include any other conduct not included in (d)1i or ii above.

2. Area of disturbance in square feet (sf):

Less than or equal to 270 sf	1 point
271 sf to 5,000 sf	2 points
5,001 sf to 10,000 sf	3 points
10,001 sf to 20,000 sf	4 points
Greater than 20,000 sf	5 points

The Department shall determine the area of disturbance as that area which was actually disturbed as a result of the violation.

3. Unauthorized activity conducted in special area or resources:

Each special area or resource involved—1 point

The Department shall assess one point for each special area or resource, as defined in N.J.A.C. 7:7E-3, in which the unauthorized activity occurred.

(e) The table of civil administrative base penalties is as follows:

Points	Base Penalty
1-3	\$ 500
4	\$ 1,000
5	\$ 5,000
6	\$10,000
7	\$15,000
8	\$20,000
9	\$25,000

(f) The Department shall adjust the amount of the base penalty assessed pursuant to (e) above based upon the mitigating penalty component as calculated in (f)1i or ii below, if applicable.

1. The Department shall multiply the base penalty dollar amount by the multiplier for either of the applicable mitigating factors in (f)1i or ii below to obtain the mitigating penalty component. Where neither mitigating factor in (f)1i or ii below applies, the civil administrative penalty shall be the civil administrative base penalty determined pursuant to (e) above, unless adjusted pursuant to (g) below.

Mitigating Factor	Multiplier
i. Where the nature, timing and effectiveness of any measures taken by the violator to remove the unauthorized development and to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of violation from the Department; or	0.50

- ii. Where a complete application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained for the unauthorized development without the need of any modification, mitigation or restoration. 0.50

2. To obtain the civil administrative penalty, the Department shall subtract the mitigating penalty component calculated pursuant to (f)1 above, where applicable, from the base penalty.

(g) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (e) or, where applicable, (f) above based upon any or all of the factors listed in (g)1 through 4 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 25 percent of the penalty pursuant to (e) above, or more than the statutory limit.

1. The compliance history of the violator;
2. The frequency with which any violation of N.J.S.A. 13:19-1 et seq., rules, permit or order occurred;
3. The deterrent effect of the penalty; and/or
4. Any other mitigating, extenuating or aggravating circumstances.

7:7-8.6 Civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA) other than failure to obtain a permit for regulated activities

(a) The Department may, in its discretion, assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., other than those violations addressed under N.J.A.C. 7:7-8.5. The Department shall assess penalties under this section in lieu of N.J.A.C. 7:7-8.5 when N.J.A.C. 7:7-8.5 is not applicable to the violation.

(b) Each violation of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) The Department may assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (g) below.

SERIOUSNESS

		Major	Moderate	Minor
	Major	\$20,000- \$25,000	\$15,000- \$20,000	\$10,000- \$15,000
CONDUCT	Moderate	\$15,000- \$20,000	\$10,000- \$15,000	\$ 5,000- \$10,000
	Minor	\$10,000- \$15,000	\$ 5,000- \$10,000	\$125- \$ 5,000

(e) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major seriousness shall apply to any violation which has caused or has the potential to cause serious harm to human health or the environment;
2. Moderate seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health or the environment; or
3. Minor seriousness shall apply to any violation not included in (e)1 or 2 above.

(f) The conduct of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and
3. Minor conduct shall include any other conduct not included in (f)1 or 2 above.

(g) The Department may, in its discretion, adjust the amount determined pursuant to (d), (e) and (f) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (d) above, on the basis of any or a combination of the factors listed in (g)1 through 5 below. No such factor constitutes a defense to any violation:

1. The compliance history of the violator;
2. The number and frequency of violation(s) by the violator;
3. The measures taken by the violator to mitigate the effects of the current violation;
4. The deterrent effect of the penalty; and/or
5. Any other extenuating, mitigating or aggravating circumstances.

7:7-8.7 Civil penalty for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) Any person who violates the provisions of N.J.S.A. 13:19-1 et seq., any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., an administrative order or a court order issued pursuant to N.J.S.A. 13:19-1 et seq., or who fails to pay a civil administrative penalty in full pursuant to N.J.A.C. 7:7-8.3, shall be subject, upon order of a court, to a civil penalty of not more than \$25,000 for each violation, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(b) Any penalty established pursuant to this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:19-1 et seq.

7:7-8.8 Civil administrative penalties for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$1,000 for each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq.

(b) Each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the civil administrative penalty within the matrix in (e) below by:
 - i. Determining the seriousness of the violation pursuant to (f) below; and
 - ii. Determining the conduct of the violator pursuant to (g) below.
2. The civil administrative penalty shall be the amount within the matrix in (e) below, unless adjusted pursuant to (h) below.

(e) The matrix of civil administrative penalties is as follows:

SERIOUSNESS

		Major	Moderate	Minor
CONDUCT	Major	\$1,000	\$900	\$750
	Moderate	\$900	\$700	\$500
	Minor	\$750	\$500	\$250

(f) The seriousness of the violation shall be determined according to the category of activity regulated under N.J.A.C. 7:7-2.3, as follows:

1. Minor: Four or fewer pilings;
2. Moderate: Docks 100 square feet or less, breakwaters 40 linear feet or less or other similar structures;
3. Major: All other structures or activities; or those violations defined as minor or moderate which have a permanent adverse effect on a special area as defined in N.J.A.C. 7:7E-3.

(g) The Department shall determine the conduct of a violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
2. Moderate shall include any unintentional but foreseeable act or omission by the violator;
3. Minor shall include any other conduct not included in (g)1 or 2 above.

(h) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (d) above based upon any or all of the factors listed in (h)1 through 6 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 50 percent of the penalty determined pursuant to (d) above, or more than the statutory limit.

1. The compliance history of the violator;
2. The frequency with which any violation of N.J.S.A. 12:5-1 et seq., or rules promulgated, or permits issued pursuant to N.J.S.A. 12:5-1 et seq. occurred;
3. Where the nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of the violation from the Department or where a complete permit application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained in accordance with N.J.S.A. 12:5-1 et seq., the assessed penalty may be reduced by 50 percent;
4. Where a permit is obtained in accordance with N.J.S.A. 12:5-1 et seq. without the need of any modification, mitigation or restoration and has not been considered under (h)3 above;
5. The deterrent effect of the penalty; and/or

6. Any other mitigating, extenuating or aggravating circumstances.

7:7-8.9 Civil administrative penalty for continuing violation of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

The Department may assess an additional penalty of not more than \$100.00 for each day during which a violation continues after receipt of an administrative order from the Department pursuant to N.J.A.C. 7:7-8.2(b).

7:7-8.10 Procedures for assessment, settlement and payment of civil administrative penalties pursuant to N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) To assess a civil administrative penalty under N.J.S.A. 12:5-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This notice of civil administrative penalty assessment shall:

1. Identify the section of the statute, rule or permit violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.11.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order.

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.11, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or
2. If the Department denies the hearing request, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or
3. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.8 and 8.9 according to the factors identified in (c)1 through 4 below. No such factor constitutes a defense to any violation:

1. Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.8 and 8.9, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; and/or

4. Any other terms or conditions acceptable to the Department.

7:7-8.11 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 12:5-1 et seq., the violator shall submit the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the findings of fact stated in short and plain terms;
3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;
4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 21 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:7-8.12 Civil penalties for violations of N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)

(a) Any person who violates any order by the Department, or violates any provisions of N.J.S.A. 13:9A-1 et seq., shall be subject, upon order of a court, to a civil penalty of not more than \$1,000.

(b) Any penalty ordered as provided in this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:9A-1 et seq.

7:7-8.13 Civil actions for violations of N.J.S.A. 13:19-1 et seq. (CAFRA), N.J.S.A. 12:5-1 et seq. (Waterfront Development), and N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)

(a) The Department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq. and 12:5-1 et seq. or any regulation, rule, permit, or order adopted or issued by the Department pursuant to any of these acts, and the court may proceed in the action in a summary manner. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;
2. Assessment against the violator for any costs incurred by the Department in removing, correcting or terminating the violation of any provision of any of the acts, or any regulation or rule adopted, or permit or order issued, by the Department pursuant to any of these acts, for which the action under this section may have been brought; and/or
3. A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.

(b) For violations of N.J.S.A. 13:19-1 et seq., the Department may institute an action or proceeding in the Superior Court for the assessment against the violator for any costs incurred by the Department in terminating the adverse effects upon the land, or upon water or air quality, resulting from any violation of any provision of N.J.S.A. 13:19-1 et seq., or any rule promulgated or any permit or order issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., for which the action under this section may have been brought.

7:7-8.14 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof, and to this end, the provisions of this subchapter are declared to be severable.

APPENDIX

**Administrative Hearing Request Checklist
and Tracking Form for Permits**

I. Permit Being Appealed:

Title and Type of Permit

Issuance Date of Permit

Permit Number

II. Person Requesting Hearing:

Name/Company

Name of Attorney (if applicable)

Address

Address of Attorney

III. Please Include the Following Information as Part of Your Request:

- A. The date the permittee received the final permit;
- B. A copy of permit, list of all permit conditions and issues contested;
- C. The legal and factual questions at issue;
- D. A statement as to whether or not the permittee raised each legal and factual issues during the public comment period on the permit;
- E. Suggested revised or alternative permit conditions;
- F. An estimate of the time required for the hearing;
- G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
- H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and
- I. This form, completed, signed and dated with all of the information listed above, including attachments, to:
 1. Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402
 2. (Name and address of Assistant Director/designee)
 3. All co-permittees (w/attachments)

IV. Signature: _____ **Date:** _____