

1. The written 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 written request for hearing an appeal has been mailed to the applicant/permittee.

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2. Within 14 days of the date on which the initial request for a hearing was postmarked, the person appealing the decision shall 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) A permittee may publish notice of the Department's final decision in a newspaper of Statewide circulation and a newspaper of regional circulation which includes the municipality in which the project site is located. The permittee shall provide a copy of the Department's decision to any person who requested such notice by certified mail. The Department shall maintain a list of such newspapers and a list of all persons who have requested notice of the decision.

(c) Pending appeal of the Department decision and the Commissioner's final decision on the appeal, a person may apply to the Commissioner for a stay of the issuance of a permit by written request and for good cause shown therein. The Commissioner may stay the issuance of the permit upon such terms and conditions as the Commissioner may deem proper in his or her sole discretion. The request for stay of issuance of the permit shall be made within 21 days of the issuance of the Department approval of the permit application.

(d) Where a request for a hearing concerning a Department decision on a permit application has been granted by the Department, the request shall be referred to the Office of Administrative Law for a fact-finding hearing if required pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), after which, the Commissioner shall issue a final decision adopting, rejecting or modifying the findings of fact and conclusions of law of the administrative law judge, within the time frame specified in N.J.S.A. 52:14B-10.

(e) Nothing in this section shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14-3.1 through 3.3 (P.L.1993, c.359).

#### **7:13-4.11 Permit application review by delegated agencies**

When authority to approve certain types of regulated activities is delegated in writing by the Department to another agency under provisions of this chapter and the Acts, that agency shall apply the standards and criteria of this chapter to all matters arising under the jurisdiction of this chapter which have been delegated to that agency.

## **SUBCHAPTER 5. IMPLEMENTATION**

### **7:13-5.1 Consistency with other requirements in permit review**

(a) A permit under this chapter is expressly conditioned upon the permittee complying with all other applicable

Federal, State and local statutes, rules and regulations, orders, standards, plans, and ordinances which may apply to the work necessary to accomplish the proposed project, and obtaining all other permits, licenses or approvals required for the work which is a part of the proposed project. The issuance of a permit pursuant to this chapter shall not obligate the Department to grant or deny an application by the permittee for any other license, permit or approval issued by the Department.

(b) In cases where the Department has not delegated authority under N.J.A.C. 7:13-5.3, no local agency or employee thereof shall grant any application for development as defined in the "Municipal Land Use Law" (N.J.S.A. 40:55D-1 et seq.) for an activity regulated under this chapter until an application for a permit under this chapter has been approved by the Department. The Department will consider this provision satisfied if the local approval is conditioned upon obtaining a permit under this chapter.

#### **Case Notes**

Regulations upheld against challenge that criteria for Projects of Special Concern besides flood control were without statutory authority; Department authorized to consider overlapping flood hazards, water pollution and plant and animal preservation in criteria formulation. *Society for Environmental Economic Development v. Dept. of Environmental Protection*, 208 N.J.Super. 1, 504 A.2d 1180 (App.Div.1985).

### **7:13-5.2 Creation of a county water resources association**

The governing body of any county may, by ordinance or resolution, as the law may provide, create a county water resources association to discuss and coordinate county flood control and water management programs, to advise the county governing body on these issues and to undertake any other such duties concerning water management as the county governing body may legally delegate to it by ordinance or resolution. Members of this Association shall be appointed by the county governing body and may include the chief administrative officer or executive of any county planning agency, county engineer's office, county utility authority, county health department, county mosquito commission, county soil conservation district, county parks agency and any other person with relevant experience or training.

#### **Case Notes**

Regulations upheld against challenge that criteria for Projects of Special Concern besides flood control were without statutory authority; Department authorized to consider overlapping flood hazards, water pollution and plant and animal preservation in criteria formulation. *Society for Environmental Economic Development v. Dept. of Environmental Protection*, 208 N.J.Super. 1, 504 A.2d 1180 (App.Div.1985).

### **7:13-5.3 Delegation of power to counties**

(a) Except as otherwise expressly provided in this chapter, the Department may delegate its authority to review and decide any application made to it pursuant to this chapter as well as its power to enforce any aspect of its legal obligations arising under the Acts to a county governing body

which shall expressly agree to accept such designation, and follow the rules stated herein, and which, in the Department's judgment, retains those employees with professional training and education capable of properly administering the provisions of this chapter.

1. A county wishing to apply for authority to issue permits pursuant to the provisions of this chapter or to undertake enforcement of any of the provisions of this chapter shall submit a written request to the Department and specifically describe those aspects of the permitting and enforcement authority of the Department under this chapter which it wishes to assume. The county shall also submit evidence of a formal approval by the county governing body agreeing to apply for delegation of the authority or obligations described in the application and agreeing to adopt, in the event the request is granted, an ordinance or resolution containing all provisions of this chapter relevant to the duties and obligations to be assumed by the county. The request shall also describe in detail the personnel, physical resources and source and amount of funding by which the county shall fulfill the obligations the county wishes to assume.

2. A county to which permitting authority or enforcement obligations have been delegated pursuant to this subsection shall preserve, for the Department review, all documents, plans, maps, memoranda and notes as necessary which document that it has discharged its delegated duties in accordance with the applicable provisions of this chapter.

3. The Department shall review the county records pertaining to all duties delegated to the county under this subsection at least once every 365 days after the date of the formal delegation of duties to the county, and may at any time revoke such delegation if, in the judgment of the Department, the county has failed to properly administer powers delegated to it, which may include a failure to maintain the records stipulated in (a)2 above.

4. The county governing body to which permitting functions under this chapter have been delegated shall not charge fees in excess of those promulgated by the Commissioner pursuant to N.J.S.A. 13:1D-33.

(b) The Department shall not delegate the powers to review or decide any application for a permit pursuant to this chapter filed by a State agency.

#### 7:13-5.4 Penalties

Any person who violates a provision of this chapter shall be subject to penalty and injunctive relief, as applicable, pursuant to N.J.S.A. 58:16A-63 and 58:10A-1 et seq.

#### Case Notes

Decision to grant stream encroachment permit for resource recovery facility was not arbitrary, capricious or unreasonable and was within legislative framework and criteria. Matter of Stream Encroachment Permit No. 12400, 231 N.J.Super. 443, 555 A.2d 1123 (A.D.1989).

#### SUBCHAPTER 6. (RESERVED)

#### SUBCHAPTER 7. DELINEATED FLOODWAYS

##### Flood Plain Redelineations, 1994:

Poplar Brook, Borough of Deal, Monmouth County.

Amended by R.1994 d.9, effective January 3, 1994.

See: 25 N.J.R. 4372(a), 26 N.J.R. 211(a).

Delaware River, Pohatcong Township, Warren County.

Amended by R.1994 d.10, effective January 3, 1994.

See: 25 N.J.R. 4370(a), 26 N.J.R. 212(a).

Overpeck Creek, City of Englewood, Bergen County.

Amended by R.1994 d.11, effective January 3, 1994.

See: 25 N.J.R. 4371(a), 26 N.J.R. 212(b).

##### Flood Plain Redelineations, 1995:

Pascack and Fieldstone Brooks, Montvale Borough, Bergen County.

Amended by R.1995 d.46, effective January 17, 1995.

See: 26 N.J.R. 2834(a), 27 N.J.R. 324(a).

Sparkill Brook.

Amended by R.1995 d.516, effective September 18, 1995.

See: 27 N.J.R. 1854(a), 27 N.J.R. 3600(b).

East Branch Rahway River.

Amended by R.1995 d.517, effective September 18, 1995.

See: 27 N.J.R. 1855(a), 27 N.J.R. 3601(a).

#### 7:13-7.1 Delineated floodways

(a) The streams listed in (b), (c), (d), (e), (f) and (g) below have been delineated following public hearings by the Water Policy and Supply Council, and information concerning these delineations is on file in the offices of the Division of Water Resources:

1. Type 1: A flood hazard area map has been prepared setting forth floodway limits and extent of flood hazard area limits. Water surface profiles are included for both the floodway and flood hazard area design floods.

2. Type 2: There is no flood hazard area map available. Delineation must be determined on a case by case basis from the water surface profile which have been developed for both the floodway and flood hazard area design floods.