

**CHAPTER 13****FLOOD HAZARD AREA CONTROL ACT RULES****Authority**

N.J.S.A. 13:1D-1 et seq., 13:1D-29 et seq., 13:20-1 et seq., 58:10A-1 et seq., 58:11A-1 et seq., and 58:16A-50 et seq.

**Source and Effective Date**

Effective: October 6, 2014.  
See: 46 N.J.R. 2149(a).

**Chapter Expiration Date**

Chapter 13, Flood Hazard Area Control Act Rules, expires on October 6, 2021.

**Chapter Historical Note**

Chapter 13, Water Supply and Flood Plain Management, was adopted as new rules by R.1975 d.105, effective June 2, 1975. See: 6 N.J.R. 391(a), 7 N.J.R. 206(b).

Pursuant to Executive Order No. 66(1978), Chapter 13, Water Supply and Flood Plain Management, expired on July 19, 1983.

Subchapter 11, Delineated Floodways, was readopted as R.1983 d.321, effective July 21, 1983. See: 15 N.J.R. 839(a), 15 N.J.R. 1374(b).

Chapter 13, Flood Hazard Areas, was adopted as new rules by R.1984 d.201, effective May 21, 1984, and Subchapter 11, Delineated Floodways, was recodified as N.J.A.C. 7:13-7.1. See: 15 N.J.R. 2104(a), 16 N.J.R. 1201(a).

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from May 4, 1989 to July 17, 1989. See: 21 N.J.R. 1481(a).

Pursuant to Executive Order No. 66(1978), Chapter 13, Flood Hazard Area Control, was readopted as R.1989 d.415, effective July 14, 1989. See: 21 N.J.R. 371(a), 21 N.J.R. 2350(a).

Pursuant to Executive Order No. 66(1978), Chapter 13, Flood Hazard Area Control, was readopted as R.1994 d.338, effective June 10, 1994. See: 26 N.J.R. 1036(a), 26 N.J.R. 2791(a).

Chapter 13, Flood Hazard Area Control, was repealed and Chapter 13, Flood Hazard Area Control, was adopted as new rules by R.1995 d.149. See: 26 N.J.R. 1009(a), 27 N.J.R. 1211(a).

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from March 20, 2000 to December 31, 2000. See: 32 N.J.R. 1253(b).

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from December 31, 2000 to June 30, 2001. See: 33 N.J.R. 553(c).

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from June 30, 2001 to June 30, 2002. See 33 N.J.R. 2641(a).

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 13, Flood Hazard Area Control, expiration date was extended by gubernatorial directive from June 30, 2002 to December 30, 2003. See: 34 N.J.R. 2802(c).

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 13, Flood Hazard Area Control, expiration date was extended by gubernatorial directive from December 30, 2003 to June 30, 2005. See: 36 N.J.R. 886(a).

Chapter 13, Flood Hazard Area Control, was readopted as R.2006 d.44, effective December 23, 2005. See: 37 N.J.R. 2759(a), 38 N.J.R. 947(a).

Chapter 13, Flood Hazard Area Control, was repealed and Chapter 13, Flood Hazard Area Control Act Rules, was adopted as new rules by R.2007 d.340, effective November 5, 2007. See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

Petition for Rulemaking. See: 42 N.J.R. 733(c), 1085(b).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 13, Flood Hazard Area Control Act Rules, was scheduled to expire on November 5, 2014. See: 43 N.J.R. 1203(a).

Chapter 13, Flood Hazard Area Control Act Rules, was readopted, effective October 6, 2014. See: Source and Effective Date.

Subchapter 14, Transfer, Suspension and Termination of an Approval, was renamed Transfer, Suspension, and Termination of an Approval; and Subchapter 17, Application Fees, was repealed and Subchapter 17, Application Fees, was adopted as new rules by R.2015 d.023, effective February 2, 2015. See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**7:13-1.1 Purpose and scope**

(a) This chapter sets forth requirements governing human disturbance to the land and vegetation in the following areas:

1. The flood hazard area of a regulated water, as described at N.J.A.C. 7:13-3; and
2. The riparian zone of a regulated water, as described at N.J.A.C. 7:13-4.

(b) This chapter implements the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.; and, in addition, relevant aspects of the New Jersey Water Pollution Control Act,

N.J.S.A. 58:10A-1 et seq.; the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.; the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.; the Ninety-Day

Construction Permits Law, N.J.S.A. 13:1D-29 et seq.; and N.J.S.A. 13:1D-1 et seq.

(c) The purpose of this chapter is to minimize damage to life and property from flooding caused by development within fluvial and tidal flood hazard areas, to preserve the quality of surface waters, and to protect the wildlife and vegetation that exist within and depend upon such areas for sustenance and habitat.

1. Unless properly controlled, development within flood hazard areas increases the intensity and frequency of flooding by reducing flood storage, increasing stormwater runoff and obstructing the movement of floodwaters. Damage also occurs from fallen structures, unsecured materials and other debris carried by floodwaters. Furthermore, improperly built structures are subject to flood damage and threaten the health, safety and welfare of those who use them. Increased flooding results in increased risk of loss of life and property damage.

2. Healthy vegetation adjacent to surface waters is essential for maintaining bank stability and water quality. The indiscriminate disturbance of such vegetation destabilizes the banks of channels and other surface waters, which leads to increased erosion and sedimentation that exacerbates the intensity and frequency of flooding. The loss of vegetation adjacent to surface waters also reduces filtration of stormwater runoff and thus degrades the quality of these waters. Such impacts adversely affect the health and habitat of fish and wildlife that depend upon clean surface waters and therefore disrupt the ecological balance that is necessary for life. Humans are ultimately affected by this imbalance, since clean water is essential for all life.

(d) Except where authority has been delegated to a county governing body under N.J.A.C. 7:13-1.4, the Department shall be the agency that implements this chapter.

(e) Activities regulated under this chapter may also be subject to other Federal, State and/or local rules, plans and ordinances. Authorization to undertake a regulated activity under this chapter does not indicate that the activity also meets the requirements of any other rule, plan or ordinance. It is the applicant's responsibility to obtain all necessary approvals for a proposed project.

(f) Information and forms relating to this chapter can be obtained from:

Street address (for meetings and hand delivery of material):

State of New Jersey  
Department of Environmental Protection  
Division of Land Use Regulation  
501 East State Street  
Station Plaza 5, 2nd Floor  
Trenton, New Jersey 08609

Postal address:

State of New Jersey  
Department of Environmental Protection  
Division of Land Use Regulation  
P.O. Box 439  
Trenton, New Jersey 08625-0439  
Telephone: (609) 292-0060  
Fax: (609) 777-3656  
Website: [www.nj.gov/dep/landuse/](http://www.nj.gov/dep/landuse/)

(g) USGS quad maps and Flood Hazard Area Technical Manuals can be obtained from the Department's Office of Maps and Publications at the address below. The Flood Hazard Area Technical Manual can also be downloaded from the website listed in (f) above.

State of New Jersey  
Department of Environmental Protection  
Office of Maps and Publications  
428 East State Street  
P.O. Box 438  
Trenton, New Jersey 08625-0438  
Telephone: (609) 777-1039  
Fax: (609) 292-3285

#### 7:13-1.2 Definitions

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

"Acid producing soils" means soils that contain geologic deposits of iron sulfide minerals (pyrite or marcasite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.0 or lower. Information regarding the location of acid producing soils in New Jersey can be obtained from local Soil Conservation District offices.

"Actively farmed" means currently and continually in use for cultivation, grazing or other agricultural purposes, provided such activities are recognized as agricultural by the USDA. An area that lies fallow as part of a conventional rotational cycle that does not exceed five years is considered to be actively farmed. Farms that have been abandoned for more than five years are not actively farmed.

"Anadromous water" means a water that supports anadromous fish, as identified by the Department's Division of Fish and Wildlife. Anadromous fish travel between salt water and fresh water or upstream to spawn, and N.J.A.C. 7:13-10.5(b) indicates how to determine which waters support anadromous fishery resources.

"Applicability determination" is the Department's official statement of whether an activity requires permit under this chapter, as described at N.J.A.C. 7:13-5.1.



"Aquatic habitat enhancement device" means a device placed within and/or adjacent to a channel to enhance aquatic habitat, typically consisting of boulders, brush, deflectors, felled shoreline trees, low-flow channel structures, mud sills, rubble reefs, spawning/nursery structures and/or tire structures.

"Architect" means a professional architect who is licensed to practice in New Jersey.

"Bank" means the inclined side of a channel, an excavated or impounded area or a topographic depression, which confines and/or conducts water.

"Bed" means the floor of a channel over which water flows continuously or intermittently. Bed also means the floor of an excavated or impounded area or of a topographic depression that confines and/or conducts water.

"Building" means a structure with walls and a roof, which is designed, constructed and/or intended for storage, shelter or occupation. A building that is intended for regular human occupation is considered a habitable building.

"Category One water" means a water designated as such in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B.

"Central Passaic Basin" means the regulated area along the following waters:

1. Beaver Dam Brook, downstream of Jacksonville Road in Montville Township, Morris County;
2. Black Brook in Florham Park Borough, East Hanover Township and Hanover Township, Morris County;
3. Dead River, downstream of Liberty Corner Road in Bernards Township, Somerset County;
4. East Ditch, downstream of Jacksonville Road in Pequannock Township, Morris County;
5. Harrison Brook, downstream of Lake Road in Bernards Township, Somerset County;
6. Passaic River, between U.S. Route 202 in Bernards Township, Somerset County, and Harding Township, Morris County, and Beatties Dam in Little Falls Township, Passaic County;
7. Pequannock River, downstream of Paterson-Hamburg Turnpike in Riverdale Borough, Morris County, and Pompton Lakes Borough, Passaic County;
8. Pompton River;
9. Ramapo River, downstream of the Pompton Lake dam in Pompton Lakes Borough, Passaic County;
10. Rockaway River, downstream of the Boonton Reservoir dam in Boonton Town and Parsippany-Troy Hills Township, Morris County;
11. Wanaque River, downstream of Paterson-Hamburg Turnpike in Pompton Lakes Borough, Passaic County;

12. West Ditch, downstream of Jacksonville Road in Lincoln Park Borough, Morris County; and

13. Whippany River, downstream of State Route 10 in East Hanover and Hanover Townships, Morris County;

"Channel" means a linear topographic depression that continuously or intermittently confines and/or conducts surface water, not including transient erosional gullies and other ephemeral features that temporarily form after heavy rainfall. A channel can be naturally occurring or can be of human origin through excavation or construction. A channel includes both bed and banks.

"Channel modification" means the reconfiguration or reconstruction of all or part of a channel, such as by straightening, relocating, lining or excavating the channel, or by enclosing the channel within a structure such as a pipe or culvert. The removal of accumulated sediment and debris in accordance with N.J.A.C. 7:13-8.3, 8.4(c)2 or 11.15 is not a channel modification.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Dam" means a structure defined as such in the Department's Dam Safety Standards at N.J.A.C. 7:20.

"Department" means the New Jersey Department of Environmental Protection.

"Department delineation" means the flood profiles, flood elevations and/or detailed mapping of the flood hazard area and/or floodway, promulgated by the Department. Appendix 2 of this chapter, incorporated herein by reference, lists the Department delineated waters of New Jersey.

"Documented habitat for threatened or endangered species" means an area for which:

1. There is recorded evidence of past use by a threatened or endangered species of flora or fauna for breeding, resting or feeding. Evidence of past use by a species can include, but is not limited to, sightings of the species or of its sign (for example, skin, scat, shell, track, nest, herbarium records, etc.), as well as identification of its call; and
2. The Department makes the finding that the area remains suitable for use by the specific documented threatened or endangered species during the normal period(s) the species would use the habitat.

"Drainage area" means a geographic area within which water, sediments and dissolved materials drain to a particular receiving waterbody or to a particular point along a receiving waterbody.

"Drawing" means a graphic depiction of land, vegetation, water, structures, and other physical features on paper, such as a blueprint, construction plan, cross-section, topographic map, architectural rendering or other similar illustration,

which is submitted to the Department to describe an existing or proposed activity or condition.

“Emergency permit” means an authorization to undertake a regulated activity, which is issued by the Department when certain conditions exist that warrant immediate action to protect the environment and/or public health, safety and welfare, as described at N.J.A.C. 7:13-12.

“Engineer” means a professional engineer who is licensed to practice in New Jersey.

“Erosion” means the detachment and movement of soil or rock fragments by water, wind, ice and/or gravity.

“Excavation” means removal or recovery of soil, minerals, mineral substances or organic substances other than vegetation, from the land surface or beneath the land surface, whether the land surface is exposed or submerged. Excavation does not include the movement of material due to erosion.

“FEMA” means the United States Federal Emergency Management Agency.

“FEMA flood insurance study” means a document providing various information regarding the potential for a water to flood, published by FEMA for certain waters in certain municipalities. A FEMA flood insurance study can include flood profiles, floodway maps, flow rates and other information related to flooding along the water covered by the FEMA study. FEMA maps can be viewed at <https://msc.fema.gov>. Requests for copies of the available FEMA flood insurance studies as well as any questions regarding their use, derivation or modification, should be directed to FEMA at (800) 358-9616.

“FEMA flood profile” means a graphic depiction of the 100-year water surface elevation of a given water, published by FEMA as part of a FEMA flood insurance study. FEMA flood profiles are not included in all FEMA flood insurance studies.

“FEMA floodway map” means a map showing the limits of the floodway for a given water, published by FEMA as part of a FEMA flood insurance study. FEMA floodway maps are not included in all FEMA flood insurance studies.

“FEMA 100-year flood elevation” means the 100-year water surface elevation at a given location, most recently released as an effective FEMA base flood elevation, or any more recent advisory or proposed flood elevation, if either elevation is higher than the effective base flood elevation. These elevations are available from FEMA at the address provided in the definition elsewhere in this section of “FEMA flood insurance study.”

“Fill” means to deposit or place material on the surface of the ground and/or under water. “Fill” also means the material being deposited or placed. Fill includes, but is not limited to,

concrete, earth, pavement, rock, sand, soil, structures or any stored material such as building material, construction equipment, landscaping material, piles of soil, stone or wood, trash, vegetation in planters and/or root balls, and vehicles. Fill does not include vegetation rooted in the ground, whether naturally occurring or planted.

“Flood control project” means a structural or topographic modification to a channel, flood hazard area and/or riparian zone, performed for the public benefit and undertaken by a public entity, which is designed primarily to reduce flood elevations, reduce the risk of damage from flooding and/or protect an area from flooding or flood damage.

“Flood fringe” means the portion of the flood hazard area that is outside the floodway.

“Flood hazard area” means land, and the space above that land, which lies below the flood hazard area design flood elevation. Structures, fill and vegetation that are situated on land that lies below the flood hazard area design flood elevation are described as being “in” or “within” the flood hazard area. The inner portion of the flood hazard area is called the floodway and the outer portion of the flood hazard area is called the flood fringe. Figures A and B at N.J.A.C. 7:13-2.3 illustrate these areas as well as the riparian zone along a typical water. The flood hazard area on a particular site is determined using the methods set forth at N.J.A.C. 7:13-3. There are two types of flood hazard areas:

1. Tidal flood hazard area, in which the flood hazard area design flood elevation is governed by tidal flooding from the Atlantic Ocean. Flooding in a tidal flood hazard area may be contributed to or influenced by stormwater runoff from inland areas, but the depth of flooding generated by the tidal rise and fall of the Atlantic Ocean is greater than flooding from any fluvial sources; and
2. Fluvial flood hazard area, in which the flood hazard area design flood elevation is governed by stormwater runoff. Flooding in a fluvial flood hazard area may be contributed to or influenced by elevated water levels generated by the tidal rise and fall of the Atlantic Ocean, but the depth of flooding generated by stormwater runoff is greater than flooding from the Atlantic Ocean.

“Flood hazard area design flood” means a flood equal to the 100-year flood plus an additional amount of water in fluvial areas to account for possible future increases in flows due to development or other factors. This additional amount of water also provides a factor of safety in cases when the 100-year flood is exceeded. N.J.A.C. 7:13-3 describes the various methods of determining the flood hazard area design flood for a particular water as well as the additional amount of water to be added in various situations.

“Flood hazard area design flood elevation” means the peak water surface elevation that will occur in a water during the flood hazard area design flood.

"Flood Hazard Area Technical Manual" means the version of the Department publication entitled "Flood Hazard Area Technical Manual" in effect at the time an application is submitted. The manual can be obtained from the Department at the address listed at N.J.A.C. 7:13-1.1(g). The manual includes a copy of this chapter, various application checklists and other information helpful for understanding the requirements of this chapter and the application review process.

"Flood-proofing" means measures applied to a building that are intended to prevent or provide resistance to displacement, buoyancy, and damage from flooding up to a certain elevation, so as to eliminate or reduce potential flood damage to the building and its contents. There are two types of flood-proofing:

1. Wet flood-proofing, which are measures that allow floodwaters to enter a building, and thereby balance hydrostatic pressure on the structure during a flood. Wet flood-proofing generally includes using flood-resistant materials, protecting mechanical and utility equipment, and using openings or breakaway walls; and

2. Dry flood-proofing, which are measures that prevent floodwaters from entering a building. Dry flood-proofing generally includes making the building watertight through sealing openings, installing waterproof doors and windows, or sealing walls with waterproof coatings, impermeable membranes, and/or a supplementary layer of masonry or concrete.

"Floodway" means land, and the space above that land, which lies within the inner portion of the flood hazard area, and which is mathematically determined to be required to carry and discharge floodwaters resulting from the 100-year flood under certain conditions. The floodway always includes the channel and often includes land adjacent to the channel. The floodway is normally characterized by faster and deeper flows than the flood fringe, which is the portion of the flood hazard area outside the floodway.

"Freshwater wetlands" means an area defined as such under the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-1.4.

"General permit" means a flood hazard area permit to undertake a regulated activity for which the terms and conditions are established in a rule promulgated under this chapter at N.J.A.C. 7:13-8, and for which a person must submit an application for authorization.

"Grace period" means the period of time afforded under the Grace Period Law, N.J.S.A. 13:1D-125 et seq., for a person to correct a minor violation in order to avoid imposition of a penalty that would otherwise be applicable for such violation.

"Grading" means the movement of soil or other material on the surface of the ground by humans resulting in a change in topography.

"Habitable building" means a building that is intended for regular human occupation. Examples of a habitable building include a private residence or public building as defined below; a commercial building such as a retail store, restaurant, office building or gymnasium; an appurtenant structure that is regularly occupied, such as a garage, barn or workshop; and any other building that is regularly occupied, such as a house of worship, community center or meeting hall. Examples of a non-habitable building include a bus stop shelter, utility building, storage shed, self-storage unit or an individual shelter for animals such as a doghouse.

"Hazardous substance" means material defined as such in the Spill Compensation and Control Act, N.J.S.A. 58:10 23.11.

"Hazardous waste facility" means a facility that is licensed by the State to receive, store and/or process hazardous substances, and which is operating in accordance with all applicable Federal, State and local laws.

"Highlands Preservation Area" means that geographic portion of the State described in the Highlands Water Protection and Planning Act at N.J.S.A. 13:20-7(b)1.

"Hydraulic capacity" means the ability of a channel, flood hazard area or structure to conduct water. Hydraulic capacity is a function of cross-sectional area, hydraulic friction, shape, skew, slope and the presence or absence of obstructions.

"Impervious surface" means a surface that is covered with a layer of material so that it is highly resistant to infiltration by water. Examples of an impervious surface include asphalt, brick, buildings, concrete, metal and most structures. In some instances, the Department will also consider densely packed gravel or stone roadways and parking areas to be impervious for the purposes of this chapter.

"Individual permit" means a flood hazard area permit to undertake a regulated activity issued by the Department after submittal of an application, and after the Department conducts a project-specific review under the applicable requirements at N.J.A.C. 7:13-9, 10 and 11.

"Invert" means the lowest point in a given cross-section of a channel, as well as the lowest point on the inside of a pipe, culvert or any other structure with an opening such as a flood vent.

"Jacking" means the placement of an underground utility line beneath a channel by means of horizontally pushing, drilling or otherwise forcing through the earth below the channel in such a way that the channel is not disturbed.

"Land surveyor" means a professional land surveyor who is licensed to practice in New Jersey.

"Lawfully existing" means an existing fill, structure and/or use, which meets all Federal, State and local laws, and which is not in violation of this chapter because it was established:

1. Prior to January 31, 1980; or

2. On or after January 31, 1980, in accordance with the requirements of this chapter as it existed at the time the fill, structure and/or use was established.

"Low dam" means an artificial dike, levee or other barrier, which is constructed for the purpose of impounding water on a permanent or temporary basis, but which does not raise the water surface elevation enough to meet the definition of a dam.

"Low-flow aquatic passage" means the ability of aquatic species to travel upstream and downstream in a waterway without impediment during low-flow conditions in a channel. Natural channel beds often possess small rivulets that serve to provide aquatic passage in this way during low-flow conditions, which can occur during dry periods of the year. Bridges, culverts and other manmade structures may also be designed to provide low-flow aquatic passage by inclusion of a linear depression throughout the bottom of the structure in the direction of flow, which collects water during low-flow conditions and allows aquatic species to pass through the structure without impediment.

"Lowest floor" means the lowest floor of a building, including a basement or any other enclosed area, which is or may be used for permanent or temporary occupation by humans. An unfinished enclosure, such as a crawl space, entryway, and/or garage serving a private residence, which is useable solely for building access, storage, and/or parking, is not considered the lowest floor of a building, provided that such enclosure is constructed in compliance with all applicable design standards of N.J.A.C. 7:13-11.5(n), (o), and (p).

"Method 1" or the "Department delineation method" means the method of determining the flood hazard area design flood elevation and floodway limit from State adopted delineations, as described at N.J.A.C. 7:13-3.3.

"Method 2" or the "FEMA tidal method" means the method of determining the tidal flood hazard area design flood elevation and floodway limit from FEMA Flood Insurance Studies, as described at N.J.A.C. 7:13-3.4(d).

"Method 3" or the "FEMA fluvial method" means the method of determining the fluvial flood hazard area design flood elevation and floodway limit from FEMA Flood Insurance Studies, as described at N.J.A.C. 7:13-3.4(e).

"Method 4" or the "FEMA hydraulic method" means the method of determining the flood hazard area design flood elevation and floodway limit by calculation using flow rate data from FEMA Flood Insurance Studies, as described at N.J.A.C. 7:13-3.4(f).

"Method 5" or the "approximation method" means the method of determining the flood hazard area design flood elevation from the charts in chapter Appendix 1, incorporated herein by reference, as described at N.J.A.C. 7:13-3.5.

"Method 6" or the "calculation method" means the method of determining the flood hazard area design flood elevation and floodway limit by calculation using flow rates provided by an applicant for a verification under this chapter, as described at N.J.A.C. 7:13-3.6.

"Multi-residence building" means any building intended to provide three or more units of temporary or permanent residence for humans. Examples of a multi-residence building include an apartment building, condominium complex, townhouse complex, hotel, motel, and any mixed-use building that contains three or more units of temporary or permanent residence. A private residence or a public building as defined in this section is not a multi-residence building.

"NGVD" means the national geodetic vertical datum of 1929, which is the reference datum for all surveying, topography and elevations described in this chapter.

"Non-trout water" means a water that is defined as such in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B. A non-trout water is a water that is not trout production, trout maintenance or trout stocked.

"NRCS" means the United States Department of Agriculture Natural Resource Conservation Service.

"Obstruction" means material placed and/or situated in a flood hazard area that can impede or change the direction of the flow of water, either by itself or by catching or collecting debris carried by such water.

"100-year flood" in fluvial areas means a flood that has a one percent probability of being equaled or exceeded within a one-year period for a given geographic location and/or watershed. In tidal areas, a "100-year flood" means a flood caused by a tidal surge in the Atlantic Ocean, which has a one percent probability of being equaled or exceeded within a one-year period.

"100-year flow rate" means the peak rate at which floodwaters would flow in a given water during a 100-year flood.

"Permit-by-rule" means a flood hazard area permit to undertake a regulated activity for which the terms and conditions are established in a rule promulgated under this chapter at N.J.A.C. 7:13-7 and that is effective without prior written approval from the Department, provided all requirements established for that activity in the applicable permit-by-rule are satisfied.

"Person" means an individual, corporation, corporate officer, partnership, association, the Federal government, the State, a municipality, a commission or political subdivision of the State or any interstate body.

"Private residence" means a one or two-family dwelling.

"Private roadway" means a roadway for use by vehicles, including a driveway or access road, which is not a public roadway as defined in this section.

"Public building" means a habitable building that serves as one or more of the following:

1. An assisted living facility or nursing home;
2. A day care center;
3. A dormitory;
4. A hospital or medical clinic;
5. A jail or detention facility;
6. A police station, fire station or emergency response center;
7. A public shelter;
8. A school or college; and
9. Any other building designed for a public use that is similar to 1 through 8 above.

"Public roadway" means a roadway for use by vehicles, including a driveway or access road, which is constructed for public use and is maintained by the Federal, State, county or municipal government.

"Reconstruct" means to patch, mend, replace, rebuild and/or restore a lawfully existing structure to a usable condition after decay or damage has occurred, in which 50 percent or greater of the structure is replaced and/or the size, shape or location of the structure is altered. For habitable buildings, the percentage of replacement shall be determined by comparing the cost of the reconstruction to the market value of the building as determined before the start of construction; where the percentage of replacement is 50 percent or greater, such reconstruction shall also constitute a substantial improvement as defined in this section. For all other structures, the percentage of replacement shall be determined by comparing the area of the structure being reconstructed to the total area of the structure.

"Regulated activity" means an activity that is regulated under this chapter as described at N.J.A.C. 7:13-2.4. Some regulated activities, when performed in a certain manner or to a specified degree, are permitted-by-rule at N.J.A.C. 7:13-7. All regulated activities which are not permitted-by-rule require a general permit under N.J.A.C. 7:13-8, an individual permit under N.J.A.C. 7:13-9, 10 and 11, an emergency permit under N.J.A.C. 7:13-12, or a coastal permit under N.J.A.C. 7:7 and N.J.A.C. 7:7E, prior to commencement.

"Regulated area" means the flood hazard area and riparian zone along a regulated water, as described at N.J.A.C. 7:13-2.3.

"Regulated water" means a water subject to this chapter as described at N.J.A.C. 7:13-2.2.

"Repair" means to patch, mend, replace, rebuild and/or restore a lawfully existing structure to a usable condition after decay or damage has occurred, in which less than 50 percent of the structure is replaced and the size, shape or location of the structure is not altered. For habitable buildings, the percentage of replacement shall be determined by comparing the cost of the repair to the market value of the building as determined before the start of construction; where the percentage of replacement is less than 50 percent, such repair shall not constitute a substantial improvement as defined in this section. For all other structures, the percentage of replacement shall be determined by comparing the area of the structure being repaired to the total area of the structure.

"Revision" means a document issued by the Department to revise a valid, previously issued verification, general permit authorization, individual permit or Department delineation as described at N.J.A.C. 7:13-13.

"Riparian zone" means the land and vegetation within and adjacent to a regulated water as described at N.J.A.C. 7:13-4.1 and illustrated at N.J.A.C. 7:13-2.3.

"Sediment" means solid material, mineral or organic, that is in suspension, is being transported or has been moved from its site of origin by air, water, ice or gravity as a product of erosion.

"Site" means the area within the legal boundary of the property, properties or right-of-way upon which any action under this chapter is requested, proposed, occurring or has occurred, plus any contiguous land owned or controlled by the same person(s). The legal boundary of a property is set forth in the deed(s) of the property. The legal boundary of a right-of-way is set forth in the document creating the right-of-way.

"Soil bioengineering" means the method of stabilizing eroded banks using vegetation, and sometimes in conjunction with other natural materials, as described at section 650.1601(d)(2) of Chapter 16 in the USDA Natural Resource Conservation Service Engineering Field Handbook, published December 1996, incorporated herein by reference. Copies of the Engineering Field Handbook can be obtained from local NRCS offices.

"Soil Conservation District" means a division of the New Jersey Department of Agriculture (NJDA), authorized under N.J.S.A. 4:24 1 et seq. Each Soil Conservation District administers NJDA programs for one or more counties. Soil Conservation Districts are overseen by the New Jersey State Soil Conservation Committee in the NJDA, which promulgates the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90.

"Solid waste" means any garbage, refuse, sludge or any other material defined as solid waste in the Solid Waste Rules at N.J.A.C. 7:26-1.6.



"Solid waste facility" means a facility that is licensed by the State to receive, store and/or process solid waste.

"Stormwater" means water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface or is captured by separate storm sewers or other sewage or drainage facilities.

"Stormwater management basin" means an impoundment created by constructing an embankment, excavating a pit and/or erecting or placing a structure, for the purpose of managing stormwater runoff. A stormwater management basin can be designed to be normally dry (as in a detention or infiltration basin), retain a permanent pool of water (as in a retention basin or wet pond), and/or be planted mainly with vegetation suitable for freshwater wetlands (as in most constructed stormwater wetlands).

"Stormwater runoff" means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

"Structure" means any assemblage of material by humans, including, but not limited to, a berm, bridge, bulkhead, building, cable, causeway, culvert, dam, dike, embankment, fence, jetty, levee, pavement, piling, pipe, post, railroad, retaining wall, roadway, stormwater management basin, tower, utility pole or wire. Vegetation is not a structure. Soil bioengineering material that includes vegetation as well as other material is a structure.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its condition before damage would equal or exceed 50 percent of the market value of the structure before the damage occurred. Restoration of a substantially damaged structure shall constitute a substantial improvement as defined in this section.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure as determined before the start of construction of the improvement. This term includes structures that have sustained substantial damage regardless of the actual repair work performed. Substantial improvement does not include:

1. Any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of a building designated by the State as an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

"Suitably anchored" means secured to resist flotation, collapse and displacement due to floodwaters. A structure

shall be considered to be suitably anchored if the structure is erected in accordance with the requirements for flood-resistant construction in the International Building Code, incorporated herein by reference. Copies of the International Building Code can be obtained at the following address:

International Code Council, Inc.  
4051 West Flossmoor Road  
Country Club Hills, Illinois 60477  
Telephone: (888) 422-7233

"Temporary" means a regulated activity that occupies, persists and/or occurs on a site for no more than six months. For example, a fill or structure is temporary if, within six months of its placement, the fill or structure is removed from the site, all disturbed regulated areas are restored to their original topography and all necessary measures are implemented to ensure that the original vegetative cover onsite is restored to its previous (or an improved) condition.

"Threatened or endangered species" means a species identified pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Endangered Species Act of 1973, 16 U.S.C. §§1531 et seq. or the Endangered Plant Species List, N.J.A.C. 7:5C-5.1, and any subsequent amendments thereto.

"Tree" means a woody plant which is five inches or greater in diameter at a height of 4.5 feet above the ground.

"Trout maintenance water" means a section of water designated as trout maintenance in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B.

"Trout production water" means a section of water identified as trout production in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B.

"Trout stocked water" means a section of water stocked with trout by the Department's Division of Fish and Wildlife and listed in N.J.A.C. 7:25-6.

"Unsecured material" means the following:

1. A structure that is not suitably anchored; and
2. Material placed on the surface of the ground, which would likely become buoyant, mobile or lifted by water during a flood, or otherwise be transported offsite by floodwaters. Examples include building material, construction equipment, landscaping material, patio furniture, piles of soil, stone or wood, trash, vegetation in planters or root balls, and vehicles.

"USDA" means the United States Department of Agriculture.

"USGS quad map" means a topographic quadrangle map issued by the United States Geologic Survey (USGS), 7.5 minute series, drawn at a scale of 1:24,000, available from the Department at the address listed in N.J.A.C. 7:13-1.1(g).

"Utility line" means a pipe, cable, line or wire for the transport or transmission of gases, liquids, electrical energy or communications. This term includes a pole or tower required to support a utility line, but does not include a tower that only transmits or receives electromagnetic waves through the air, such as for radio, television or telephone transmission.

"Verification" means a document issued by the Department under N.J.A.C. 7:13-6, which establishes the flood hazard area design flood elevation, flood hazard area limit, floodway limit, and/or riparian zone limit on a site.

"Water" means a collection of water on the surface of the ground, including, but not limited to, a bay, brook, creek, ditch, lake, pond, reservoir, river or stream. A water also includes the path or depression through which the water flows or is confined. A water that is piped, relocated or otherwise modified remains a water. A storm sewer is not a water unless it was constructed to replace or divert a previously existing water.

"Water control structure" means a structure within or adjacent to a water, which intentionally or coincidentally alters the hydraulic capacity, design flood elevation, flood hazard area limit and/or floodway limit of the water. Examples of a water control structure include a bridge, culvert, dam, embankment, ford (if above grade), retaining wall and weir.

"Water surface elevation" means the elevation of the surface of a water, measured in feet NGVD, and determined either by special calculation or gauge. For the purposes of determining compliance with a requirement of this chapter, a water surface elevation is rounded to the nearest 0.1 feet.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

Deleted definitions "Crawl space", "Dry flood-proofing" and "FEMA flow rate"; in definition "FEMA flood insurance study", inserted the first occurrence of "flood insurance" and the third sentence, and deleted "or flood profiles," following "studies"; added definitions "FEMA 100-year flood elevation", "Flood-proofing", "Multi-residence building", "100-year flow rate", "Substantial damage" and "Substantial improvement"; rewrote definitions "Lowest floor", "Reconstruct" and "Repair"; and in definition "Public building", deleted former paragraph 8, recodified former paragraphs 9 and 10 as paragraphs 8 and 9 and in paragraph 9, substituted "8" for "9".

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

### 7:13-1.3 Types of permits and approvals

(a) This chapter establishes procedures and requirements for the following permits and approvals:

1. An applicability determination, in accordance with N.J.A.C. 7:13-5;
2. A verification, in accordance with N.J.A.C. 7:13-6;
3. A permit-by-rule, in accordance with N.J.A.C. 7:13-7;

4. A general permit, in accordance with N.J.A.C. 7:13-8;

5. An individual permit, in accordance with N.J.A.C. 7:13-9, 10 and 11;

6. An emergency permit, in accordance with N.J.A.C. 7:13-12;

7. A revision of an verification, general permit authorization, individual permit or Department delineation, in accordance with N.J.A.C. 7:13-13; and

8. A transfer of an approval to another person, in accordance with N.J.A.C. 7:13-14.1.

(b) Only the following persons or entities may qualify to obtain or operate under the permits and approvals listed at (a) above:

1. The owner(s) of the site on which the regulated activity is proposed or conducted. If the regulated activity is proposed or conducted within a right-of-way or easement, the Department shall be provided written consent for the regulated activity from the owner(s) of the right-of-way or easement;

2. An agent that has been designated by the owner(s) of the site on which the regulated activity is proposed or conducted to obtain or operate under a permit or approval on behalf of the owner(s); or

3. A public entity that is proposing work within an existing or proposed right-of-way or easement, which is owned or controlled by that entity or which will be appropriated by that entity under the power of eminent domain.

(c) The Department shall review an application for a permit or approval listed in (a) above according to this chapter in effect on the day that a complete application is received by the Department. Any amendments to this chapter that are promulgated after the receipt of a complete application (as described by the application requirements for each type of permit or approval under this chapter) shall not affect the Department's review of that application, unless otherwise agreed to in writing by both the Department and the applicant.

(d) A person submitting an application under this chapter shall, to the extent that the person is aware, notify the Department of all facts relevant to the review of the application including, but not limited to, the presence of regulated areas and of threatened or endangered species onsite, history of flooding and previous flood damages onsite and the location of easements and other encumbrance on the property. Failure to provide all necessary information of which the applicant, its consultants, engineers, surveyors or agents is aware may result in the denial of an application or the suspension or termination of an approval, and may subject the applicant, its consultants, engineers, surveyors or agents to enforcement action pursuant to N.J.A.C. 7:13-19 for submittal of false information.

(e) No Department decision made under this chapter shall obligate the Department to approve or deny any future application under this or any other Department program or rule.

#### 7:13-1.4 Delegation of authority

(a) Except as specified in (e) below, the Department may delegate authority to take action under this chapter to a county governing body. A county governing body seeking to assume all or a portion of the Department's authority under this chapter shall do the following:

1. Retain employees with professional training and education capable of properly administering the permitting program established by this chapter; and
2. Submit to the Department a written request for delegation that includes the following:
  - i. A description of the aspects of the Department's authority that the county governing body seeks to assume;
  - ii. An agreement to uphold the requirements of this chapter;
  - iii. A written statement by the county governing body agreeing to apply for and accept delegation of authority, pursuant to N.J.S.A. 58:16A-55.6, and agreeing to adopt, in the event the request is approved, an ordinance or resolution enabling the body to carry out the delegation. A copy of the proposed ordinance or resolution shall also be provided; and
  - iv. A detailed description of the personnel, the physical resources and the source and amount of funding the county governing body shall use to fulfill the obligations it seeks to assume.

(b) Within 60 calendar days of receipt of a request by a county governing body in accordance with (a)2 above, the Department shall:

1. Delegate all or a portion of the authority sought by the county governing body. Such delegation may include conditions to ensure compliance with this chapter, and may be for a specified period of time, as the Department deems appropriate; or
2. Deny the request for delegation and provide the reasons why the Department has determined such delegation is not appropriate.

(c) A county governing body that has assumed delegation shall permanently retain, and make available for Department review, a copy of all documents, plans, maps, memoranda and notes necessary to document that it has discharged its delegated duties for each application it processes. The Department shall review these records at least biannually. The Department can at any time terminate delegation if it determines that the county governing body has failed to

properly administer the authority delegated to it, or has failed to maintain the necessary documentation.

(d) A county governing body that has assumed delegation shall not charge fees greater than those provided at N.J.A.C. 7:13-17.

(e) The Department shall not delegate authority to approve any of the following:

1. An application under this chapter by a State agency;
2. An application under this chapter by the county governing body itself; and
3. An application under this chapter for an individual permit that involves a hardship exception pursuant to N.J.A.C. 7:13-9.8.

#### 7:13-1.5 Creation of a county water resources association

(a) A county governing body can create, by ordinance or resolution, a county water resources association, the purpose of which shall be to:

1. Establish county flood control and water management programs, and coordinate these with State and Federal programs;
2. Advise the county governing body on issues related to flood control and water management; and
3. Undertake other duties concerning flood control and water management that the county governing body delegates to the association by ordinance or resolution.

(b) The county governing body shall appoint the members of the county water resources association. Appointed members may include the chief administrative officer or executive of a county planning agency, office of the county engineer, county utility authority, county health department, county mosquito commission, local Soil Conservation District, county parks agency and any other person with relevant experience or training.

#### 7:13-1.6 Liberal construction

This chapter shall be liberally construed to enable the Department to fulfill its statutory obligations. The Commissioner can amend, repeal or rescind this chapter or any part thereof in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

#### 7:13-1.7 Severability

If any section, subsection, provision, clause or portion of these rules or the application thereof to any person or circumstance is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these rules and their application to persons and circumstances other than those to which they have been held invalid shall not be affected thereby.



## SUBCHAPTER 2. EXTENT OF REGULATORY AUTHORITY

### 7:13-2.1 Permit requirement

(a) No person shall engage in a regulated activity in a regulated area without a flood hazard area permit as required by this chapter, or a coastal permit as required by N.J.A.C. 7:7 and 7:7E, as set forth in (b) and (c) below. Initiation of a regulated activity in a regulated area without a flood hazard area or coastal permit as set forth at (b) below (except as provided in (c) below) shall be considered a violation of this chapter and shall subject the party or parties responsible for the regulated activity to enforcement action, as set forth at N.J.A.C. 7:13-19. Regulated areas are set forth at N.J.A.C. 7:13-2.3 and regulated activities are set forth at N.J.A.C. 7:13-2.4.

(b) Except as provided in (c) or (e) below, a person undertaking any regulated activity in a regulated area shall do so only in accordance with one of the following:

1. A permit-by-rule, pursuant to N.J.A.C. 7:13-7;
2. An authorization under a general permit, pursuant to N.J.A.C. 7:13-8;
3. An individual permit, pursuant to N.J.A.C. 7:13-9, 10 and 11;
4. An emergency permit, pursuant to N.J.A.C. 7:13-12; or
5. A CAFRA or waterfront development permit, pursuant to N.J.A.C. 7:7 and 7:7E, provided:
  - i. The CAFRA or waterfront development permit was declared by the Department as complete for final review on or after November 5, 2007; and
  - ii. If activities are proposed in a fluvial flood hazard area, the applicant meets one of the four conditions at N.J.A.C. 7:13-9.6(a) regarding the need for a verification of the flood hazard area and/or floodway onsite.

(c) Undertaking a regulated activity in a regulated area does not require an approval listed at (b) above in the cases listed in (c)1 through 4 below. For the purpose of this subsection, each distinct construction activity in a project, such as each building, road or utility crossing, is considered a distinct regulated activity.

1. The regulated activity is part of a project for which all elements that were subject to the Flood Hazard Area Control rules in effect prior to November 5, 2007 have been approved under a permit issued pursuant to those rules, provided:
  - i. The regulated activity is specifically approved under the permit, or was not subject to the requirements of this chapter prior to November 5, 2007;

ii. The application for the permit was received by the Department and was complete for review prior to November 5, 2007; and

iii. The permit is valid when the regulated activity is undertaken;

2. The regulated activity is part of a project for which all elements in a tidal flood hazard area that were subject to N.J.A.C. 7:7 and 7:7E in effect prior to November 5, 2007 have been approved under a valid CAFRA or waterfront development permit, provided:

i. The regulated activity is specifically approved under the permit, or was not subject to the requirements of N.J.A.C. 7:7 and 7:7E prior to November 5, 2007;

ii. The application for the permit was received by the Department and was declared complete for final review prior to November 5, 2007; and

iii. The permit is valid when the regulated activity is undertaken;

3. The regulated activity is part of a project that was subject to neither the requirements of this chapter, nor N.J.A.C. 7:7 and 7:7E, prior to November 5, 2007 and both of the following applies:

i. The regulated activity is located within the Hackensack Meadowlands District; and

ii. The regulated activity is authorized under a valid zoning certificate issued by the New Jersey Meadowlands Commission prior to November 5, 2007, pursuant to N.J.A.C. 19:4-4.2; or

4. The regulated activity is part of a project that was subject to neither the requirements of this chapter, nor N.J.A.C. 7:7 and N.J.A.C. 7:7E, prior to November 5, 2007 and one of the following applies:

i. The regulated activity is authorized under a valid municipal approval, issued prior to November 5, 2007, which enables commencement of construction of the regulated activity on a specific lot and/or easement; or

ii. The regulated activity does not require an approval identified in (c)4i above, and one or more of the following construction activities were completed onsite prior to November 5, 2007:

- (1) The foundation for at least one building or structure;
- (2) All of the subsurface improvements for a roadway; or
- (3) The installation of all of the bedding materials for a utility line.

(d) If a regulated activity is approved under a qualifying approval listed at (c) above, and the regulated activity is subsequently revised by the issuing entity, the original

approval continues to satisfy the requirements of (c) above provided the Department determines that the revision will not result in one or more of the following:

1. An increase in the area of vegetation disturbed in a riparian zone;
2. An increase in flood storage displacement in a flood hazard area;
3. For regulated activities under a qualifying approval under (c)1 or 2 above, additional regulated activities within a regulated area that have not been previously reviewed by the Department under N.J.A.C. 7:7, 7:7E and/or this chapter, as applicable; and/or
4. A change in land use and/or an alteration of the basic purpose and intent of the project, such as converting a residential development into a commercial development.

(e) If railroad activities proposed in a flood hazard area or riparian zone are exempt from State regulation under Federal law, no permit shall be required under this chapter for that activity. However, the railroad shall provide the Department with the application material normally required for the proposed activity at least 90 calendar days prior to the railroad commencing the activity. For emergency activities, the information described at N.J.A.C. 7:13-12.1(c) shall be provided to the Department via telephone and/or fax, as listed at N.J.A.C. 7:13-1.1(f), as soon as possible after the emergency is discovered, and in no event later than the day the activity is authorized or commences, whichever occurs first.

#### Case Notes

Failure by a construction company and its owner to obtain the permit required by the Flood Hazard Area Control Act (FHACA) prior to depositing 300 cubic yards of fill within a delineated flood hazard area violated N.J.A.C. 7:13-2.1(a), because the conduct affected the flood hazard area of a regulated water within the meaning of N.J.A.C. 7:13-3 and the riparian zone thereof per N.J.A.C. 7:13-4 and because the conduct thus constituted "regulated activity" within the meaning of N.J.A.C. 7:13-2.4(a)1. Given the admissions made by the company and its owner in proceedings before an administrative law judge (ALJ), the ALJ recommended imposition of a penalty per N.J.S.A. 58:16A-63(d) to include a \$20,000 administrative fine for which both the company and its owner were properly held liable and an order requiring restoration of the site as required by the Department of Environmental Protection. *New Jersey Dep't of Env't Prot. v. Oveter's Construction, Inc. and Oliver Brown*, OAL Dkt. No. ECE-LU 7582-11, 2013 N.J. AGEN LEXIS 229, Initial Decision (August 23, 2013).

#### 7:13-2.2 Regulated waters

(a) All waters in New Jersey are regulated under this chapter except for the following:

1. Any manmade canal;

2. In accordance with N.J.S.A. 58:16A-60, any coastal wetland regulated under the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.); and

3. Any segment of water that has a drainage area of less than 50 acres, provided one or more of the following applies:

- i. The water has no discernible channel;
- ii. The water is confined within a lawfully existing, manmade conveyance structure or drainage feature, such as a pipe, culvert, ditch, channel or basin (not including any water that historically possessed a naturally-occurring, discernible channel, which has been piped, culverted, ditched or similarly modified); and/or
- iii. The water is not connected to a regulated water by a channel or pipe, such as an isolated pond or depression that has no outlet.

#### 7:13-2.3 Regulated areas

(a) For each regulated water, as described at N.J.A.C. 7:13-2.2, the Department identifies and regulates the water and the area surrounding it in two different ways, resulting in the regulated areas described at (a)1 and 2 below:

1. A flood hazard area exists along every regulated water that has a drainage area of 50 acres or more. If a regulated water has a drainage area of less than 50 acres, the water does not have a flood hazard area that is regulated under this chapter. The flood hazard area is comprised of a flood fringe and a floodway, except for the Atlantic Ocean and other non-linear tidal waters such as bays and inlets, which do not have a floodway. Therefore, the entire flood hazard area along these tidal waters is considered to be a flood fringe for the purposes of this chapter. The methods for determining the limits of the flood fringe and floodway are described at N.J.A.C. 7:13-3; and

2. A riparian zone exists along every regulated water, except there is no riparian zone along the Atlantic Ocean nor along any manmade lagoon, stormwater management basin, or oceanfront barrier island, spit or peninsula. The regulated water itself is also part of the riparian zone. The methods for determining the limits of the riparian zone are described at N.J.A.C. 7:13-4.1.

(b) The flood hazard area and riparian zone described at (a)1 and 2 above generally overlap. Figures A and B below (not drawn to scale) illustrate a typical water and each of these regulated areas. This chapter sets forth the specific requirements applicable to activities in *each regulated area*.

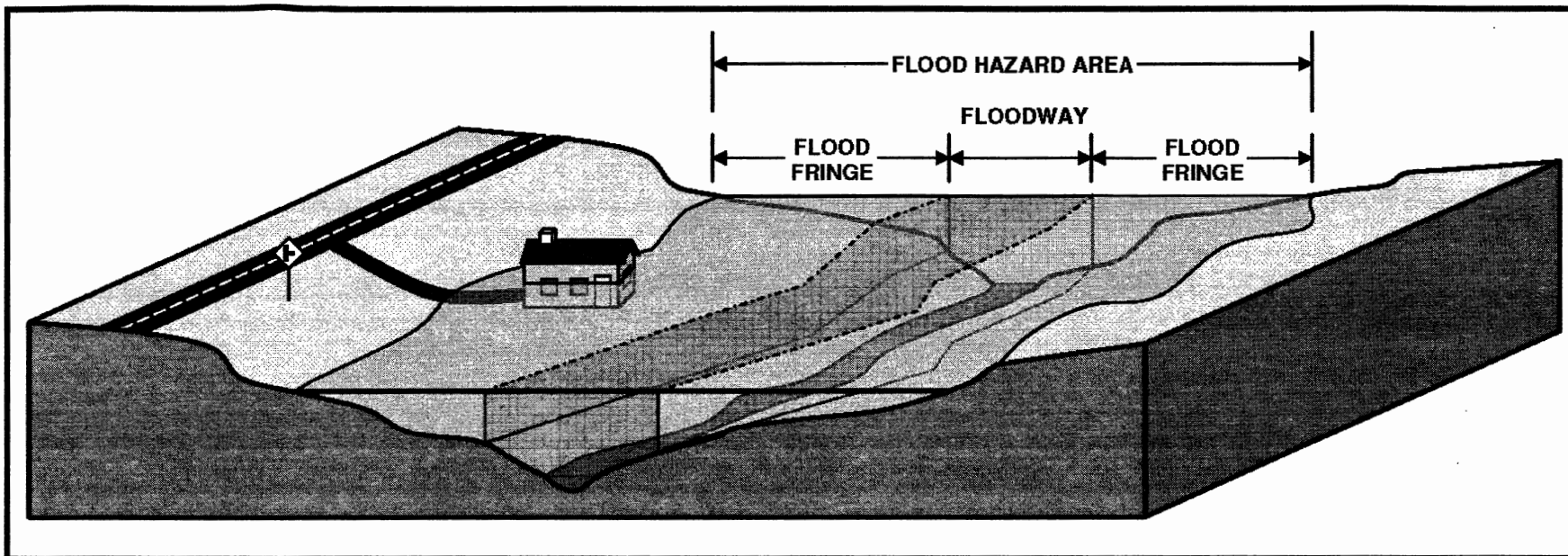


FIGURE A: THE FLOOD HAZARD AREA IS COMPRISED OF THE FLOODWAY AND FLOOD FRINGE

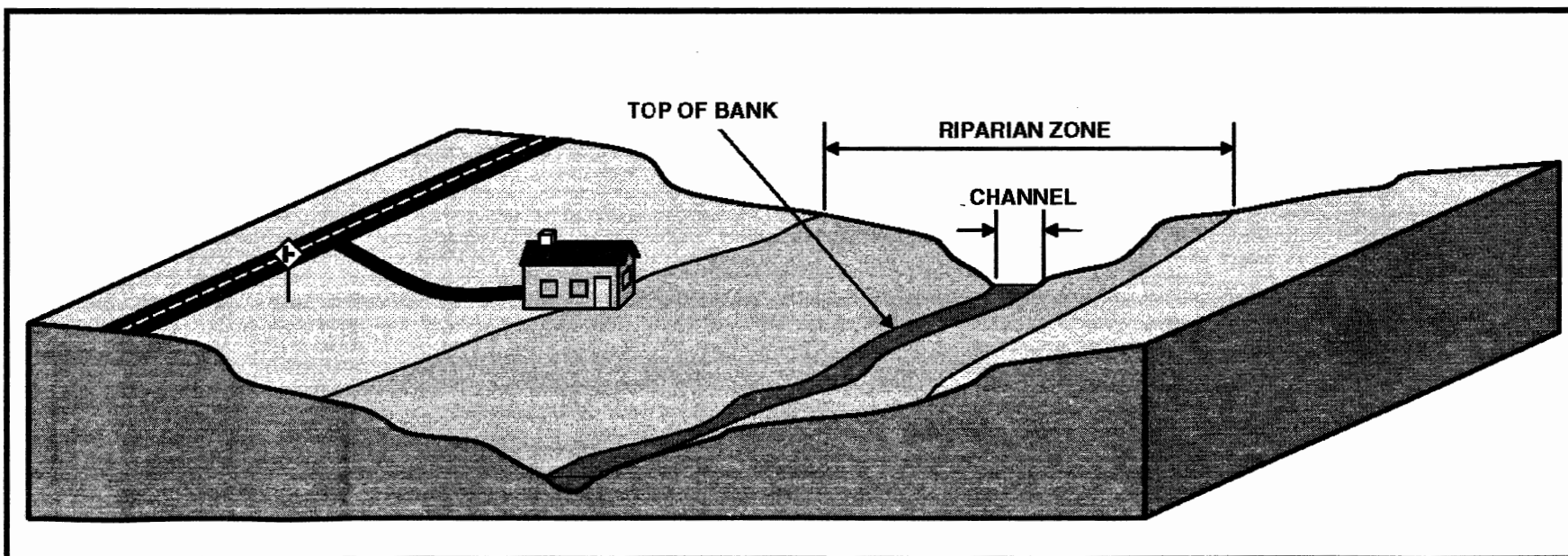


FIGURE B: THE RIPARIAN ZONE IS COMPRISED OF THE CHANNEL AND LAND WITHIN 50, 150 OR 300 FEET OF THE CHANNEL

**7:13-2.4 Regulated activities**

(a) Any action that includes or results in one or more of the following constitutes a regulated activity under this chapter if undertaken in a regulated area, as described at N.J.A.C. 7:13-2.3:

1. The alteration of topography through excavation, grading and/or placement of fill;
2. The clearing, cutting and/or removal of vegetation in a riparian zone;
3. The creation of impervious surface;
4. The storage of unsecured material;
5. The construction, reconstruction and/or enlargement of a structure; and
6. The conversion of a building into a private residence or a public building.

**Case Notes**

Failure by a construction company and its owner to obtain the permit required by the Flood Hazard Area Control Act (FHACA) prior to depositing 300 cubic yards of fill within a delineated flood hazard area violated N.J.A.C. 7:13-2.1(a), because the conduct affected the flood hazard area of a regulated water within the meaning of N.J.A.C. 7:13-3 and the riparian zone thereof per N.J.A.C. 7:13-4 and because the conduct thus constituted "regulated activity" within the meaning of N.J.A.C. 7:13-2.4(a)1. Given the admissions made by the company and its owner in proceedings before an administrative law judge (ALJ), the ALJ recommended imposition of a penalty per N.J.S.A. 58:16A-63(d) to include a \$20,000 administrative fine for which both the company and its owner were properly held liable and an order requiring restoration of the site as required by the Department of Environmental Protection. New Jersey Dep't of Env't Prot. v. Oveter's Construction, Inc. and Oliver Brown, OAL Dkt. No. ECE-LU 7582-11, 2013 N.J. AGEN LEXIS 229, Initial Decision (August 23, 2013).

### SUBCHAPTER 3. DETERMINING THE FLOOD HAZARD AREA AND FLOODWAY

**Case Notes**

Failure by a construction company and its owner to obtain the permit required by the Flood Hazard Area Control Act (FHACA) prior to depositing 300 cubic yards of fill within a delineated flood hazard area violated N.J.A.C. 7:13-2.1(a), because the conduct affected the flood hazard area of a regulated water within the meaning of N.J.A.C. 7:13-3 and the riparian zone thereof per N.J.A.C. 7:13-4 and because the conduct thus constituted "regulated activity" within the meaning of N.J.A.C. 7:13-2.4(a)1. Given the admissions made by the company and its owner in proceedings before an administrative law judge (ALJ), the ALJ recommended imposition of a penalty per N.J.S.A. 58:16A-63(d) to include a \$20,000 administrative fine for which both the company and its owner were properly held liable and an order requiring restoration of the site as required by the Department of Environmental Protection. New Jersey Dep't of Env't Prot. v. Oveter's Construction, Inc. and Oliver Brown, OAL Dkt. No. ECE-LU 7582-11, 2013 N.J. AGEN LEXIS 229, Initial Decision (August 23, 2013).

**7:13-3.1 General provisions for determining the flood hazard area and floodway along a regulated water**

(a) This subchapter provides six methods for determining the flood hazard area and floodway along a regulated water as follows:

1. Method 1 (Department delineation method) as described at N.J.A.C. 7:13-3.3;
2. Method 2 (FEMA tidal method) as described at N.J.A.C. 7:13-3.4(d);
3. Method 3 (FEMA fluvial method) as described at N.J.A.C. 7:13-3.4(e);
4. Method 4 (FEMA hydraulic method) as described at N.J.A.C. 7:13-3.4(f);
5. Method 5 (approximation method) as described at N.J.A.C. 7:13-3.5; and
6. Method 6 (calculation method) as described at N.J.A.C. 7:13-3.6.

(b) The flood hazard area is the land, and the space above that land, which lies below the flood hazard area design flood elevation, as defined at N.J.A.C. 7:13-1.2. The six methods described in (a) above provide the flood hazard area design flood elevation, from which the flood hazard area limit on a site is determined. In some cases, the limits of the floodway can also be determined using these methods.

(c) In most cases, the Department shall issue an individual permit under this chapter only if the applicant has determined the flood hazard area and floodway limits on the site, and has received a verification for these limits from the Department pursuant to N.J.A.C. 7:13-6.1. However, under certain conditions as set forth at N.J.A.C. 7:13-9.6, the flood hazard area and/or floodway limits need not be verified in order for the Department to be able to determine whether a regulated activity complies with this chapter. Furthermore, a verification is not required prior to obtaining a general permit authorization under this chapter, except for certain cases as noted under general permits 5, 6 and 7 at N.J.A.C. 7:13-8.7, 8.8 and 8.9, respectively.

(d) The flood hazard area and floodway described in this subchapter may differ from areas identified as a "flood hazard area," "flood zone," "floodplain" or "floodway" by another public entity such as FEMA or a local government. The methods listed at (a) above are specifically designed and intended for determining compliance with the construction standards and requirements of this chapter.

**7:13-3.2 Selecting a method for determining the flood hazard area and floodway along a regulated water**

(a) There are a number of factors that influence the selection of a method for determining the flood hazard area

and floodway on a given site, as set forth in (b) through (e) below. These factors include the existence of a Department delineation or FEMA flood insurance study, whether the applicant prefers to calculate the flood hazard area and/or floodway limits and what type of project is proposed. Furthermore, each method has certain limitations on its usefulness and availability as described in this subchapter. Applicants are encouraged to carefully review the entire subchapter before selecting a method.

(b) Where a Department delineation for a regulated water has been promulgated on or after January 24, 2013, an applicant shall determine the flood hazard area and floodway limits using this delineation in accordance with Method 1, as set forth at N.J.A.C. 7:13-3.3.

(c) Where a Department delineation for a regulated water has been promulgated prior to January 24, 2013, an applicant may:

1. Determine the flood hazard area and/or floodway in accordance with (c) i or ii below, whichever results in a higher flood hazard area design flood elevation and wider floodway limit:

- i. The Department delineation described in (c) above, in accordance with Method 1, as set forth at N.J.A.C. 7:13-3.3; or

- ii. FEMA mapping, in accordance with Method 2 in a tidal flood hazard area or Method 3 in a fluvial flood hazard area, as set forth at N.J.A.C. 7:13-3.4(d) and (e), respectively; or

2. Determine the flood hazard area and/or floodway by calculation, in accordance with Methods 4 or 6, as set forth at N.J.A.C. 7:13-3.4(f) and 3.6, respectively.

(d) Where no Department delineation exists for a regulated water, an applicant may:

1. Determine the flood hazard area and/or floodway using FEMA mapping, provided such mapping exists for the section of regulated water in question, in accordance with Methods 2, 3, or 4, as set forth at N.J.A.C. 7:13-3.4(d), (e), and (f), respectively;

2. Determine the approximate limit of the flood hazard area in accordance with Method 5, as set forth at N.J.A.C. 7:13-3.5, provided no FEMA mapping exists for the section of regulated water in question; or

3. Determine the flood hazard area and/or floodway by calculation, in accordance with Method 6, as set forth at N.J.A.C. 7:13-3.6.

(e) The flood hazard area and floodway shall be determined using only one method for each regulated water on a site, except in the following cases:

1. If a Department delineation or FEMA flood insurance study terminates within a site, the flood hazard area

on the remainder of the site may be delineated using another applicable method described in this subchapter; and

2. If Method 3 is used to delineate the flood hazard area but no FEMA floodway map exists for the section of regulated water in question, and determining the floodway is necessary to demonstrate compliance with the requirements of this chapter, the applicant shall use Method 4 to calculate the floodway.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

Rewrote the section.

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

### **7:13-3.3 Flood hazard area and floodway based on a Department delineation (Method 1)**

(a) This section sets forth the procedure for determining a flood hazard area design flood elevation and floodway limit from a Department delineation. Appendix 2 of this chapter lists the Department delineated waters of New Jersey. Requests for copies of a Department delineation, including flood profiles and maps, as well as any questions regarding the use, derivation or modification of these delineations, should be directed to the Department's Office of Floodplain Management at the following address:

State of New Jersey  
Department of Environmental Protection  
Bureau of Dam Safety and Flood Control  
P.O. Box 419  
Trenton, New Jersey 08625-0419  
Telephone: (609) 984-0859

(b) Under Method 1:

1. The flood hazard area design flood elevation is that which is shown on the flood profile adopted as part of the Department delineation; and

2. The floodway limit is that which is shown on the flood maps adopted as part of the Department delineation.

(c) The flood hazard design elevation and floodway limits for a regulated water depicted on a FEMA map that includes the Department's flood hazard area design flood elevation and that reflects FEMA's final determination of the 100-year flood elevation (base flood elevation) effective pursuant to 44 CFR 67.10 are incorporated into this chapter as the Department delineation of the regulated water.

1. The Department shall publish notice in the New Jersey Register of any flood hazard area design flood elevation and floodway limits so incorporated. The notice shall include any necessary administrative change to the list of delineated waters in Appendix 2.



(d) An applicant seeking to modify a Department delineation shall submit an application for a revision as provided at N.J.A.C. 7:13-13.4.

(e) If an applicant proposes construction in a Department delineated floodway, and must prepare hydraulic calculations to demonstrate that the construction meets the requirements of this chapter, the applicant shall base the calculations on the the flow rates and other hydraulic data that were used to determine the flood hazard area and floodway limits in the Department delineation. Such data is available from the Department at the address listed in (a) above.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

Rewrote the introductory paragraph of (b); added new (c); recodified former (c) and (d) as (d) and (e); and rewrote (e).

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

#### **7:13-3.4 Flood hazard area and floodway based on a FEMA flood insurance study (Methods 2 through 4)**

(a) This section sets forth the procedure for determining a flood hazard area design flood elevation and floodway limit from a FEMA flood insurance study FEMA flood maps can be viewed at <https://msc.fema.gov>. Requests for copies of the available FEMA flood insurance studies as well as any questions regarding their use, derivation or modification, should be directed to FEMA at (800) 358-9616.

(b) The methods set forth in this section for determining the flood hazard area and floodway along a regulated water may be used only if the following requirements are satisfied:

1. A FEMA flood insurance study exists for the section of regulated water in question, which is dated January 31, 1980, or later, and includes the information needed for the Method that is being used. For example, Methods 2 and 3 below require that the FEMA flood insurance study includes the regulated water's 100-year flood elevation, and Method 4 below requires that the FEMA study includes the regulated water's 100-year flow rate; and

2. The floodway limits and 100-year flow rate being used are the most recently released by FEMA for the municipality in which the site is located, including any advisory, proposed, or effective mapping.

(c) There are three methods by which a FEMA flood insurance study may be used to determine the flood hazard area and floodway limit along a regulated water as follows:

1. Method 2 (FEMA tidal method), set forth at (d) below, which applies to a tidal flood hazard area for which a FEMA flood profile exists for the section of regulated water in question. If the FEMA flood insurance study does

not provide a 100-year flood elevation, it is not possible to use this method;

2. Method 3 (FEMA fluvial method), set forth at (e) below, which applies to a fluvial flood hazard area for which a FEMA flood profile exists for the section of regulated water in question. If the FEMA flood insurance study does not provide a 100-year flood elevation, it is not possible to use this method; and

3. Method 4 (FEMA hydraulic method), set forth at (f) below. This method may be used only if the following requirements are satisfied:

- i. The FEMA flood insurance study provides a 100-year flow rate for the regulated water. In most tidal flood hazard areas a large area is inundated due to flooding from the Atlantic Ocean, and therefore FEMA does not provide a 100-year flow rate for the regulated water itself. In such a case, it is not possible to use this method; and

- ii. The applicant proposes a regulated activity in the flood hazard area and applies for an individual permit under this chapter, for which the Department requires hydraulic calculations comparing pre-construction and post-construction water surface elevations within the regulated water, in order to demonstrate that the regulated activity complies with this chapter. Examples of activities that require such an analysis are detailed at N.J.A.C. 7:13-11.1(f), 11.1(g), 11.7(c) and 11.7(d).

(d) Under Method 2 (FEMA tidal method):

1. The flood hazard area design flood elevation shall be equal to the FEMA 100-year flood elevation; and

2. The floodway limit shall be determined as follows:

- i. If a FEMA floodway map exists for the section of regulated water in question, the floodway limit shall be equal to the floodway limit shown on the FEMA floodway map; or

- ii. If no FEMA floodway map exists for the section of regulated water in question, the floodway limit shall be equal to the limits of the channel. The Atlantic Ocean and other non-linear tidal waters such as bays and inlets do not have a floodway.

(e) Under Method 3 (FEMA fluvial method):

1. The flood hazard area design flood elevation shall be equal to one foot above the FEMA 100-year flood elevation; and

2. The floodway limit shall be determined as follows:

- i. If a FEMA floodway map exists for the section of regulated water in question, the floodway limit shall be equal to the floodway limit shown on the FEMA floodway map; or

- ii. If no FEMA floodway map exists for the section of regulated water in question, the floodway limit cannot



be determined using this method. The applicant shall instead calculate the floodway limit using Method 4 as described in (f) below. In such a case, applicants are encouraged to first contact the Department to discuss whether it is necessary to determine the floodway limit on a site for a given project.

(f) Under Method 4 (FEMA hydraulic method):

1. The flood hazard area design flood elevation and floodway limit shall be based on a standard step backwater analysis and determined as follows:

i. For a tidal flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using the 100-year flow rate reported by FEMA for the regulated water (see (c)3i above);

ii. For a fluvial flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using 125 percent of the 100-year flow rate reported by FEMA for the regulated water; and

iii. A hydraulic analysis shall be performed to determine the floodway limit using the 100-year flow rate reported by FEMA for the regulated water, assuming a maximum rise of 0.2 feet in the 100-year flood elevation. The floodway limits shall be calculated assuming equal conveyance reduction, unless the applicant demonstrates (prior to the submission of an application for a verification to the Department) that due to the topography of the area, the proximity of structures to the channel and/or other physical characteristics of the watershed or flood hazard area, use of another method will more optimally calculate the floodway limits at a given location.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (a), deleted "where no Department delineation exists" following "study" and "or flood profiles" following "studies", and inserted the second sentence; deleted former (b)1; recodified former (b)2 as (b)1; rewrote (b)1; and added new (b)2.

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

**7:13-3.5 Flood hazard area determined by approximation (Method 5)**

(a) This section sets forth the procedure for approximating a flood hazard area design flood elevation using the method described in chapter Appendix 1. This method does not provide a floodway limit. Therefore, the Department shall issue an individual permit for a regulated activity within an approximated flood hazard area only if the project meets the requirements at N.J.A.C. 7:13-9.7.

(b) The flood hazard area design flood elevation for a regulated water can be approximated under Method 5, provided the following requirements are satisfied:

1. Method 1 (Department delineation method) set forth at N.J.A.C. 7:13-3.3 cannot be used because no Department delineation exists for the section of regulated water in question;

2. Methods 2 through 4 (FEMA fluvial, FEMA tidal and FEMA hydraulic methods) set forth at N.J.A.C. 7:13-3.4 cannot be used because no qualifying FEMA flood insurance study exists for the section of regulated water in question; and

3. The drainage area of the water at the project site does not exceed 30 square miles.

(c) An applicant may elect to establish the approximate flood hazard area limit at an elevation higher than that which is provided by Method 5 in order to match an existing topographic feature onsite, such as the top of an embankment, or to run concurrent with a verified freshwater wetland or transition area line.

(d) Method 5 is intended to be conservative and may in some cases overestimate the actual limits of flooding onsite to ensure that public health, safety and welfare is adequately protected in absence of a Department delineation or FEMA flood insurance study.

(e) If the Department determines that using Method 5 to approximate a flood hazard area will significantly underestimate the depth of flooding on a particular site due to an unusual hydrologic or hydraulic condition within the drainage area, or due to a unique feature on or near the site, the Department shall not approve a general permit authorization or an individual permit for any regulated activity in the approximated flood hazard area if such approval is determined to constitute a threat to public safety. Should the applicant choose to apply for a permit in such a case, the flood hazard area limit shall first be calculated according to Method 6, as described at N.J.A.C. 7:13-3.6.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (d), deleted the last sentence.

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

**7:13-3.6 Flood hazard area and floodway determined by calculation (Method 6)**

(a) This section sets forth the procedure for determining a flood hazard area design flood elevation and floodway limit via hydrologic and hydraulic calculations.

(b) If the following conditions exist, Method 6 is the only method by which an applicant may determine the flood hazard area and floodway along a regulated water:

1. Method 1 (Department delineation method) set forth at N.J.A.C. 7:13-3.3 cannot be used because no Department delineation exists for the section of regulated water in question;

2. Methods 2 through 4 (FEMA fluvial, FEMA tidal and FEMA hydraulic methods) set forth at N.J.A.C. 7:13-3.4 cannot be used because no qualifying FEMA flood insurance study exists for the section of regulated water in question; and

3. Method 5 (approximation method) set forth at N.J.A.C. 7:13-3.5 cannot be used for one of the following reasons:

- i. The requirements for using the approximate method at N.J.A.C. 7:13-3.5(b) are not satisfied;
- ii. The Department determines that the approximate method will significantly underestimate the depth of flooding on the site in question, pursuant to N.J.A.C. 7:13-3.5(e); or
- iii. The applicant is proposing a regulated activity for which the requirements at N.J.A.C. 7:13-9.7 are not satisfied.

(c) Under Method 6, the flood hazard area design flood elevation and floodway limit shall be based on a standard step backwater analysis and determined as follows:

1. A hydrologic analysis shall be performed to determine the peak flow rate for the 100-year flood for the regulated water. The hydrologic analysis shall assume existing development conditions in the drainage area, as of the date of the application to the Department;

2. For a tidal flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using the 100-year flow rate determined under (c)1 above;

3. For a fluvial flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using 125 percent of the 100-year flow rate determined under (c)1 above; and

4. A hydraulic analysis shall be performed to determine the floodway limit using the 100-year flow rate determined under (c)1 above, assuming a maximum rise of 0.2 feet in the 100-year flood elevation. The floodway limits shall be calculated assuming equal conveyance reduction, unless the applicant demonstrates (prior to the submission of an application for a verification to the Department) that due to the topography of the area, the proximity of structures to the channel and/or other physical characteristics of the watershed or flood hazard area, use of another method will

more optimally calculate the floodway limits at a given location.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (a), deleted the last sentence.

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

## SUBCHAPTER 4. DETERMINING THE RIPARIAN ZONE

### Case Notes

Failure by a construction company and its owner to obtain the permit required by the Flood Hazard Area Control Act (FHACA) prior to depositing 300 cubic yards of fill within a delineated flood hazard area violated N.J.A.C. 7:13-2.1(a), because the conduct affected the flood hazard area of a regulated water within the meaning of N.J.A.C. 7:13-3 and the riparian zone thereof per N.J.A.C. 7:13-4 and because the conduct thus constituted "regulated activity" within the meaning of N.J.A.C. 7:13-2.4(a)1. Given the admissions made by the company and its owner in proceedings before an administrative law judge (ALJ), the ALJ recommended imposition of a penalty per N.J.S.A. 58:16A-63(d) to include a \$20,000 administrative fine for which both the company and its owner were properly held liable and an order requiring restoration of the site as required by the Department of Environmental Protection. *New Jersey Dep't of Env't Prot. v. Oveter's Construction, Inc. and Oliver Brown*, OAL Dkt. No. ECE-LU 7582-11, 2013 N.J. AGEN LEXIS 229, Initial Decision (August 23, 2013).

### 7:13-4.1 The riparian zone

(a) A riparian zone exists along every regulated water, except there is no riparian zone along the Atlantic Ocean nor along any manmade lagoon, stormwater management basin, or oceanfront barrier island, spit or peninsula.

(b) The riparian zone includes the land and vegetation within each regulated water described in (a) above, as well as the land and vegetation within a certain distance of each regulated water as described in (c) below. The portion of the riparian zone that lies outside of a regulated water is measured landward from the top of bank. If a discernible bank is not present along a regulated water, the portion of the riparian zone outside the regulated water is measured landward as follows:

1. Along a linear fluvial or tidal water, such as a stream, the riparian zone is measured landward of the feature's centerline;

2. Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;

3. Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water; and

4. Along an amorphously-shaped feature, such as a wetland complex, through which a regulated water flows

but which lacks a discernible channel, the riparian zone is measured landward of the feature's centerline.

(c) The width of the riparian zone along each regulated water described in (a) above is as follows:

1. The riparian zone is 300 feet wide along both sides of any Category One water, and all upstream tributaries situated within the same HUC-14 watershed;
2. The riparian zone is 150 feet wide along both sides of the following waters not identified in (c)1 above:
  - i. Any trout production water and all upstream waters (including tributaries);
  - ii. Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;
  - iii. Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and
  - iv. Any segment of a water flowing through an area that contains acid producing soils; and
3. The riparian zone is 50 feet wide along both sides of all waters not identified in (c)1 or 2 above.

(d) The riparian zones established by this chapter are separate from and in addition to any other similar zones or buffers established to protect surface waters. For example, the Stormwater Management rules at N.J.A.C. 7:8 and the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38 establish 300-foot Special Water Resource Protection Areas and buffers, respectively, along certain waters. Furthermore, the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A establish 50-foot and 150-foot transition areas along freshwater wetlands and other features that are also regulated under this chapter. Compliance with the riparian zone requirements of this chapter does not constitute compliance with the requirements imposed under any other Federal, State or local statute, regulation or ordinance.

#### Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 177) adopted, concluding that where (1) petitioner in 2003 applied to the local board of adjustment to construct a building with mixed residential and office use and parking near Pascack Brook, (2) the local board of adjustment in January 2004 issued a resolution that gave site plan approval for the development, but which was conditioned upon petitioner receiving approval from the county planning board and any other governmental agencies, if required, and complying with "any and all State and Federal laws and applicable regulations," (3) the Department of Environmental Protection in August 2004 upgraded Pascack Brook to a Category One water at a time when petitioner had not yet commenced construction, petitioner's argument that it was unfair to not grandfather the project was without merit; courts have upheld new Department requirements on development that had previously received site plan or subdivision approval, when necessary to promote public health and safety (decided under former rules). ANM

Realty v. N.J. Dep't of Env'tl. Prot., OAL Dkt. No. ESA 1029-06, 2007 N.J. AGEN LEXIS 918, Final Decision (August 3, 2007).

## SUBCHAPTER 5. APPLICABILITY DETERMINATIONS

### 7:13-5.1 General provisions for applicability determinations

(a) A flood hazard area applicability determination is the Department's statement of whether an activity is regulated and, therefore, requires a permit under this chapter.

(b) An applicability determination is optional. However, if it is unclear whether a particular activity is regulated, the Department encourages applicants to obtain an applicability determination prior to commencing work since unauthorized regulated activities may result in enforcement action pursuant to N.J.A.C. 7:13-19.

(c) An application for an applicability determination shall contain the following:

1. One copy of an application report, as described at N.J.A.C. 7:13-15.3; and
2. One set of drawings, signed and sealed by a engineer, land surveyor or architect, as appropriate, detailing the proposed activities. If fill or grading is proposed, the drawing shall show existing and proposed topography unless the Department determines that topography is not necessary to determine compliance with this chapter. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary.

(d) After reviewing an application for an applicability determination, the Department shall:

1. Notify the applicant that the application did not include all the material required at (c) above and request the missing information. The Department may cancel the request for an applicability determination if the missing information is not provided within 60 calendar days. Otherwise, when the requested material is received, the Department shall take one of the actions in (d)2 below; or
2. Inform the applicant in writing that:
  - i. The Department is unable to determine whether this chapter applies to the proposed activities because the limit of the flood hazard area and/or riparian zone onsite cannot be determined without additional information. Therefore, the Department shall not issue an applicability determination until the applicant obtains a verification under N.J.A.C. 7:13-6;
  - ii. This chapter does not apply to the proposed activity and no permit is required pursuant to N.J.A.C. 7:13-2.1, provided the chapter is not amended to establish stricter standards or conditions; or

iii. This chapter does apply to the proposed activities and the regulated activities must be conducted in accordance with a permit pursuant to N.J.A.C. 7:13-2.1. The Department will also inform the applicant whether the proposed activities qualify for a permit-by-rule or whether an application for a general permit authorization or individual permit is necessary, provided the application contains sufficient detail regarding the proposed activities for the Department to make such a determination.

(e) Workload permitting, the Department shall make a final decision on an application for an applicability determination within 30 calendar days of receiving a complete application.

(f) Except as provided in (g) below, an applicability determination is valid for five years from its issuance date and shall not be extended. However, an applicant may request a new applicability determination to replace an expired one by submitting an application under (c) above. An applicability determination may also be transferred upon the sale of a property to which it applies to a new owner pursuant to N.J.A.C. 7:13-14.1.

(g) If the Department determines under (d)2ii above that this chapter does not apply to a proposed activity, and this

chapter is subsequently amended to put in place stricter standards or conditions such that the proposed activity becomes regulated, or else the Department amends the flood hazard area or riparian zone onsite such that the proposed activity now lies within one of these regulated areas, the applicability determination shall become void and the applicant shall obtain a permit pursuant to N.J.A.C. 7:13-2.1 prior to commencing the regulated activities onsite.

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## SUBCHAPTER 6. VERIFICATIONS

### 7:13-6.1 General provisions for verifications

(a) A verification is a document containing the Department's approval of the flood hazard area design flood elevation on a site, includes either a flood hazard area limit or an indication that the entire site is in a flood hazard area, and may also include a floodway limit and/or a riparian zone limit, if applicable.

(b) The flood hazard area design flood elevation, flood hazard area and/or floodway limits on a site shall be determined in accordance with the procedures outlined in

N.J.A.C. 7:13-3. The riparian zone limits on a site shall be determined in accordance with N.J.A.C. 7:13-4.

(c) An application for a verification shall include the following:

1. Three copies of an application report, as described at N.J.A.C. 7:13-15.3. If a hydrologic and/or hydraulic model is submitted with the application, the photographs required in the application report shall depict any water control structures, as well as a representative sampling of the locations of any cross-sections, which are referenced by the models;

2. One copy of an engineering report, as described at N.J.A.C. 7:13-15.4, which includes all necessary supporting calculations, maps and other documentation and a description of which delineation method under N.J.A.C. 7:13-3 was used;

3. Documentation that the applicable public notice requirements of N.J.A.C. 7:13-16 have been met;

4. The appropriate application fee required at N.J.A.C. 7:13-17; and

5. Six sets of drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, which include the following:

i. Topography that references NGVD, or includes the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary;

ii. The limit of the flood hazard area under existing conditions on the site. If the entire site is in a flood hazard area, the drawings shall include a note to this effect, as well as the elevation(s) of the flood hazard area design flood on the site;

iii. The limit of any floodway under existing conditions on the site, if the applicant seeks verification of the floodway limits. If the entire site is in a floodway, the drawings shall include a note to this effect;

iv. A metes and bounds description of any flood hazard area limit and floodway limit under existing conditions onsite. If the verification is submitted concurrently with a permit application that proposes to affect one or both of these limits, the drawings shall also include a metes and bounds description of the proposed flood hazard area and/or floodway limits;

v. The following statement: "NOTE: All or a portion of this site lies in a flood hazard area. Certain activities in flood hazard areas are regulated by the New Jersey Department of Environmental Protection and some activities may be prohibited on this site or may first require a permit. Contact the Division of Land Use Regulation at (609) 292-0060 for more information prior to any construction onsite.";

vi. A note indicating which method described at N.J.A.C. 7:13-3 was used to determine the limit of the flood hazard area and/or floodway;

vii. The limit of any riparian zone onsite as described at N.J.A.C. 7:13-4.1; and

viii. An indication of the location of any cross-section and water control structure referenced in the engineering report as well as a graphic depiction of each cross-section.

(d) The Department shall review an application for a verification according to the same procedure established for individual permit applications at N.J.A.C. 7:13-9.3.

(e) A verification is valid for five years from its issuance date, unless the verification is issued concurrently with a 10-year individual permit under N.J.A.C. 7:13-9.4(b), in which case the verification is valid for 10 years from its issuance date. A verification shall not be extended. However, a verification can be reissued automatically with the issuance of a permit for a regulated activity at that site pursuant to (f) below and can be transferred at the time of sale of a property to which the verification applies to a new owner pursuant to N.J.A.C. 7:13-14.1.

(f) If the Department issues a verification for a site, and within five years issues a general permit authorization or an individual permit for a regulated activity that references or relies upon the verification at that site, the Department shall automatically reissue the verification upon approval of the permit or authorization so that the verification and permit or authorization have the same expiration date. This automatic reissuance shall occur only once per verification and there is no fee for this reissuance. The reissued verification shall reflect any alterations to the flood hazard area design flood elevation, flood hazard area limit and/or floodway limit that will result from the regulated activities authorized under the individual permit or general permit authorization. All pre-construction and post-construction elevations and limits shall be demarcated on drawings approved under the verification.

(g) Within 90 calendar days after the Department issues a verification on a privately owned lot, or on a publicly owned lot other than a right-of-way, the applicant shall submit the following information to the clerk of each county in which the site is located, and shall send proof to the Department that this information is recorded on the deed of each lot referenced in the verification. Failure to have this information recorded in the deed of each lot and/or to submit proof of recording to the Department constitutes a violation of this chapter and may result in suspension or termination of the verification and/or subject the applicant to enforcement action pursuant to N.J.A.C. 7:13-19:

1. The Department file number for the verification;
2. The approval and expiration dates of the verification;



3. A metes and bounds description of any flood hazard area limit and/or floodway limit approved under the verification;

4. The flood hazard area design flood elevation, or range of elevations if variable, approved under the verification; and

5. The following statement: "The State of New Jersey has determined that all or a portion of this lot lies in a flood hazard area. Certain activities in flood hazard areas are regulated by the New Jersey Department of Environmental Protection and some activities may be prohibited on this site or may first require a permit. Contact the Division of Land Use Regulation at (609) 292-0060 for more information prior to any construction onsite."

## SUBCHAPTER 7. PERMITS-BY-RULE

### 7:13-7.1 General provisions for permits-by-rule

(a) This subchapter establishes permits-by-rule for certain regulated activities. Each permit-by-rule specifically describes the regulated activity authorized, including the size and type of regulated activity and in some cases where in the flood hazard area and riparian zone the regulated activity may be conducted. The Department may, by rulemaking in accordance with the Administrative Procedure Act, rescind or modify an existing permit-by-rule, or establish new ones. The flood hazard area permits-by-rule are set forth at N.J.A.C. 7:13-7.2, and are summarized, for informational purposes only, in Table A below.

(b) The following requirements apply to every permit-by-rule at N.J.A.C. 7:13-7.2:

1. Each limit or condition of a particular permit-by-rule shall be satisfied without requiring a review of detailed engineering calculations; and

2. All structures shall be suitably anchored.

(c) A regulated activity that meets the requirements of a permit-by-rule may be conducted without prior Department approval. However, if it is unclear whether a particular activity meets a permit-by-rule, the Department encourages applicants to obtain an applicability determination under N.J.A.C. 7:13-5.1 prior to commencing work, since unauthorized regulated activities may result in enforcement action pursuant to N.J.A.C. 7:13-19. Furthermore, a person may wish to obtain an applicability determination in order to demonstrate to a local government that a proposed activity meets a permit-by-rule.

(d) A person intending to undertake a regulated activity under any of the eight permits-by-rule at N.J.A.C. 7:13-7.2(a) shall, at least 14 days prior to initiating the activity, provide written notification to the Department (via letter, electronic mail, fax or in person) as follows:

1. The notification shall include:

i. The property owner's name and contact information;

ii. The contractor's name (if applicable) and contact information;

iii. The street address and lot, block, municipality and county for the site at which the regulated activity will be conducted;

iv. Which permit-by-rule applies to the activity;

v. The proposed start and end date for the activity; and

vi. A brief description of the activity.

2. The notification shall be submitted to:

Attn: Permit-By-Rule Notification  
New Jersey Department of Environmental  
Protection  
Bureau of Coastal and Land Use Compliance and  
Enforcement  
P.O. Box 422  
401 East State Street  
Trenton, New Jersey 08625-0422  
Fax: (609) 633-6798  
Electronic mail: [floodhazard-pbrnotice@dep.state.nj.us](mailto:floodhazard-pbrnotice@dep.state.nj.us)  
Website: <http://nj.gov/dep/enforcement/lu.html>

(e) Prior to undertaking a regulated activity that fails to comply with any limit, condition or requirement of a permit-by-rule in this subchapter, the applicant must first obtain a general permit authorization (pursuant to N.J.A.C. 7:13-8), an individual permit (pursuant to N.J.A.C. 7:13-9, 10 and 11), an emergency permit (pursuant to N.J.A.C. 7:13-12) or a CAFRA or waterfront development permit (pursuant to N.J.A.C. 7:7 and 7:7E) for the regulated activity. Furthermore, a person may undertake a regulated activity under a permit-by-rule only up to any given limit specified by the permit-by-rule. For example, the placement of no more than five cubic yards of fill under the permit-by-rule at N.J.A.C. 7:13-7.2(b)3 means either the one-time placement of five cubic yards of fill or multiple placements of fill over time that cumulatively do not exceed five cubic yards. A person may also concurrently undertake activities under two or more permits-by-rule provided all activities meet the requirements of this subchapter. For example, a person could elevate a building under the permit-by-rule at N.J.A.C. 7:13-7.2(a)3, construct an addition to the building under the permit-by-rule at N.J.A.C. 7:13-7.2(a)4, and build a fence around the building under the permit-by-rule at N.J.A.C. 7:13-7.2(b)5, without requiring another approval under this chapter, provided each activity meets the descriptions of each applicable permit-by-rule.

Table A  
SUMMARY OF PERMITS-BY-RULE

This Table is for informational purposes only. See N.J.A.C. 7:13-7.2(a) through (f) for specific applicable limits and requirements for each permit-by-rule.

(a) Activities that require 14-day prior notice to the Department

1. Reconstructing a lawfully existing structure outside a floodway
2. Constructing in a disturbed riparian zone or at or below grade in a flood hazard area
3. Reconstructing, relocating, or elevating a building above the flood hazard area design flood elevation
4. Constructing an addition to a building of no more than 300 square feet outside a floodway
5. Removing a major obstruction from a regulated water with machinery
6. Constructing a boat launching ramp of no more than 1,000 square feet
7. Constructing an aquatic habitat enhancement device
8. Constructing a USGS-approved flow gauge or weir

(b) General construction and maintenance activities

1. Conducting normal property maintenance in a riparian zone
2. Removing a lawfully existing structure outside a floodway
3. Placing no more than five cubic yards of fill material outside a floodway
4. Repairing a lawfully existing structure
5. Constructing a fence
6. Construction in a tidal flood fringe that does not need a coastal permit
7. Constructing an addition above a building outside a floodway
8. Constructing a non-habitable building of no more than 150 square feet outside a floodway
9. Constructing an open structure with a roof outside a floodway (for example, car port, patio, pole barn)
10. Constructing an aboveground recreational structure (for example, bleacher, picnic table, backstop)
11. Constructing an aboveground swimming pool outside a floodway
12. Constructing an in-ground swimming pool
13. Constructing an open deck attached to a building
14. Constructing an open dock of no more than 1,000 square feet on an impounded water
15. Placing an aboveground fuel tank of no more than 2,000 gallons outside a floodway
16. Placing an underground fuel tank
17. Filling an abandoned raceway
18. Maintaining a manmade canal that passes through a regulated area
19. Constructing a wind turbine development consisting of one to three wind turbines.

(c) Activities associated with utilities

1. Placing a utility pole
2. Placing an open-frame utility tower outside a floodway
3. Jacking an underground utility line beneath a water
4. Placing an underground utility line beneath existing pavement
5. Attaching a utility line to the downstream face of a roadway that crosses a water
6. Placing an underground utility line in a flood hazard area outside a riparian zone

(d) Activities associated with roadways and parking areas

1. Repaving a roadway or parking area outside a floodway
2. Placing an open guardrail along a public roadway
3. Removing sediment by hand adjacent to a bridge, culvert or outfall along a public roadway
4. Reconstructing a bridge superstructure above a flood hazard area

(e) Activities associated with the storage of unsecured material

1. Temporary storage of construction material outside a floodway
2. Incidental storage of material associated with a residence
3. Incidental storage of material associated with a non-residence
4. Operating an existing business that stores and distributes material
5. Operating an existing hazardous waste facility
6. Operating an existing solid waste facility

## (f) Agricultural activities

1. Continuing ongoing agricultural activities that result in no fill
2. Commencing new agricultural activities that result in no fill
3. Undertaking soil conservation practices outside a floodway
4. Constructing an agricultural building of no more than 1,000 square feet outside a floodway

## Public Notice.

See: 41 N.J.R. 2728(a), 3851(a), 4127(b).

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

In Table A, added (b)19.

## Public Notice.

See: 43 N.J.R. 1605(a), 3470(a).

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In the introductory paragraph of Table A, inserted a period at the end; and in paragraph (a)3 of Table A, substituted "Reconstructing, relocating, or elevating" for "Elevating".

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

area, park, parking area, picnic ground, playground, playing field, roadway, sidewalk or trail);

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. The construction activity is not a major development, as defined at N.J.A.C. 7:8-1.2, and is therefore not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8;

iv. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

3. The reconstruction, relocation, and/or elevation of a lawfully existing building outside a floodway, provided:

i. The footprint of the building is not increased by more than 300 square feet;

ii. The lowest floor of the building is reconstructed or elevated to at least one foot above the flood hazard area design flood elevation;

iii. The area below the lowest floor of the building is not used for habitation and remains open to floodwaters, in accordance with N.J.A.C. 7:13-11.5(n), (o), and (p);

iv. The building is not expanded or relocated closer to any regulated water or within a floodway;

v. Any building being relocated is either moved outside any riparian zone or situated within an area where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);

vi. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the building if such disturbance is necessary to facilitate its reconstruction, relocation, and/or elevation; and

vii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

4. The construction of an addition that is connected to a lawfully existing building outside a floodway, provided:

**7:13-7.2 Permits-by-rule**

(a) The permits-by-rule at (a)1 through 8 below apply to the specified construction and maintenance activities listed therein. Pursuant to N.J.A.C. 7:13-7.1(d), prior written notice to the Department is required for each of these permits-by-rule.

1. The reconstruction of a lawfully existing structure outside a floodway, provided:

i. The structure is not a habitable building;

ii. The structure is not a retaining wall that extends four feet or more above the ground;

iii. The reconstructed structure lies within the footprint of the existing structure and is not enlarged;

iv. The reconstruction is not a major development, as defined at N.J.A.C. 7:8-1.2, and is, therefore, not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8;

v. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the structure if such disturbance is necessary to facilitate its reconstruction; and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

2. Any construction activity, provided:

i. If the activity is located in a flood hazard area, all construction is situated at or below grade and the existing ground elevation is not raised (such as for the construction of a bicycle path, driveway, fishing or hunting area, garden, lawn, nature preserve, outdoor recreation

- i. The addition has a footprint of no more than 300 square feet;
  - ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;
  - iii. No part of the addition extends into a floodway;
  - iv. The construction of the addition, in combination with all other proposed improvements, does not result in a substantial improvement to the building being expanded;
  - v. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the addition if such disturbance is necessary to facilitate its construction; and
  - vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;
5. The use of machinery to remove a major obstruction from a regulated water that cannot be removed by hand, such as a fallen tree, abandoned vehicle, furniture and other large debris, provided:
- i. No trees are disturbed in the riparian zone to provide access to the channel and/or obstruction;
  - ii. The machinery is situated outside the regulated water where possible;
  - iii. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed; and
  - iv. No fill material or accumulated sediment is removed from the regulated water;
6. The construction of a boat launching ramp, provided:
- i. The ramp has a footprint of no more than 2,000 square feet;
  - ii. The ramp is constructed at or below grade;
  - iii. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed;
  - iv. No more than 2,000 square feet of vegetation, including permanent and temporary disturbance, is cleared, cut or removed in a riparian zone; and
  - v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;
7. The construction of an aquatic habitat enhancement device provided:
- i. The device is approved by the Department's Division of Fish and Wildlife, Bureau of Freshwater Fisheries;
  - ii. The device will not cause erosion in the regulated water;
  - iii. The device will not cause any rise in the flood hazard area design flood elevation outside the regulated water;
  - iv. The device will not cause any existing building to be subject to increased flooding during any flood event up to and including the flood hazard area design flood;
  - v. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed;
  - vi. No more than 2,000 square feet of vegetation, including permanent and temporary disturbance, is cleared, cut or removed in a riparian zone; and
  - vii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;
8. The construction of a gauge, weir or other device to measure the depth, velocity and/or rate of flow in a regulated water provided:
- i. The device is approved by the United States Geological Survey;
  - ii. The device will not cause erosion in the regulated water;
  - iii. The device will not cause any rise in the flood hazard area design flood elevation outside the regulated water;
  - iv. The device will not cause any existing building to be subject to increased flooding during any flood event up to and including the flood hazard area design flood;
  - v. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed;
  - vi. No more than 2,000 square feet of vegetation, including permanent and temporary disturbance, is cleared, cut or removed in a riparian zone; and
  - vii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity.
- (b) The permits-by-rule at (b)1 through 19 below apply to the specified construction and maintenance activities listed therein.

1. The disturbance of vegetation in a riparian zone for normal property maintenance.

i. Normal property maintenance means an activity necessary to maintain a lawfully existing structure, lawn and/or garden and includes:

- (1) Pruning;
- (2) Selective tree cutting;
- (3) Planting indigenous, non-invasive vegetation;
- (4) Maintaining a field, lawn, park and/or easement that was lawfully established prior to October 2, 2006 and that has been maintained (such as through periodic mowing) since that date;
- (5) The removal of trash, debris and dead vegetation by hand; and
- (6) Maintaining a garden that was lawfully established prior to October 2, 2006.

ii. Normal property maintenance does not include any activity that would result in any clearing, cutting or removal of vegetation not described in (b)1i above, such as:

- (1) Mowing an area that was not lawfully mowed prior to October 2, 2006 or which was lawfully mowed prior to this date but has since been allowed to revert to its natural vegetative state;
- (2) Removing vegetation to create a new lawn, garden, field or park;
- (3) Burning vegetation;
- (4) Applying herbicide;
- (5) Grading and other changes in topography; and
- (6) Constructing structures, or placing fill or impervious surfaces;

2. The removal of any lawfully existing structure outside a floodway, provided:

- i. The structure is disposed of outside of any regulated area and in accordance with all applicable Federal, State and local laws;
- ii. All disturbed regulated areas are properly stabilized;
- iii. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the structure if such disturbance is necessary to facilitate its removal; and
- iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity, except where the removed material is to be replaced by new fill or a structure. (Note that any replace-

ment fill or structure is subject to the requirements of this chapter and may require a permit.);

3. The placement of no more than five cubic yards of fill outside a floodway, provided:

- i. No fill is placed within 25 feet of any top of bank or edge of water;
- ii. The fill is not a structure. For example, five cubic yards of stone, topsoil, wood chips or other landscaping material can be placed under this permit-by-rule but the construction of a building that displaces five cubic yards of flood storage volume cannot;
- iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and
- iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

4. The repair of a lawfully existing structure, provided:

- i. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed if the structure is located in a regulated water;
- ii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and
- iii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

5. The construction of a fence, provided:

- i. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;
- ii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);
- iii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity; and
- iv. One of the following conditions is satisfied:
  - (1) The fence is located outside a floodway; or



(2) The fence is located in a floodway and has sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as a barbed-wire, split-rail or strand fence. A fence with little or no open area, such as a chain link, lattice or picket fence, does not meet this requirement;

6. Any construction activity in a tidal flood hazard area that is not regulated under N.J.A.C. 7:7 and 7:7E, provided:

i. The existing ground elevation is not raised in any floodway;

ii. No aboveground structure is placed in a floodway;

iii. No habitable building is constructed;

iv. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

v. The construction activity is not a major development, as defined at N.J.A.C. 7:8-1.2, and is therefore not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8;

vi. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

vii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

7. The construction of an addition above a lawfully existing building outside a floodway, provided:

i. The addition is completely supported by the existing building;

ii. The lowest floor of the addition is constructed at least one foot above the flood hazard area design flood elevation;

iii. The construction of the addition, in combination with all other proposed improvements, does not result in a substantial improvement to the building being expanded;

iv. No part of the addition extends into a floodway;

v. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the building if such disturbance is necessary to facilitate the construction of the addition; and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

8. The construction of a non-habitable building outside a floodway, such as a shed, animal shelter or storage area, provided:

i. The building has a footprint of no more than 150 square feet;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

9. The construction of an open structure with a roof outside a floodway, such as a car port, covered patio or pole barn, provided:

i. The structure is not enclosed with walls on any side below the flood hazard area design flood elevation;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. The roof is supported solely by poles or is cantilevered from an adjoining structure;

iv. No fill is placed in the flood hazard area except for any poles necessary to support the roof;

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

10. The construction of an aboveground recreational structure (such as a backstop, bleacher, picnic table or playground equipment), provided:

i. The structure is not a building;

ii. No obstruction to flow is placed in a floodway;

iii. The existing ground elevation is not raised;

iv. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

11. The construction of an aboveground swimming pool outside a floodway associated with residential use, provided:

i. The swimming pool does not displace more than 100 cubic yards of flood storage volume (see N.J.A.C. 7:13-10.4);

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

12. The construction of an in-ground swimming pool associated with residential use, provided:

i. The pool lies completely at or below existing grade;

ii. If the pool is located in a floodway, and the construction of a safety fence around the pool is required by local ordinances, the size and height of the fence is minimized and the fence is as open as possible to allow the passage of floodwaters;

iii. Any material excavated to construct the pool is removed from the flood hazard area;

iv. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

13. The construction of a deck that is connected to a lawfully existing building, provided:

i. The deck is not enclosed with walls either above or below its floor, except for protective or decorative fencing, banisters or latticework that allow floodwaters to pass freely;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

14. The construction of a dock along an impounded water, such as a lake, pond or reservoir, provided:

i. The dock is built on pilings and remains open underneath to allow floodwaters to pass freely;

ii. The dock covers no more than 1,000 square feet including all decking and pilings;

iii. The impounded water has a surface area of one acre or more;

iv. The dock does not extend more than 20 percent across the width of the impounded water;

v. No more than 1,000 square feet of vegetation, including permanent and temporary disturbance, is cleared, cut or removed in a riparian zone; and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

15. The construction of an aboveground fuel tank of no more than 2,000 gallons outside a floodway, within or adjacent to the building it serves, provided:

i. The tank is designed to remain watertight during a flood;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

16. The construction of an underground fuel tank within or adjacent to the building it serves, provided:

i. The tank is designed to remain watertight during a flood;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

17. The filling of an abandoned raceway adjacent to a regulated water, provided:

i. The raceway is a manmade conveyance structure that was created to divert water from a channel for the purpose of providing hydrology or hydraulic power before returning the water to the channel;

ii. The raceway is currently blocked at one or both ends so that water from the channel is not able to flow through the raceway under normal flow conditions;

iii. The raceway does not supply hydrology to an otherwise isolated freshwater wetlands complex;

iv. The raceway is filled up to, but not above, the surrounding topography and the entire disturbed area is properly graded so as not to interfere with overland drainage; and

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

18. The repair, maintenance or dredging of the channel and/or embankments of a manmade canal, which passes through a regulated area, provided:

i. A public entity having jurisdiction over the canal determines that the proposed regulated activity is necessary for the proper operation of the canal;

ii. No fill or dredged spoils are placed in the flood hazard area;

iii. No trees are cleared, cut or removed in a riparian zone; and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity; and

19. The placement of one to three wind turbines provided:

i. Each wind turbine is less than 200 feet tall, measured from the ground surface to the tip of the blade at its highest position;

ii. The rotor swept area of the wind turbine(s) shall not exceed a cumulative area of 2,000 square feet. Rotor swept area means the area of the circle delineated by the tips of the blades of the wind turbine for a horizontal axis wind turbine, and the area determined by multiplying the rotor radius times the rotor height times 3.14 for a vertical axis wind turbine;

iii. No wind turbine tower(s) or site disturbance shall be located in floodways;

iv. No portion of any wind turbine(s), including blades, tower and site disturbance, is located within an area mapped as threatened or endangered species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (Landscape Maps) except as provided at (b)19iv(1) and (2) below. Landscape Maps are available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;

(1) The wind turbine is located within 120 feet of an existing building on an actively maintained lawn or area of land that has been manipulated by contouring of the soil and/or by intentional planting of flowers, grasses, shrubs, trees or other ornamental vegetation, which is maintained in such a condition by regular and frequent (at least one time per year) cutting, mowing, pruning, planting, weeding or mulching; or

(2) The wind turbine is located on lawfully existing building or on lawfully existing impervious cover;

v. If a wind turbine is more than 120 feet tall, measured from the ground surface to the tip of the blade at its highest position, the tower shall be a freestanding monopole(s);

vi. No lighting is placed on or directed at any wind turbine, except for lighting required by the Federal Aviation Administration. Shielded ground level security lighting may be used. Lighting is shielded when it is covered in a way that light rays are not emitted above the horizontal plane of the light;

vii. Development under this permit-by-rule shall not result in construction of more than three wind turbines on a site, either solely or in conjunction with a previous wind turbine development;

viii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

ix. The construction activity is not a major development, as defined at N.J.A.C. 7:8-1.2, and is therefore not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8;

x. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);

xi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity; and

xii. With the exception of guy wires on turbines 120 feet tall or less, all wires or cables that connect the wind turbine to an existing transmission line are located underground.

(c) The permits-by-rule at (c)1 through 6 below apply to the specified activities associated with utility lines listed therein.

1. The placement of one or more utility poles (which are not open-frame towers as described in (c)2 below) for utility lines, provided:

i. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

ii. All wires or cables connected to the utility poles are situated at least one foot above the flood hazard area design flood elevation;

iii. No trees are cleared, cut or removed in a riparian zone; and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

2. The placement of one or more open-frame towers outside a floodway to support a utility line, provided:

i. Each tower's footing is constructed at or below grade;

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. All wires or cables connected to the towers are situated at least one foot above the flood hazard area design flood elevation;

iv. No trees are cleared, cut or removed in a riparian zone; and

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

3. The placement of an underground utility line beneath a regulated water through directional drilling or "jacking," provided:

i. The regulated water is not disturbed in any way;

ii. No trees are cleared, cut or removed in a riparian zone;

iii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

iv. All disturbed areas in the flood hazard area are restored to their original topography upon completion of the regulated activity;

v. If the line is jacked or drilled beneath a bridge or culvert, all work is accomplished without displacing or damaging the bridge or culvert;

vi. If the line is jacked or drilled beneath an open channel, the top of the line is placed at least four feet below the channel invert and remains nominally horizontal at this depth at least 10 feet beyond the top of each bank;

vii. The line is sealed to ensure that there will be no leakage or discharge in a regulated area;

viii. No manhole is constructed within 10 feet of any top of bank or edge of water (unless situated within a paved surface);

ix. The top of any manhole in a floodway is flush with the ground;

x. The top of any manhole in a flood fringe is flush with the ground where possible; and

xi. Any manhole along a sanitary sewer has a water-tight cover in the flood hazard area;

4. The placement of an underground utility line beneath existing pavement within a regulated area (such as under an existing parking lot in the flood hazard area or under an existing roadway that crosses a regulated water), provided:

i. The regulated water is not disturbed in any way;

ii. No vegetation is cleared, cut or removed in a riparian zone;

iii. All disturbed areas in the flood hazard area are restored to their original topography upon completion of the regulated activity;

iv. If the line is placed under a roadway, either above or below a culvert or within a bridge, all work is accomplished without displacing or damaging the bridge or culvert;

v. If the line is placed under a roadway, either above or below a culvert, the line is encased within a larger steel pipe, or is placed with at least one foot vertical clearance above or below the culvert;

vi. The line is sealed to ensure that there will be no leakage or discharge in a regulated area;

vii. No manhole is constructed within 10 feet of any top of bank or edge of water (unless situated within a paved surface);

viii. The top of any manhole in a floodway is flush with the ground;

ix. The top of any manhole in a flood fringe is flush with the ground where possible; and

x. Any manhole along a sanitary sewer has a watertight cover in the flood hazard area;

5. The attachment of a utility line to a lawfully existing roadway that crosses a regulated water, provided:

i. The regulated water is not disturbed in any way;

ii. No more than 1,000 square feet of vegetation, including permanent and temporary disturbance, is cleared, cut or removed in a riparian zone, and all such vegetation lies within an existing right-of-way that is periodically mowed and/or cleared;

iii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

iv. All disturbed areas in the flood hazard area are restored to their original topography upon completion of the regulated activity;

v. The line is firmly attached to the roadway's bridge or culvert so that no part of the line, its encasement or any attachment device extends above the roadway profile or across the bridge or culvert opening;

vi. Where possible, the line is situated at least one foot above the flood hazard area design flood elevation;

vii. If a predominant direction of flow in the regulated water is discernible, the line is attached to the downstream face of the roadway crossing;

viii. All work is accomplished without displacing or damaging any bridge or culvert in any way;

ix. The line is sealed to ensure that there will be no leakage or discharge in a regulated area;

x. No manhole is constructed within 10 feet of any top of bank or edge of water (unless situated within a paved surface);

xi. The top of any manhole in a floodway is flush with the ground;

xii. The top of any manhole in a flood fringe is flush with the ground where possible; and

xiii. Any manhole along a sanitary sewer has a watertight cover in the flood hazard area; and

6. The placement of an underground utility line in a flood hazard area outside a riparian zone, provided:

i. All disturbed areas in the flood hazard area are restored to their original topography upon completion of the regulated activity;

ii. The line is sealed to ensure that there will be no leakage or discharge in a regulated area;

iii. The top of any manhole in a floodway is flush with the ground;

iv. The top of any manhole in a flood fringe is flush with the ground where possible; and

v. Any manhole along a sanitary sewer has a watertight cover in the flood hazard area.

(d) The permits-by-rule at (d)1 through 4 below apply to the specified activities associated with roadways and parking areas listed therein.

1. The repaving and/or resurfacing of a lawfully existing paved roadway or paved parking area outside a floodway, provided:

i. The surface of the existing roadway or parking area is raised by no more than three inches. Multiple repaving and/or resurfacing is permissible provided the cumulative impact of the activity does not result in raising the pavement by more than three inches;

ii. The existing roadway is not expanded; and

iii. No vegetation is cleared, cut or removed in a riparian zone;

2. The construction of a guardrail along a public roadway approved by a public entity, provided:

i. No trees are cleared, cut or removed in a riparian zone; and

ii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

3. The removal of accumulated sediment and/or debris from a regulated water, within and/or immediately adjacent to a lawfully existing bridge, culvert or stormwater discharge pipe along a public roadway and/or on public property, provided:

i. All work is performed by hand, such as by shovels, hoses, hydraulic pumps and other similar equipment. No backhoes or other heavy machinery shall be used in the regulated water;

ii. The sediment and debris removal is necessary to maintain positive flow through the structure;

iii. The sediment and debris removal is limited to within 100 feet of the structure;

iv. All work is performed under the supervision of the public entity that is responsible for maintaining the roadway and/or public property;

v. Vegetation outside the regulated water is not disturbed;

vi. No trees are cleared, cut or removed in a riparian zone;

vii. The timing restrictions set forth at N.J.A.C. 7:13-10.5(d) are observed;

viii. Excavation consists solely of accumulated sediment and does not alter the natural bed and banks of the channel; and

ix. The material removed is disposed of outside of any regulated area and in accordance with all applicable Federal, State and local laws; and

4. The reconstruction of all or part of a lawfully existing bridge superstructure over a regulated water, provided the reconstructed portion lies above the flood hazard area design flood elevation. The reconstruction need not be in-kind.

(e) The permits-by-rule at (e)1 through 6 below apply to the specified activities associated with the storage of secured and/or unsecured material listed therein.

1. The temporary storage of unsecured material outside a floodway, which is necessary for a lawful construction activity, provided:

i. No hazardous substances are stored;

ii. No storage is located within 25 feet of any top of bank or edge of water;

iii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

iv. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

2. The storage in a regulated area of unsecured material incidental to the use or maintenance of a lawfully existing private residence (such as lawn and garden equipment and materials, shelters for animals, trash receptacles, toys, vehicles and wood piles), provided:

i. No hazardous substances are stored;

ii. The unsecured material is of an amount and nature typical for a residence. For example, this permit-by-rule does not authorize the storage of construction debris, roll-off containers, an inordinate number of vehicles or machinery or large piles of refuse;

iii. No unsecured material is located within a floodway unless the material was lawfully situated there prior to October 2, 2006;

iv. No unsecured material is located within 25 feet of any top of bank or edge of water unless the material was lawfully situated there prior to October 2, 2006; and

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);

3. The storage in a regulated area of unsecured material incidental to the use or maintenance of a lawfully existing business or other non-residential facility (such as dumpsters, vehicles and equipment), provided:

i. No hazardous substances are stored unless:

(1) The storage of hazardous substances is essential to the operation of the business or facility;

(2) The hazardous substances are isolated from potential contact with floodwaters; and

(3) The hazardous substances are stored in accordance with all Federal, State and local laws;

ii. The unsecured material is of an amount and nature typical for the subject business or non-residential facility. For example, this permit-by-rule does not authorize the storage of construction debris, roll-off containers, an inordinate number of vehicles or machinery or large piles of refuse;

iii. No unsecured material is located within a floodway unless the material was lawfully situated there prior to October 2, 2006;

iv. No unsecured material is located within 25 feet of any top of bank or edge of water unless the material was lawfully situated there prior to October 2, 2006; and

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);

4. The storage in a regulated area of unsecured material that is necessary for the operation of a lawfully existing business or other non-residential facility, the primary function of which is to store and distribute material (such as a gravel pit, junk yard, landscaping business, lumber yard or vehicle dealership, rental facility or impoundment area), provided:



- i. No hazardous substances are stored unless;
    - (1) The storage of hazardous substances is essential to the operation of the business or facility;
    - (2) The hazardous substances are isolated from potential contact with floodwaters; and
    - (3) The hazardous substances are stored in accordance with all Federal, State and local laws;
  - ii. The business or facility was established prior to October 2, 2006;
  - iii. The business or facility has been in continuous operation since October 2, 2006; and
  - iv. The size of the business or facility and the peak volume of material stored in the flood hazard area have not increased since October 2, 2006. Any increase in size or peak volume requires that an individual permit be obtained pursuant to N.J.A.C. 7:13-11.16;
5. The placement, storage or processing of hazardous waste at a lawfully existing hazardous waste facility located in a regulated area, provided:
- i. The facility was established prior to October 2, 2006;
  - ii. The facility has been in continuous operation since October 2, 2006;
  - iii. The facility is operating in compliance with all Federal, State and local requirements; and
  - iv. The size of the facility and the peak volume of hazardous waste in the flood hazard area have not increased since October 2, 2006. Any increase in size or peak volume requires that an individual permit be obtained pursuant to N.J.A.C. 7:13-11.17; and
6. The placement, storage or processing of solid waste at a lawfully existing solid waste facility (such as a composting facility, landfill or recycling center), located in a regulated area, provided:
- i. The facility was established prior to October 2, 2006;
  - ii. The facility has been in continuous operation since October 2, 2006;
  - iii. The facility is operating in compliance with all Federal, State and local requirements; and
  - iv. The size of the facility and the peak volume of solid waste in the flood hazard area have not increased since October 2, 2006. Any increase in size or peak volume requires an individual permit pursuant to N.J.A.C. 7:13-11.18.
- (f) The permits-by-rule at (f)1 through 4 below apply to the specified agricultural activities listed therein.
1. The continuation of lawfully existing agricultural activities (such as grazing, harvesting, horticulture, irrigation, planting, tilling, viticulture and watering, as well as forestry under an approved forestry management plan that does not allow clear cutting), provided:
    - i. The activities are undertaken on land that has been actively farmed since October 2, 2006; and
    - ii. The activities do not result in the displacement of flood storage volume or the construction of an above-ground structure;
  2. The commencement of new agricultural activities (such as grazing, harvesting, horticulture, irrigation, planting, tilling, viticulture and watering, as well as forestry under an approved forestry management plan that does not allow clear cutting) on land that is not actively farmed provided:
    - i. The activities do not result in the displacement of flood storage volume or the construction of an above-ground structure; and
    - ii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);
  3. The continuation or commencement of soil conservation practices outside a floodway, such as terracing, subsurface tile drainage or construction of a diversion, a grassed swale or an excavated pond, provided:
    - i. The activities are undertaken on land that has been actively farmed since October 2, 2006;
    - ii. The activities are approved in writing by the local Soil Conservation District or the USDA Natural Resource Conservation Service, as appropriate;
    - iii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;
    - iv. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and
    - v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity; and
  4. The construction of a building with no foundation outside a floodway, provided:
    - i. The building is located on land that has been actively farmed since October 2, 2006;

ii. The building has a footprint of no more than 1,000 square feet;

iii. The building is designed for agricultural use. Examples of such buildings include a plastic covered greenhouse, a roadside farm stand and a tool shed placed on an existing farm field;

iv. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity.

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

In the introductory paragraph of (b), substituted "19" for "18"; in (b)17v, deleted "and" from the end; in (b)18iv, substituted "; and" for a period at the end; and added (b)19.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

Rewrote (a)3; added new (a)4iv and (b)7iii; recodified former (a)4iv and (a)4v as (a)4v and (a)vi and former (b)7iii through (b)7v as (b)7iv through (b)vi; and in (b)7ii, deleted "finished" following "lowest".

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

## SUBCHAPTER 8. GENERAL PERMITS

### 7:13-8.1 Standards applicable to all general permits

(a) This subchapter establishes general permits for certain regulated activities. Each general permit describes the regulated activity authorized, including the size and type of regulated activity and in some cases where in the flood hazard area or riparian zone the regulated activity may be conducted. The Department may, by rulemaking in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., rescind or modify an existing general permit or establish new ones. The flood hazard general permits established in this subchapter are set forth as follows:

Table B

### SUMMARY OF GENERAL PERMITS

This Table is for informational purposes only. See N.J.A.C. 7:13-8.3 through 8.12 for specific applicable limits and requirements for each general permit

| <u>Permit</u> | <u>Description</u>                                                             | <u>Citation</u><br><u>(N.J.A.C. 7:13-)</u> |
|---------------|--------------------------------------------------------------------------------|--------------------------------------------|
| 1             | Channel cleaning by a public entity under the Stream Cleaning Act              | 8.3                                        |
| 2A            | Agricultural: Soil erosion control, bank stabilization or bank restoration     | 8.4(c)1                                    |
| 2B            | Agricultural: Channel cleaning                                                 | 8.4(c)2                                    |
| 2C            | Agricultural: Constructing a roadway across a water                            | 8.4(c)3                                    |
| 2D            | Agricultural: Filling a manmade water for freshwater wetlands restoration      | 8.4(c)4                                    |
| 2E            | Agricultural: Creating a ford across a water to manage livestock               | 8.4(c)5                                    |
| 2F            | Agricultural: Constructing a fence across or along a water to manage livestock | 8.4(c)6                                    |
| 2G            | Agricultural: Constructing a pump or water intake along a water for livestock  | 8.4(c)7                                    |
| 3             | Bridge or culvert scour protection by a public entity                          | 8.5                                        |
| 4             | Stormwater maintenance by a public entity                                      | 8.6                                        |
| 5             | Relocating a building to reduce flood damage                                   | 8.7                                        |
| 6             | Reconstructing a damaged or destroyed residence                                | 8.8                                        |
| 7             | Residential construction in a tidal flood hazard area                          | 8.9                                        |
| 8             | Utility line across or along a water draining less than 50 acres               | 8.10                                       |
| 9             | Roadway or footbridge across a water draining less than 50 acres               | 8.11                                       |
| 10            | Stormwater outfall along a water draining less than 50 acres                   | 8.12                                       |

(b) A regulated activity shall be authorized under a general permit only if the Department determines that the following requirements are satisfied:

1. The regulated activity is not undertaken in the channel or riparian zone of a regulated water with fishery resources during a restricted time period as described at N.J.A.C. 7:13-10.5(d), unless otherwise approved by the Department's Division of Fish and Wildlife;

2. The regulated activity does not adversely affect low-flow aquatic passage within any regulated water;

3. The regulated activity will not adversely affect a threatened or endangered species, or a documented habitat for a threatened or endangered species;

4. All structures are suitably anchored;

5. The regulated activity is performed in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90;

6. Prior to undertaking the regulated activity, all necessary approvals are obtained from the local Soil Conservation District in cases where the district has jurisdiction over the project;

7. The regulated activity does not require review for compliance with the Stormwater Management rules at N.J.A.C. 7:8 because:

i. The overall project with which the general permit activity is associated is not a major development, as defined at N.J.A.C. 7:8-1.2; or

ii. The Department has already determined through the approval of a CAFRA, Waterfront Development or Freshwater Wetlands Protection Act permit that the overall project with which the general permit activity is associated complies with the Stormwater Management rules at N.J.A.C. 7:8;

8. If the regulated activity is proposed in a regulated area known or suspected to contain acid producing soils, a plan is established and implemented to minimize the adverse effects of exposing these soils as described at N.J.A.C. 7:13-10.7; and

9. The regulated activity complies with the specific requirements of the applicable general permit(s) set forth in this subchapter.

(c) Except for general permit 1, the application and review procedures for which are described at N.J.A.C. 7:13-8.3, an application for a general permit shall be submitted to the Department to the address listed in N.J.A.C. 7:13-1.1(f), and shall include the following:

1. One completed certification (available from the Department's website at [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse)), signed and sealed by an engineer, which lists each requirement of (b) above, as well as each requirement for the particular

general permit under which authorization is sought and explains how each requirement is met;

2. Six sets of drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, which detail the proposed activities, including existing and proposed topography if fill or grading is proposed. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary. The limit of any riparian zone onsite shall also be shown, as well as any areas where riparian zone vegetation will be cleared, cut or removed;

3. Three copies of an application report, as described at N.J.A.C. 7:13-15.3; and

4. An application fee in accordance with N.J.A.C. 7:13-17, except for general permit 6, which requires no application fee.

(d) Within 20 working days following the receipt of an application for an authorization under a general permit, the Department shall:

1. Determine that all necessary information required by this chapter for a complete general permit application has been provided, and declare the application complete for review;

2. Determine that all necessary information required by this chapter for a complete general permit application has not been provided, or that one or more submitted items are deficient, and request in writing that the applicant submit the missing material and/or address any deficiencies within a reasonable time period. The Department may cancel the application if the requested information is not provided within 60 calendar days. The Department shall subsequently declare the application complete for review within 20 working days of receiving the requested information; or

3. If the Department does not take action under (d)1 or 2 above within 20 working days, the general permit application shall automatically be deemed complete for review. In such a case, the Department may request additional information, which is necessary to bring the application into compliance with the requirements of this chapter during the review of the application.

(e) Within 45 calendar days after receiving a complete application for an authorization under a general permit, the Department shall:

1. Determine that the application meets the requirements of this chapter and approve the general permit authorization in writing; or

2. Determine that the application does not meet the requirements of this chapter and deny the general permit authorization in writing.

(f) If the Department fails to take written action on an application in accordance with (e) above, the general permit application shall automatically be deemed to be approved. This default approval is subject to any applicable conditions set forth in this chapter for the activities covered by the application for general permit authorization. Furthermore, default approval under this section shall not prevent the Department from taking enforcement action pursuant to N.J.A.C. 7:13-19 for any activity undertaken in violation of this chapter.

(g) An authorization to perform a regulated activity under a general permit is subject to the conditions listed at N.J.A.C. 7:13-8.2.

(h) Multiple or repeated activities proposed to be undertaken on a site that would individually qualify for authorization under a general permit shall require an individual permit if the cumulative impacts exceed any limit contained in the applicable general permit.

(i) Except as provided in (j) below, a general permit authorization is valid for five years from its issuance date and shall not be extended. However, a new general permit authorization to replace an expired one may be requested by submitting an application under this section. A general permit can also be transferred with the sale of a property to a new owner pursuant to N.J.A.C. 7:13-14.1.

(j) If the rule in this subchapter establishing a particular general permit is repealed, then any person with a valid authorization issued under such general permit shall immediately cease any authorized activities and apply for an individual permit in accordance with N.J.A.C. 7:13-9, 10 and 11. If the rule in this subchapter establishing a particular general permit is amended to put in place stricter standards or conditions, then any person with a valid authorization issued under the original general permit shall immediately cease any authorized activities under the authorization and either apply for authorization under the amended general permit in accordance with this subchapter or else apply for an individual permit in accordance with N.J.A.C. 7:13-9, 10 and 11.

(k) A verification of the flood hazard area design flood elevation, floodway limits, and/or riparian zone limits, pursuant to N.J.A.C. 7:13-6, is not required prior to obtaining a general permit authorization under this chapter, except for certain cases as noted under general permits 5, 6, and 7 at N.J.A.C. 7:13-8.7, 8.8, and 8.9, respectively.

Amended by R.2015 d.023, effective February 2, 2015.  
See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

In (c)4, deleted "of \$500.00" following the first occurrence of "fee", and updated the N.J.A.C. reference; and in (k), inserted a comma following the first occurrence of "limits", following "6", and following "8.8", and deleted the second sentence.

## 7:13-8.2 General permit conditions

(a) The standard conditions that apply to all general permit authorizations are described in (b) below. Site-specific conditions are described in (c) through (e) below. If a permittee undertakes any regulated activity approved under a general permit authorization, such action shall constitute the permittee's acceptance of the general permit authorization in its entirety and the permittee's agreement to abide by the general permit authorization and all applicable conditions.

(b) The following conditions apply to all general permit authorizations issued under this chapter:

1. Duty to comply: The permittee, its contractors and subcontractors shall comply with all conditions of the permit authorization, supporting documents and approved drawings. Any noncompliance with a permit authorization constitutes a violation of this chapter, and is grounds for enforcement action pursuant to N.J.A.C. 7:13-19, as well as suspension and/or termination of the permit authorization.

2. Duty to reapply: If the permittee wishes to continue an activity covered by the permit after the expiration date of the permit authorization, the permittee must apply for and obtain a new permit authorization.

3. Duty to halt or reduce activity: It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit authorization.

4. Duty to minimize environmental impacts: The permittee shall take all reasonable steps to prevent, minimize or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit authorization.

5. Proper operation and maintenance: The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the permit authorization. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. The operation of back up or auxiliary facilities or similar systems is only required when necessary to achieve compliance with the permit authorization. The permittee must also properly execute any approved mitigation compensation and/or restoration proposal designed to mitigate losses caused by the permitted activity. The permittee shall maintain the authorized work areas in good condition and in accordance with the permit authorization.

6. Proper oversight: The permittee shall ensure that all approved activities are undertaken using the best management practices available under the supervision and direc-

tion of an engineer at all points necessary to ensure compliance with all permit conditions.

7. Proper site maintenance: While the regulated activities are being undertaken, neither the permittee nor its agents shall cause or permit any unreasonable interference with the free flow of a regulated water by placing or dumping any materials, equipment, debris or structures within or adjacent to the channel. Upon completion or abandonment of the work, the permittee and/or its agents shall remove and dispose of in a lawful manner all excess materials, debris, equipment, silt fences and other temporary soil erosion and sediment control devices from all regulated areas.

8. Permit actions: A permit authorization can be revised, suspended or terminated for cause. The filing of a request by the permittee for a revision, or a notification of planned changes or anticipated noncompliance does not stay any condition of a permit authorization.

9. Property rights: A permit authorization does not convey any property rights or any exclusive privilege.

10. Duty to provide information: A copy of the general permit authorization and other authorizing documents including all approved plans and drawings shall be maintained at the authorized site at all times and made available to Department representatives or their designated agents immediately upon request. The permittee shall also furnish to the Department within a reasonable time any information that the Department requests to determine compliance with a permit authorization or to determine whether cause exists for suspension or termination of a permit authorization. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by the permit authorization.

11. Inspection and entry: The permittee shall allow an authorized representative of the Department, at reasonable times and upon the presentation of credentials, to:

- i. Enter upon the permittee's premises where a regulated activity is located or conducted, or where records must be kept under the conditions of the permit authorization;
- ii. Have access to and copy any records that must be kept under the conditions of the permit authorization; and
- iii. Inspect any facilities, equipment, practices or operations regulated or required under the permit authorization. Failure to allow reasonable access under this section shall be considered a violation of this chapter and subject the permittee to enforcement pursuant to N.J.A.C. 7:13-19.

12. Reporting requirements: The permittee shall provide reports to the Department as follows:

i. Planned changes: The permittee shall give notice to the Department prior to any planned physical alterations or additions to the permitted project or activity;

ii. Transfers: The permit authorization is not transferable to any person unless the transfer is approved by the Department, pursuant to N.J.A.C. 7:13-14.1;

iii. Noncompliance: The permittee shall immediately report to the Department by telephone at (877) 927-6337 any noncompliance that may endanger health or the environment. The permittee shall report all other noncompliance to the Division of Land Use Regulation by telephone at (609) 292-0060 within two business days of the time the permittee becomes aware of the noncompliance, and in writing within five business days of the time the permittee becomes aware of the noncompliance. The written notice shall include: a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter; and

iv. Other information: Where the permittee becomes aware that it failed to submit any relevant facts in an application, or submitted incorrect information in an application or in any report to the Department, it shall promptly submit such facts or information.

(c) In addition to the conditions that apply to all general permit authorizations under (b) above, the Department shall establish conditions in a general permit, as required on a case by case basis, to assure compliance with all applicable requirements of this chapter and its enabling statutes.

(d) The Department may include in a general permit authorization a condition requiring a pre-construction meeting on the site of permitted activities. Any such condition shall specify how many days prior to construction the permittee must notify the Department so that the pre-construction meeting can be scheduled.

(e) All conditions of a general permit authorization shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable rules or regulations or requirements shall be included in the general permit authorization.

#### **7:13-8.3 General permit 1 for channel cleaning under the Stream Cleaning Act**

(a) General permit 1 authorizes a county, municipality or a designated agency thereof to desnag a channel and/or remove accumulated sediment, debris and garbage which are obstructing flow in a channel. This section implements the



provisions of the "Stream Cleaning Act" in the Flood Hazard Area Control Act at N.J.S.A. 58:16A-67.

(b) The receipt of a freshwater wetlands general permit 26 authorization, issued pursuant to N.J.A.C. 7:7A-5.26, which authorizes stream cleaning, clearing or desnagging by local governments, shall constitute authorization to conduct activities qualifying for a general permit 1 authorization under this chapter without further application or approval under this chapter. However, the receipt of a general permit 1 authorization under this section shall not relieve an applicant from the need to obtain a freshwater wetlands general permit 26 authorization, since the freshwater wetlands general permit has notice requirements that must be satisfied pursuant to N.J.A.C. 7:7A-10.

(c) Except where the applicant has obtained a freshwater wetlands general permit 26 authorization as described in (b) above, applicants for a general permit 1 authorization must follow the application requirements and procedures at (f) through (j) below. There is no application fee for general permit 1 authorization.

(d) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), to qualify for general permit 1 authorization, a channel cleaning, clearing or desnagging project shall satisfy all of the following requirements:

1. The project's sole purpose is to remove obstructions to flow or desnag a channel;
2. The project is necessary and in the public interest;
3. The project consists solely of either:
  - i. The removal of accumulated silt, sediment, debris and/or garbage from a channel with a natural bed. This general permit does not authorize removal of material below the natural bed of the channel; or
  - ii. The removal of any accumulated material from a channel previously lined with concrete or similar artificial material;
4. The project does not disturb the channel bank or the riparian zone, unless such disturbance is unavoidable, necessary to gain access to the channel and minimized;
5. The project does not alter the natural banks of the channel. This general permit does not authorize the straightening or realignment of a channel. Straightening or realignment constitutes channel modification and requires an individual permit pursuant to N.J.A.C. 7:13-10.1(c);
6. The project is conducted from only one bank where possible;
7. The use of heavy equipment in the channel is avoided;

8. Vegetation and tree canopy on the more southerly or westerly bank is preserved in order to shade the channel; and

9. If the project involves sediment removal from a channel with a natural bed, the following requirements are satisfied:

- i. The channel reach is less than 500 feet in length;
- ii. The channel bed does not exceed 15 feet in average width;
- iii. The channel has a documented history of severe flooding that has resulted or can result in property damage, therefore necessitating the proposed cleaning, clearing or desnagging;
- iv. The channel is not classified as a Pinelands water or Category One water under the Department's Surface Water Quality Standards at N.J.A.C. 7:9B; and
- v. The channel is not a documented habitat for threatened or endangered species.

(e) All materials, including dredged material, removed from a channel during activities authorized under this general permit shall be disposed of outside of any regulated area and also any freshwater wetlands, transition areas and State open waters, as those terms are defined in the Department's Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-1.4, unless the applicant demonstrates that this would cause more environmental harm or flooding risk than disposing of the material in these areas. For example, if removal of dredged material requires construction of a long temporary roadway through a very wet area to enable trucks to transport the dredged material offsite, this might cause more environmental harm than using a large blower to spread the dredged material thinly over a large area.

(f) An application for authorization under this general permit shall be submitted to the Department by mail at the address listed in N.J.A.C. 7:13-1.1(f), and shall include the following (photocopies of maps and documents are acceptable):

1. Three sets of drawings, signed and sealed by a engineer or land surveyor, as appropriate, that clearly depict the segments of channel to be cleaned;
2. Three copies of an application report, as described at N.J.A.C. 7:13-15.3. The narrative required in the application report shall include the following:
  - i. A description of the proposed cleaning methods and disposal locations for all dredged material; and
  - ii. The classification, under the Department's Surface Water Quality Standards, N.J.A.C. 7:9B, of the affected portion of the channel; and



3. One completed certification (available from the Department's website at [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse)) that meets the following requirements:

- i. The certification is signed and sealed by the county or municipal engineer, or an engineer who is employed by the local Soil Conservation District; and
- ii. The certification lists each requirement in (d) above that applies to the project, and states how the requirement has been or will be satisfied.

(g) Within 15 calendar days following the receipt of an application submitted under (f) above for a project that does not involve sediment removal, the Department shall:

1. Notify the applicant that the application did not include the information required at (f) above, or that supplemental information is needed to determine if the activity complies with the general permit, and request the additional information. The Department may cancel the request for a general permit if the requested information is not provided within 60 calendar days. When the requested information is received, the Department shall, within 15 calendar days after receiving the information, take one of the actions in (g)2 or 3 below;

2. Notify the applicant in writing that the project does not qualify for authorization under this general permit, pursuant to (j) below; or

3. Approve the general permit authorization.

(h) Within 60 calendar days following the receipt of an application submitted under (f) above for a project that does involve sediment removal, the Department shall:

1. Notify the applicant that the application did not include information required at (f) above, or that supplemental information is needed to determine if the activity complies with the general permit, and request the additional information. The Department may cancel the request for a general permit if the requested information is not provided within 60 calendar days. When the requested information is received, the Department shall, within 60 calendar days after receiving the information, take one of the actions in (h)2 or 3 below;

2. Notify the applicant in writing that the project does not qualify for authorization under this general permit, pursuant to (j) below; or

3. Approve the general permit authorization.

(i) If the Department fails to take written action on an application in accordance with (g) or (h) above, the general permit application shall automatically be deemed to be approved. This default approval is subject to any applicable conditions set forth in this chapter for the activities covered by the application. Furthermore, default approval under this section shall not prevent the Department from taking

enforcement action pursuant to N.J.A.C. 7:13-19 for any activity undertaken in violation of this chapter.

(j) If the Department notifies the applicant under (g)2 or (h)2 above that a channel cleaning, clearing or desnagging project is not authorized under this general permit, the Department shall provide the applicant with the technical reasons for the decision. If the Department's technical reasons are based upon an inability to determine the location of the natural channel bed, the Department shall, at the request of the applicant, assist in identifying the natural channel bed.

(k) Within 15 calendar days after the completion of a project under this general permit that involves the removal of sediment, the permittee shall submit to the Department a written notice that the project has been completed. The notice shall contain one completed certification (available from the Department's website [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse)) that satisfies the following requirements:

1. The certification is signed and sealed by the county or municipal engineer, or an engineer who is employed by the local Soil Conservation District; and

2. The certification states each requirement in (d) above that applies to the project, and states how the requirement has been satisfied.

#### **7:13-8.4 General permits 2A through 2G for agricultural activities designed by the NRCS**

(a) This section sets forth general permits for seven agricultural activities in a regulated area. In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), to qualify for a general permit under this section, an activity shall satisfy the requirements applicable to the specific general permit and shall:

1. Occur on land that is actively farmed;

2. Be solely intended for agricultural purposes; and

3. Be approved by and performed under the supervision of the USDA Natural Resource Conservation Service and/or local soil conservation district, as appropriate.

(b) Applications for a general permit authorization under this section are subject to the application requirements and procedures at N.J.A.C. 7:13-8.1(c) through (e).

(c) Regulated activities satisfying (a) above shall qualify for authorization under one of the following general permits provided the conditions applicable to that general permit are satisfied:

1. General permit 2A: A soil erosion control, bank stabilization or bank restoration project, provided:

- i. The project is accomplished by re-sloping the eroded bank and planting vegetation where possible. Where these techniques alone will not stabilize erosion,

or where more than 2,000 square feet of trees would be cleared, cut or removed using such methods, soil bioengineering, shall be used;

ii. Disturbance to vegetation within the riparian zone is minimized;

iii. The cross-sectional area of the channel is not significantly altered;

iv. The activity will not obstruct flow in the channel or floodway; and

v. All cleared, cut or removed vegetation in the riparian zone is replanted with indigenous, non-invasive vegetation, except where the removed vegetation has been replaced by non-vegetative stabilizing material;

2. General permit 2B: The removal of accumulated silt, sediment, debris and/or garbage from a regulated water, provided:

i. Excavation does not extend below the natural bed or alter the natural banks. This general permit does not authorize the straightening or realignment of a channel. Straightening or realignment constitutes channel modification and requires an individual permit pursuant to N.J.A.C. 7:13-10.1(c);

ii. The project does not disturb the channel bank or the riparian zone, unless such disturbance is unavoidable, necessary to gain access to the channel and minimized;

iii. The project is conducted from only one bank where possible;

iv. All heavy machinery necessary for the conduct of the project is situated outside the channel. Heavy machinery may reach into the channel to dredge, but cannot be driven into or operated within the channel;

v. Vegetation and tree canopy on the more southerly or westerly bank is preserved in order to shade the channel;

vi. All proposed access points to the water are described in writing and with color photographs;

vii. All disturbed areas in the riparian zone are replanted with indigenous, non-invasive vegetation upon completion of the project;

viii. All removed sediment is disposed of in accordance with all applicable Federal, State and local laws. If the removed sediment is to remain in the flood hazard area, it is spread evenly at least 25 feet from any top of bank or edge of water and, if in a floodway, no more than three inches deep; and

ix. The placement of the removed sediment does not interfere with the positive overland drainage of the receiving area;

3. General permit 2C: The construction of a roadway across a regulated water, provided:

i. Construction in the channel is minimized and unset or raw cement is not allowed to come into contact with water in the channel during construction;

ii. If the crossing is accomplished with a culvert, the culvert is stabilized with headwalls that have footings which extend at least three feet below grade, and which will prevent the culvert from displacement during the flood hazard area design flood;

iii. If the crossing is accomplished with a bridge, the bridge is constructed with abutments that have footings which extend at least three feet below grade, and which will prevent the bridge from displacement during the flood hazard area design flood;

iv. The proposed roadway surface and all embankments are designed to remain stable during the flood hazard area design flood;

v. The perpendicular path of disturbance through the riparian zone is no more than 25 feet in width; and

vi. It is clear to the Department from a visual inspection of submitted drawings that the proposed roadway crossing will not increase flooding offsite;

4. General permit 2D: The filling of a manmade regulated water for the purpose of freshwater wetlands restoration, provided:

i. The regulated water originates onsite; and

ii. The filling of the regulated water will not adversely affect overland drainage on adjoining properties;

5. General permit 2E: The creation of a ford for livestock to cross a regulated water, provided:

i. Livestock currently cross the regulated water on a regular basis;

ii. The creation of a stable ford will reduce ongoing damage to the channel caused by the existing access to the channel by livestock;

iii. No trees are cleared, cut or removed in a riparian zone;

iv. The ford is situated at or below the existing channel bed so that the ford will not obstruct flow;

v. The perpendicular path of disturbance through the riparian zone is no more than 20 feet in width; and

vi. The ford is designed to remain stable during the flood hazard area design flood;

6. General permit 2F: The construction of a fence along and/or across a regulated water to limit or manage livestock access to a channel, or to prevent livestock or other animals from accessing certain agricultural areas, provided:

- i. No trees are cleared, cut or removed in a riparian zone;
- ii. The fence is placed parallel to the channel where possible;
- iii. If the fence crosses a channel and/or is located in a floodway, it has sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as a barbed-wire, split-rail or strand fence. A fence with little or no open area, such as a chain link, lattice or picket fence, is not permitted across a channel or in a floodway; and
- iv. The fence will not impede bank-full flow in the channel; and

7. General permit 2G: The construction of a pump and/or water intake structure in or along a regulated water, in order to provide water for livestock outside the channel (and thereby limit livestock access to the channel), provided:

- i. No trees are cleared, cut or removed in a riparian zone;
- ii. Fill within the flood hazard area is minimized; and
- iii. The pump or structure will not impede bank-full flow in the channel.

#### **7:13-8.5 General permit 3 for bridge or culvert scour protection by a public entity**

(a) This section sets forth a general permit that authorizes a public entity to place rip-rap and other stabilization material within or along one or more regulated waters to replace material that has eroded away, in order to prevent the scouring of an existing bridge or culvert along a public roadway. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a scour protection activity is eligible for authorization under general permit 3 only if:

- 1. It is approved by and performed under the supervision of a public entity;
- 2. It is necessary for the maintenance and/or protection of an existing bridge or culvert along a public roadway;
- 3. The stabilizing material placed in the channel is in the same location as the material that has eroded away since the bridge or culvert was originally constructed. This stabilizing material can be placed within any open void area that has been created by previous scour in the channel, and/or can replace any unconsolidated material in the

channel, such as silt or sediment, which has subsequently been deposited in any such void area;

4. The amount of stabilizing material placed in the channel is no greater than necessary to replace the material that has eroded away (and which may have subsequently been replaced by unconsolidated material) since the bridge or culvert was originally constructed;

5. The stabilizing material consists of, or is covered by, indigenous substrate where possible;

6. The stabilizing material does not obstruct flow in the channel or floodway;

7. The project does not disturb the channel bank or the riparian zone, unless such disturbance is unavoidable, necessary to gain access to the channel and minimized. If access to the channel results in topographic changes to the bank, such as ruts from trucks or other machinery, the grade of the bank shall be restored to its pre-construction topography where possible;

8. All cleared, cut or removed vegetation in the riparian zone is replanted with indigenous, non-invasive vegetation, except where the removed vegetation has been replaced by the stabilizing material;

9. Every effort is made to perform the activity from only one bank; and

10. Vegetation and canopy on the more southerly or westerly bank is preserved for shading of the water where possible.

#### **7:13-8.6 General permit 4 for stormwater maintenance by a public entity**

(a) This section sets forth a general permit that authorizes the maintenance, repair and replacement of lawfully existing stormwater management structures and conveyance features by a public entity, in cases where such activities are regulated under this chapter. This general permit does not authorize any new stormwater discharges or the expansion of an existing stormwater management or collection system. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a maintenance and repair activity is eligible for authorization under general permit 4 only if:

- 1. It is approved by and performed under the supervision of a public entity;
- 2. It occurs within and is necessary for the maintenance of a lawfully existing, manmade conveyance structure or drainage feature, such as a pipe, culvert, ditch, channel or basin, not including natural channels that were previously modified;

3. It involves one or more of the following:

- i. The removal of accumulated sediment, debris or nuisance vegetation;
- ii. The stabilization of an eroded structure; and/or
- iii. The reconstruction, repair and/or in-kind replacement of any:

- (1) Culvert along a manmade channel;
- (2) Stormwater pipe, manhole, inlet, catch basin;
- (3) Headwall, discharge structure or associated conduit outlet protection; and/or
- (4) Tidegate, levee or pump station along a water that is separated from tidal influence by these structures;

4. Disturbance to vegetation in the riparian zone is minimized; and

5. All temporarily cleared, cut or removed vegetation in the riparian zone is replanted with indigenous, non-invasive vegetation.

**7:13-8.7 General permit 5 for the relocation of a building to reduce flood damage**

(a) This section sets forth a general permit that authorizes the relocation of a lawfully existing building to another location on the same site in order to reduce flood damage potential. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), the relocation of a lawfully existing building is eligible for authorization under general permit 5 only if:

- 1. Where possible, the building is moved further from the regulated water and to higher ground on the same site;
- 2. The building is not enlarged (except for an addition that meets a permit-by-rule at N.J.A.C. 7:13-7.2);
- 3. The building is not located in a floodway (either before or after relocation);
- 4. The lowest floor of the building is raised to at least one foot above the flood hazard area design flood elevation;
- 5. The area below the lowest floor of the building is not used for habitation and remains open to floodwaters, in accordance with N.J.A.C. 7:13-11.5(n), (o), and (p);
- 6. The proposed location of the building is situated outside the riparian zone if a suitable location exists on the same site. Otherwise, the removal of trees within the riparian zone shall be minimized to accommodate the new building location; and

7. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the existing and/or proposed building if such disturbance is necessary to facilitate its relocation. In such a case, all temporarily disturbed areas shall be replanted with indigenous, non-invasive vegetation upon completion of the project, including the area where the relocated building originally existed.

(c) The flood hazard area design flood elevation and floodway limits must be known in order to determine compliance with this general permit authorization. If the flood hazard area design flood elevation and/or floodway limits can be determined using Methods 1, 2 or 3 (at N.J.A.C. 7:13-3.3, 3.4(d) and 3.4(e), respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 does not need to be obtained prior to obtaining authorization under this general permit authorization. However, if the flood hazard area design flood elevation and/or floodway limits are determined using Methods 4, 5 or 6 (at N.J.A.C. 7:13-3.4(f), 3.5 and 3.6, respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 must be obtained from the Department prior to, or concurrent with, obtaining authorization under this general permit.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (b)4 and (b)5, deleted "finished" preceding "floor"; and in (b)5, substituted "7:13-11.5(n), (o), and (p)" for "7:13-11.5(l)." Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

**7:13-8.8 General permit 6 for the reconstruction of a damaged or destroyed residence**

(a) This section sets forth a general permit that authorizes the reconstruction of a lawfully existing private residence that has been damaged or destroyed by fire, flood or other natural disaster. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), the reconstruction of a lawfully existing private residence is eligible for authorization under general permit 6 only if:

- 1. The residence has been damaged or destroyed by fire, flood or other natural disaster within five years prior to application to the Department under this general permit authorization;
- 2. The new residence is constructed within the footprint of the residence that was damaged or destroyed or is moved further from the regulated water to higher ground onsite;
- 3. The residence is not enlarged (except for an addition that meets a permit-by-rule at N.J.A.C. 7:13-7.2);

4. The residence is not located in a floodway (either before or after reconstruction);

5. The lowest floor of the new residence is constructed at least one foot above the flood hazard area design flood elevation;

6. The area below the lowest floor of the residence is not used for habitation and remains open to floodwaters, in accordance with N.J.A.C. 7:13-11.5(n), (o), and (p);

7. If the residence is to be moved, it is situated outside the riparian zone if a suitable location exists on the same site. Otherwise the removal of trees within the riparian zone shall be minimized to accommodate the new building location; and

8. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the existing and/or proposed residence if such disturbance is necessary to facilitate its reconstruction. In such a case all temporarily disturbed areas shall be replanted with indigenous, non-invasive vegetation upon completion of the project including, if the residence is relocated, the area where the residence originally existed.

(c) The flood hazard area design flood elevation and floodway limits must be known in order to determine compliance with this general permit authorization. If the flood hazard area design flood elevation and/or floodway limits can be determined using Methods 1, 2 or 3 (at N.J.A.C. 7:13-3.3, 3.4(d) and 3.4(e), respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 does not need to be obtained prior to obtaining authorization under this general permit. However, if the flood hazard area design flood elevation and/or floodway limits are determined using Methods 4, 5 or 6 (at N.J.A.C. 7:13-3.4(f), 3.5 and 3.6, respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 must be obtained from the Department prior to, or concurrent with, obtaining authorization under this general permit.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (b)1, substituted "five years" for "one year"; in (b)5 and (b)6, deleted "finished" preceding "floor"; and in (b)6, substituted "7:13-11.5(n), (o), and (p)" for "7:13-11.5(l)".

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

#### **7:13-8.9 General permit 7 for residential construction in a tidal flood hazard area**

(a) This section sets forth a general permit to construct the following residential buildings in a tidal flood hazard area:

1. One new private residence, which is not being constructed as part of a larger residential subdivision;
2. An addition to a private residence; and/or

3. A building appurtenant to a private residence, such as a garage, barn or shed.

(b) The application requirements and review procedures for this general permit are set forth at N.J.A.C. 7:13-8.1(c) through (e). The construction of certain types of residential additions and appurtenant structures may occur pursuant to a permit-by-rule in accordance with N.J.A.C. 7:13-7.2(a) and (b). Activities covered by a permit-by-rule do not require a general permit authorization under this section.

(c) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a private residence, addition or appurtenant structure is eligible for authorization under general permit 7 only if:

1. It is located in a tidal flood hazard area;
2. It does not require a CAFRA or waterfront development permit under N.J.A.C. 7:7 and 7:7E;
3. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, including any justification that may be required for the activity and any limitations on the area of vegetation that can be cleared, cut or removed in the riparian zone; and
4. It meets the applicable requirements for a building at N.J.A.C. 7:13-11.5.

(d) The flood hazard area design flood elevation and floodway limits must be known in order to determine compliance with this general permit. If the flood hazard area design flood elevation and/or floodway limits can be determined using Methods 1, 2 or 3 (at N.J.A.C. 7:13-3.3, 3.4(d) and 3.4(e), respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 does not need to be obtained prior to obtaining authorization under this general permit. However, if the flood hazard area design flood elevation and/or floodway limits are determined using Methods 4, 5 or 6 (at N.J.A.C. 7:13-3.4(f), 3.5 and 3.6, respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 must be obtained from the Department prior to, or concurrent with, obtaining authorization under this general permit.

#### **7:13-8.10 General permit 8 for a utility line across or along a water with a drainage area of less than 50 acres**

(a) This section sets forth a general permit to construct a utility line across or along a regulated water that has a drainage area of less than 50 acres. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a utility crossing is eligible for authorization under general permit 8 only if:

1. It is located across or along a regulated water that has a drainage area of less than 50 acres;



2. It is not located in the flood hazard area or riparian zone of another regulated water that has a drainage area of 50 acres or greater;

3. It is authorized under a valid freshwater wetlands general permit 2 or 21, pursuant to N.J.A.C. 7:7A-5.2 or 5.21, respectively;

4. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, including any justification that may be required for the activity and any limitations on the area of vegetation that can be cleared, cut or removed in the riparian zone; and

5. It meets the requirements at N.J.A.C. 7:13-11.9 for the construction of a utility line.

**7:13-8.11 General permit 9 for a roadway or footbridge across a water with a drainage area of less than 50 acres**

(a) This section sets forth a general permit to construct a roadway or footbridge across a regulated water that has a drainage area of less than 50 acres. The application requirements and review procedures for this general permit are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a roadway or footbridge is eligible for authorization under general permit 9 only if:

1. It crosses a regulated water that has a drainage area of less than 50 acres;

2. It is not located in the flood hazard area or riparian zone of another regulated water that has a drainage area of 50 acres or greater;

3. It is authorized under a valid freshwater wetlands general permit 10A or 10B, pursuant to N.J.A.C. 7:7A-5.10A or 5.10B, respectively;

4. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, including any justification that may be required for the activity and any limitations on the area of vegetation that can be cleared, cut or removed in the riparian zone; and

5. It meets the requirements at N.J.A.C. 7:13-11.7(e) through (i) for the protection of aquatic habitat and the maintenance of low-flow aquatic passage.

**7:13-8.12 General permit 10 for a stormwater outfall along a water with a drainage area of less than 50 acres**

(a) This section sets forth a general permit to construct a stormwater outfall structure along a regulated water that has a drainage area of less than 50 acres. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a stormwater outfall structure is eligible for authorization under general permit 10 only if:

1. It is located along a regulated water that has a drainage area of less than 50 acres;

2. It is not located in the flood hazard area or riparian zone of another regulated water that has a drainage area of 50 acres or greater;

3. It is authorized under a valid freshwater wetlands general permit 11, pursuant to N.J.A.C. 7:7A-5.11;

4. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, including any justification that may be required for the activity and any limitations on the area of vegetation that can be cleared, cut or removed in the riparian zone; and

5. It meets the requirements at N.J.A.C. 7:13-11.10 for the construction of a stormwater outfall structure.

## SUBCHAPTER 9. INDIVIDUAL PERMITS

### 7:13-9.1 General provisions for individual permits

(a) This subchapter sets forth application and review procedures for an individual permit. Design and construction standards for activities that require an individual permit are set forth in this chapter as follows:

1. Standards associated with the location of a project in a particular regulated area, such as a channel or floodway, or the location of the project in relation to certain natural resources, are set forth at N.J.A.C. 7:13-10; and

2. Standards associated with a particular regulated activity, such as the construction of a building or roadway, are set forth at N.J.A.C. 7:13-11.

(b) A regulated activity that requires an individual permit is typically subject to multiple requirements that are set forth throughout N.J.A.C. 7:13-10 and 11 as described in (a) above. The applicant shall evaluate each regulated activity according to its location, nature and potential impacts in order to determine which design and construction standards will apply to the applicant's particular project.

### 7:13-9.2 Application requirements for an individual permit

(a) An application for an individual permit shall include information on all planned activities that are reasonably related to the proposed project. In general, the level of detail and documentation required for an application shall correspond to the size and likely impact of the proposed project, its proximity to a channel and/or riparian zone, and its potential to adversely affect flooding and the environment. The Department shall, upon request, provide an applicant with



guidance regarding the appropriate level of detail for a particular application.

(b) An application for an individual permit shall include the following:

1. One copy of the appropriate checklist for the proposed activities, completed as directed by its instructions. Checklists summarize the requirements of this chapter and ask various questions about the project in order to guide the applicant through the permitting process and ensure that the correct material is submitted with each application. For example, checklists ask how the applicant determined the flood hazard area and floodway limits onsite, whether construction is proposed in a floodway or flood fringe, and how much impervious surface is proposed, all in order to alert the applicant as to whether hydrologic, hydraulic, flood storage and/or stormwater management calculations are required as part of the permit application. Checklists also ask the applicant to identify all regulated activities proposed onsite to ensure that public notice is provided where necessary and to help the applicant determine the correct application review fee. Checklists do not set forth application requirements in addition to those listed in this chapter. Checklists are provided at [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse) or can be obtained from the Department at the address listed in N.J.A.C. 7:13-1.1(f);

2. Three copies of an application report, as described at N.J.A.C. 7:13-15.3. The photographs required in the application report shall show any sections of channel or riparian zone that will be disturbed by the project;

3. One copy of an engineering report, as described at N.J.A.C. 7:13-15.4, if the Department must review detailed engineering calculations in order to determine whether the proposed activity complies with this chapter;

4. Three copies of an environmental report, as described at N.J.A.C. 7:13-15.5, except that no environmental report is required if a project consists solely of the following activities:

- i. The construction of one private residence, which is not being constructed as part of a larger residential subdivision; and/or
- ii. The construction of a building appurtenant to a private residence, such as a garage, barn or shed;

5. Documentation that the applicable public notice requirements of N.J.A.C. 7:13-16 have been met;

6. The application fee required under N.J.A.C. 7:13-17; and

7. Six sets of drawings, signed and sealed by a engineer, land surveyor or architect, as appropriate, which contain the following information:

- i. All proposed regulated activities (including the size, location and all construction details for each regulated activity);

ii. The limit of any riparian zone onsite;

iii. Existing and proposed topography if fill or grading is proposed, unless the Department determines that topography is not necessary to determine compliance with this chapter. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary;

iv. The limit of the flood hazard area and floodway onsite if present. If proposed fill, construction and/or grading will affect these limits, then both existing and proposed flood hazard area and floodway limits shall be included on all drawings;

v. Details of proposed soil erosion and sediment control measures;

vi. If construction is proposed in a regulated water, the drawings shall also include the following:

- (1) A thorough explanation of the proposed method of construction;
- (2) A timetable for the construction; and
- (3) All proposed trenching, diversionary channels and temporary piping of the regulated water; and

vii. If construction is proposed in a riparian zone, the drawings shall also include the following:

- (1) All locations where vegetation will be cleared, cut or removed; and
- (2) Details of any replanting pursuant to N.J.A.C. 7:13-10.2.

(c) An application that proposes activities in a regulated area known or suspected to contain acid producing soils shall include the following:

- 1. A comprehensive evaluation of the potential environmental risks caused by exposure of the acid producing soils; and
- 2. A plan to minimize any such risks.

(d) An application that proposes the use of fill credits to balance fill on a site in the Central Passaic Basin, as described at N.J.A.C. 7:13-10.4(s) and (t), shall include documentation that the fill credits have been purchased by the applicant prior to the submittal of the application.

(e) An application that proposes a flood-proofed building shall include the following material, signed and sealed by an architect or engineer:

- 1. Drawings that clearly show the proposed flood-proofing measures;
- 2. Calculations that demonstrate that the structure meets the requirements for flood resistance at N.J.A.C. 7:13-11.4(b); and

3. A flood-proofing certification, which confirms that the requirements of N.J.A.C. 7:13-11.5(q), (r), and/or (s) are met, as applicable, and which is accompanied by all supporting documentation, calculations, and other information upon which the certification is based.

(f) An application proposing an activity that adversely impacts a property not owned by the applicant, as described at N.J.A.C. 7:13-11.1(f), shall include documentation demonstrating that one or more of the following applies to each adversely impacted property:

1. The applicant is a public entity that intends to appropriate the adversely impacted property through its power of eminent domain;
2. The applicant has entered into a contract to purchase the adversely impacted property;
3. The applicant has obtained an easement that encompasses the entire area that will be adversely impacted by the proposed activity, which specifically allows the applicant to undertake the proposed activity; and/or
4. The applicant has obtained written permission from the owners of the adversely impacted property. Written permission shall include the following:
  - i. An explanation of the nature and purpose of the project;
  - ii. An estimate of the length of time regulated activities will occur;
  - iii. An estimate of the extent to which the adversely impacted property will be affected by flooding or stormwater discharges and the frequency at which these impacts are expected to occur; and
  - iv. The notarized signature of all owners of the adversely impacted property.

(g) The Department shall accept for review an application for an individual permit for an activity subject to the Department's Water Quality Management Planning rules at N.J.A.C. 7:15 only if the activity is consistent with N.J.A.C. 7:15 and the applicable Water Quality Management Plan adopted under the Water Quality Management Planning Act, N.J.S.A. 58:11A-1 et seq.

(h) The Department shall accept for review an application for an individual permit for an activity located in an area under the jurisdiction of the Pinelands Commission, as defined at N.J.S.A. 13:18A-11, only if the applicant has first received a Certificate of Filing, a Notice of Filing, a Certificate of Compliance or a Resolution of Approval from the Pinelands Commission for the proposed activity, as appropriate. For more information, contact the Pinelands Commission at (609) 894-7300 or through its website at [www.state.nj.us/pinelands](http://www.state.nj.us/pinelands).

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).  
See: 45 N.J.R. 360(a).

In the introductory paragraph of (e), deleted "to construct" preceding and "dry" following "a"; in (e)1, deleted "dry" following "proposed"; and rewrote (e)3.

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

### 7:13-9.3 Application review procedures for a verification or individual permit

(a) This section sets forth the Department's application review process for verifications and individual permits with the following exceptions:

1. Pursuant to the Construction Permits Law at N.J.S.A. 13:1D-29 et seq., the default approval provisions at (e) through (h) below do not apply to an application for an individual permit for an electric generating facility or for a petroleum processing or storage facility, including a liquefied natural gas facility, with a storage capacity of over 50,000 barrels; and

2. Pursuant to the Highlands Water Protection and Planning Act at N.J.S.A. 13:20-1 et seq., this section does not apply to a regulated activity associated with a Major Highlands Development, the application requirements and review procedures for which are found in the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38.

(b) Within 20 working days following the receipt of an application for a verification or individual permit, the Department shall:

1. Determine that all necessary information required by this chapter for a complete application has been provided, and declare the application complete for review;

2. Determine that all necessary information required by this chapter for a complete application has not been provided, or that one or more submitted items are deficient, and request in writing that the applicant submit the missing material and/or address any deficiencies within a reasonable time period. The Department may cancel the application if the requested information is not provided within 60 calendar days. The Department shall subsequently declare the application complete for review within 20 working days of receiving the requested information; or

3. If the Department does not take action under (b)1 or 2 above within 20 working days, the application shall be deemed complete for review. In such a case, the Department may request additional information, which is necessary to bring the application into compliance with the requirements of this chapter during the review of the application.

(c) Upon written request of the applicant, the Department shall cancel an application and fully refund the submitted application fee provided:

1. The request to cancel the application is received within 20 working days of the submittal of the application

and the Department has not already approved or denied the application; or

2. The request to cancel the application is received within 60 calendar days of the submittal of an application that remains incomplete under (b)2 above.

(d) If the Department determines during the review of a complete application under (b) above that the application

does not meet the requirements of this chapter, the Department can request additional information and/or changes to the project in order to bring the project into compliance, provided such changes are possible within the remaining application review period described in (e) below.

(e) Within 90 calendar days following the receipt of a complete application under (b) above, the Department shall:

1. Determine that the application meets the requirements of this chapter and approve the application in writing;

2. Determine that the application does not meet the requirements of this chapter and extend the review period by 30 calendar days in writing, if agreed to by the applicant as described in (f) below; or

3. Determine that the application does not meet the requirements of this chapter and deny the application in writing.

(f) The 90-day review period in (e) above can be extended one time by 30 calendar days by mutual consent of the applicant and the Department. An applicant requesting an extension shall make this request in writing during the 90-day review period (prior to the approval or denial of the project) and shall direct the request to the project manager (or his or her supervisor) assigned to review the application. The Department shall not extend the 90-day review period by less than or greater than 30 calendar days. An applicant cannot waive the right for a timely review (as provided under this section and the Ninety-Day Construction Permits Law, N.J.S.A. 13:1D-29 et seq.) and thereby avoid or indefinitely extend the Department's 90-day review period for the application.

(g) If a 30-day extension has been granted under (f) above, the Department shall, within this 30-day period:

1. Determine that the application meets the requirements of this chapter and approve the application in writing; or

2. Determine that the application does not meet the requirements of this chapter and deny the application in writing.

(h) If the Department fails to take action on an application in accordance with (e) or (g) above, the application shall automatically be deemed to be approved. This default approval is subject to any applicable conditions set forth in this chapter for the activities covered by the application. Furthermore, default approval under this section shall not prevent the Department from taking enforcement action pursuant to N.J.A.C. 7:13-19 for any activity undertaken in violation of this chapter.

(i) An applicant can request withdrawal of an application in writing at any time during the Department's review of the application. In response to a request to withdraw an application, the Department shall:

1. Agree to the withdrawal in writing; or

2. Not agree to the withdrawal and either approve or deny the application in accordance with (e) or (g) above.

(j) If an application is denied or withdrawn under (e), (g) or (i) above, any application fee that was paid to the Department shall be credited toward the application fee for one new

application, provided the following requirements are satisfied:

1. The denied or withdrawn application did not include a request for a hardship exception pursuant to N.J.A.C. 7:13-9.8;

2. The new application is submitted within one year of denial or withdrawal;

3. The new application is submitted by the same applicant;

4. The new application is submitted for the same site; and

5. The new application is submitted for the same project, except for changes necessary to meet the requirements for approval or other minor adjustments that do not require a complete re-review of the project.

(k) The Department shall list in the DEP Bulletin, published in accordance with N.J.S.A. 13:1D-34, all complete applications received, the review status of these applications, and all decisions made on these applications. The DEP Bulletin can be viewed or downloaded from the Department's web site at [www.state.nj.us/dep](http://www.state.nj.us/dep).

(l) The Department may issue or deny an application for a verification or an individual permit without a public hearing. However, the Department shall hold a public hearing in either of the following cases:

1. There is a significant degree of public interest in the application, as manifested by written requests for a hearing from at least 10 persons at different addresses. In considering the degree of public interest, the Department shall take into account whether the issues raised in the hearing requests are relevant to the application's review; or

2. The Department determines that the public interest would be best served by holding a hearing due to an unusual situation or condition on site, or due to a high potential for adverse impacts to flooding and/or the environment.

#### 7:13-9.4 Duration of an individual permit

(a) Except as provided in (b) below, an individual permit is valid for five years from its issuance date and shall not be extended. However, the Department can transfer an individual permit with the sale of a property to a new owner pursuant to N.J.A.C. 7:13-14.1.

(b) An individual permit for a public roadway, railroad or flood control project is valid for 10 years from its issuance date, provided the applicant is a public entity and the applicant demonstrates that the size and scope of the project is likely to prevent the completion of all regulated activities within a five-year period.

(c) All regulated activities shall cease upon expiration of an individual permit. Regulated activities cannot resume unless the applicant applies for and obtains a new individual permit from the Department. In such cases, the Department shall issue a new individual permit only as follows:

1. If no regulated activities have occurred onsite prior to the expiration of the original individual permit, a new individual permit shall be issued only if the project is revised where necessary to comply with the requirements of this chapter in effect when the new application is submitted; and

2. If some regulated activities have occurred onsite prior to the expiration of the original individual permit, a new individual permit shall be issued only if the project is revised where feasible to comply with the requirements of this chapter in effect when the new application is submitted. In determining the feasibility of compliance with the current requirements of this chapter, the Department shall consider the amount of construction that was completed onsite prior to the permit expiration, as well as whether continuing construction as originally approved would constitute an adverse impact on flooding or the environment.

#### 7:13-9.5 Individual permit conditions

(a) The Department places certain conditions on an individual permit to ensure that the approved project complies with this chapter. Standard conditions that apply to all individual permits are described in (b) below and the application of additional site-specific conditions are described in (c) through (e) below. If a permittee does not agree with a condition on an individual permit, the permittee is entitled to appeal the individual permit as described at N.J.A.C. 7:13-18.1. However, if a permittee undertakes any regulated activity approved under an individual permit, such action shall constitute the permittee's acceptance of the individual permit in its entirety and the permittee's agreement to abide by the individual permit and all conditions listed therein.

(b) The following conditions apply to all individual permits issued under this chapter:

1. **Duty to comply:** The permittee, its contractors and subcontractors shall comply with all conditions of the permit, supporting documents and approved drawings. Any noncompliance with a permit constitutes a violation of this chapter, and is grounds for enforcement action pursuant to N.J.A.C. 7:13-19, as well as suspension and/or termination of the permit.

2. **Duty to reapply:** If the permittee wishes to continue an activity covered by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

3. **Duty to halt or reduce activity:** It shall not be a defense for a permittee in an enforcement action that it

would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

4. **Duty to minimize environmental impacts:** The permittee shall take all reasonable steps to prevent, minimize or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit.

5. **Proper operation and maintenance:** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. The operation of back up or auxiliary facilities or similar systems is only required when necessary to achieve compliance with the permit. The permittee must also properly execute any approved mitigation compensation and/or restoration proposal designed to mitigate losses caused by the permitted activity. The permittee shall maintain the authorized work areas in good condition and in accordance with the permit.

6. **Proper oversight:** The permittee shall ensure that all approved activities are undertaken using the best management practices available under the supervision and direction of an engineer at all points necessary to ensure compliance with all permit conditions.

7. **Proper site maintenance:** While the regulated activities are being undertaken, neither the permittee nor its agents shall cause or permit any unreasonable interference with the free flow of a regulated water by placing or dumping any materials, equipment, debris or structures within or adjacent to the channel. Upon completion or abandonment of the work, the permittee and/or its agents shall remove and dispose of in a lawful manner all excess materials, debris, equipment, silt fences and other temporary soil erosion and sediment control devices from all regulated areas.

8. **Permit actions:** A permit can be revised, suspended or terminated for cause. The filing of a request by the permittee for a revision, or a notification of planned changes or anticipated noncompliance does not stay any condition of a permit.

9. **Property rights:** A permit does not convey any property rights of any sort, or any exclusive privilege.

10. **Duty to provide information:** A copy of the general permit and other authorizing documents including all approved plans and drawings shall be maintained at the authorized site at all times and made available to Department representatives or their designated agents immediately upon request. The permittee shall also furnish to the Department within a reasonable time any information that

the Department requests to determine compliance with a permit or to determine whether cause exists for suspension or termination of a permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by the permit.

11. Inspection and entry: The permittee shall allow an authorized representative of the Department, at reasonable times and upon the presentation of credentials, to:

- i. Enter upon the permittee's premises where a regulated activity is located or conducted, or where records must be kept under the conditions of the permit;
- ii. Have access to and copy any records that must be kept under the conditions of the permit; and
- iii. Inspect any facilities, equipment, practices or operations regulated or required under the permit. Failure to allow reasonable access under this section shall be considered a violation of this chapter and subject the permittee to enforcement action pursuant to N.J.A.C. 7:13-19.

12. Reporting requirements: The permittee shall provide reports to the Department as follows:

- i. Planned changes: The permittee shall give notice to the Department prior to any planned physical alterations or additions to the permitted project or activity;
- ii. Transfers: The permit is not transferable to any person unless the transfer is approved by the Department, pursuant to N.J.A.C. 7:13-14.1;
- iii. Noncompliance: The permittee shall immediately report to the Department by telephone at (877) 927-6337 any noncompliance that may endanger health or the environment. The permittee shall report all other noncompliance to the Division of Land Use Regulation by telephone at (609) 292-0060 within two business days of the time the permittee becomes aware of the noncompliance, and in writing within five business days of the time the permittee becomes aware of the noncompliance. The written notice shall include: a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter; and
- iv. Other information: Where the permittee becomes aware that it failed to submit any relevant facts in an application, or submitted incorrect information in an application or in any report to the Department, it shall promptly submit such facts or information.

(c) In addition to the conditions that apply to all individual permits under (b) above, the Department shall establish con-

ditions in an individual permit, as required on a case by case basis, to assure compliance with all applicable requirements of this chapter and its enabling statutes.

(d) The Department may in some cases include in an individual permit a condition requiring a pre-construction meeting on the site of permitted activities. Such a condition shall specify how many days prior to construction the permittee must notify the Department so that the pre-construction meeting can be scheduled.

(e) All conditions of an individual permit shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable rules or regulations or requirements shall be included in the individual permit.

#### **7:13-9.6 Cases where a verification is required prior to obtaining an individual permit**

(a) Except as provided at (b) and (c) below, the Department shall issue an individual permit for a regulated activity only if the flood hazard area design flood elevation and floodway limit are known and verified pursuant to N.J.A.C. 7:13-6.1. An applicant for an individual permit shall therefore demonstrate that:

1. The applicant possesses a valid verification of the flood hazard area design flood elevation, and also the floodway limit if present, for the project area;
2. The applicant has applied for a verification of the flood hazard area design flood elevation, and also the floodway limit if present, for the project area, and the Department approves the verification either prior to or concurrent with the issuance of the individual permit;
3. The project meets the conditions of either (b)1 or 2 below, in which case no verification is required in order to obtain an individual permit; or
4. The project meets the conditions of (c) below, in which case a verification of only the flood hazard area design flood elevation is required either prior to or concurrent with the issuance of an individual permit.

(b) A verification is not required prior to the issuance of an individual permit in either of the following cases:

1. No fill and no aboveground structure is proposed onsite; or
2. Fill and/or an aboveground structure is proposed and it is clear to the Department from a visual inspection of submitted drawings that:
  - i. No habitable building, railroad, roadway or parking area is proposed, which requires knowledge of the flood hazard area design flood elevation to determine compliance with this chapter;



ii. The proposed fill and/or structure is either located outside a floodway or will not obstruct flow in a floodway; and

iii. The flood storage displacement requirements of N.J.A.C. 7:13-10.4 are satisfied.

(c) Verification of the floodway limit is not required prior to the issuance of an individual permit for the construction a habitable building, railroad, roadway or parking area provided it is clear to the Department from a visual inspection of submitted drawings that:

1. The proposed fill and/or structure is either located outside a floodway or will not obstruct flow in a floodway; and

2. The flood storage displacement requirements of N.J.A.C. 7:13-10.4 are satisfied.

#### **7:13-9.7 Cases where an individual permit can be issued in an approximated flood hazard area**

(a) The Department shall issue an individual permit for a regulated activity in a flood hazard area approximated under Method 5 at N.J.A.C. 7:13-3.5, only if the flood hazard area is verified under N.J.A.C. 7:13-6, and only in either of the following cases:

1. No fill or aboveground structure is proposed in the flood hazard area; or

2. Fill and/or an aboveground structure is proposed in the flood hazard area, and it is clear to the Department from a visual inspection of submitted drawings that the following requirements are satisfied:

i. If a habitable building is proposed, it is located outside a floodway;

ii. If fill or any structure other than a habitable building is proposed, it is either located outside a floodway or will not obstruct flow in a floodway; and

iii. The flood storage displacement requirements of N.J.A.C. 7:13-10.4 are satisfied.

#### **7:13-9.8 Hardship exception for an individual permit**

(a) The Department shall issue an individual permit for an activity that does not comply with one or more of the requirements at N.J.A.C. 7:13-10 and 11 only if all of the requirements of (b) below are satisfied and, additionally, one or more of the following requirements are satisfied:

1. The Department determines that there is no feasible and prudent alternative to the proposed project, including not pursuing the project, which would avoid or substantially reduce the anticipated adverse effects of the project, and that granting the hardship exception would not compromise the reasonable requirements of public health, safety and welfare, or the environment;

2. The Department determines that the cost of compliance with the requirements of this chapter is unreasonably high in relation to the environmental benefits that would be achieved by compliance; and/or

3. The Department and applicant agree to one or more alternative requirements that, in the judgment of the Department, provide equal or better protection to public health, safety and welfare and the environment.

(b) To obtain an individual permit based on a hardship exception, the applicant shall demonstrate to the Department that the following requirements are satisfied:

1. Due to an extraordinary situation of the applicant or site condition, compliance with this chapter would result in an exceptional and/or undue hardship for the applicant;

2. The proposed activities will not adversely affect the use of contiguous or nearby property;

3. The proposed activities will not pose a threat to the environment, or to public health, safety and welfare; and

4. The hardship was not created by any action or inaction of the applicant or its agents.

(c) To obtain an individual permit based on a hardship exception, the applicant shall submit an application pursuant to N.J.A.C. 7:13-9.2 and shall include the following additional information as applicable:

1. A description of any potential impacts of the proposed project upon the environment;

2. If the hardship exception request relates to the access requirements of N.J.A.C. 7:13-11.6, proposed access routes to and from the property during a flood;

3. If the hardship exception request relates to any potential impacts from or to flooding, the projected height, velocity and duration of the floodwaters expected at the site during the flood hazard area design flood, as well as evidence that the project will not adversely affect the hydraulic capacity of any water so as to cause or increase flooding upstream and/or downstream of the proposed project;

4. If the hardship exception request is based on economic grounds, detailed financial documentation to support the request;

5. A description of the existing development in the area and any potential impacts of the proposed regulated activities on that development; and

6. Any additional information that the Department determines is reasonable and necessary to evaluate whether the hardship exception request meets the requirements of this section.

(d) The Department shall review an application for an individual permit based on a hardship exception in accor-

dance with the procedures for an individual permit at N.J.A.C. 7:13-9.3. The denial of an individual permit based on a hardship exception shall be without prejudice. However, any future reapplication for an individual permit based on a hardship exception that has been denied or withdrawn shall be accompanied by a new application fee.

(e) A delegated agency shall not issue an individual permit based on a hardship exception.

#### Case Notes

When a municipality's flood plain zoning ordinance was more restrictive than required by the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and did not contain its own conditions for a variance, the former Department of Environmental Protection hardship waiver regulations were consistent with the recognition that unique physical conditions of the property and the unique impact on the owner were legitimate reasons, assuming that public and property safety were not impacted, for a planning board to grant a variance from a town's flood plain control ordinance to allow for a use otherwise permitted in the district. Variances for hardship reasons were appropriately granted under N.J.S.A. 40:55D-70(c)(1), and, therefore, a planning board had the power, in the foregoing circumstances, to grant a hardship variance under N.J.S.A. 40:55D-70(c)(1) from a municipality's flood plain ordinance to allow a use otherwise permitted in that district. *Terner v. Spyco, Inc.*, 226 N.J. Super. 532, 545 A.2d 192, 1988 N.J. Super. LEXIS 270 (App.Div. 1988).

### SUBCHAPTER 10. INDIVIDUAL PERMIT REQUIREMENTS WITHIN VARIOUS REGULATED AREAS

#### 7:13-10.1 Requirements for a regulated activity in a channel

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in a channel.

(b) The Department shall issue an individual permit for a regulated activity in a channel only if the following requirements are satisfied:

1. The basic purpose of the project cannot be accomplished without the disturbance to the channel;
2. Disturbance to the channel is eliminated where possible; where not possible to eliminate, disturbance is minimized through methods including relocating the project and/or reducing the size or scope of the project;
3. All roadway, railroad, pedestrian, utility and other crossings are constructed as nearly perpendicular to the channel as possible;
4. All disturbed sections of the channel are properly stabilized, with special attention given to changes in slope, channel width and hydraulic capacity;
5. If stabilization measures such as rip-rap or scour holes are proposed in the channel, the applicant demonstrates that such measures are necessary to stabilize the channel and/or to withstand scour along a bridge or culvert, and cannot be avoided through alternative designs, such as construction of deeper abutment footings or a larger bridge

opening. Any rip-rap shall be embedded in the channel bed in such a way as to provide low-flow aquatic passage and withstand velocities associated with bank-full flows;

6. No mining of the channel is proposed. This does not preclude the incidental use or sale of material removed as a result of lake dredging, channel cleaning or other regulated activities authorized by the Department and performed for purposes other than mining;

7. All temporarily disturbed sections of the channel are restored to pre-construction conditions. Characteristics that shall be replicated include channel shape, width and meandering, ratio of shallow areas to deep areas, anticipated flow rate and velocity and substrate type;

8. Aquatic habitat is preserved where possible; and

9. Aquatic habitat is enhanced where preservation is not possible, such as through the placement of habitat enhancement devices, replacement of vegetation removed during construction, creation of tree canopy along the channel where no canopy exists and/or enhancement of existing tree canopy along the channel.

(c) The Department shall issue an individual permit for a channel modification only if the applicant demonstrates that, in addition to meeting the requirements of (b) above, the channel modification meets at least one of the following requirements:

1. The channel modification is necessary to improve the ecological health of the regulated water and its riparian zone, or to control existing flooding or erosion which poses an immediate threat to life, property or a lawfully existing structure; or

2. The channel modification is necessary for the construction of a bridge or culvert, and the following requirements are satisfied:

- i. The disturbance to the channel is minimized;
- ii. A bridge is constructed rather than a culvert, where feasible;
- iii. The length of channel covered by a bridge or enclosed in a culvert is the minimum feasible; and
- iv. No more than 200 linear feet of channel (including the bridge or culvert) is disturbed.

(d) The Department shall allow the use of construction equipment to perform regulated activities in a channel (whether situated in a channel, reaching into a channel or driven across a channel) only if, in addition to meeting the requirements of (b) above, the following requirements are satisfied:

1. There is no feasible alternative that will result in less environmental damage;
2. The bed is firm, the approaches are stable and the proposed construction activities will not cause or exacerbate bank erosion;

3. Contact with flowing water is minimized where possible through the use of temporary bridges, culverts, coffer dams and/or sediment control devices, which are removed after completion of the project;

4. Fording the channel is avoided;

5. Where unavoidable, fording is made as nearly perpendicular to the channel as possible; and

6. Adequate precautions are taken to prevent sediment, petroleum products and other pollutants from entering the channel.

(e) A person shall not drive or operate a vehicle across a channel except in the following cases:

1. It is necessary to operate construction equipment in or across a channel as described in (d) above as part of a temporary construction activity;

2. An emergency vehicle must access a site that has no other feasible means of entry. This does not include repeated visits to the same site by delivery trucks; or

3. The vehicle is driven across a lawfully existing and stable ford that was either constructed prior to October 2, 2006, or which is constructed on agricultural lands under general permit 2E at N.J.A.C. 7:13-8.4(c)5.

#### 7:13-10.2 Requirements for a regulated activity in a riparian zone

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in a riparian zone. The width of the riparian zone is set forth at N.J.A.C. 7:13-4.1.

(b) The riparian zones established by this chapter are separate from and in addition to any other similar zones or buffers established to protect surface waters. For example, the Stormwater Management rules at N.J.A.C. 7:8 and the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38 establish 300-foot Special Water Resource Protection Areas and buffers, respectively, along certain waters. Furthermore, the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A establish 50-foot and 150-foot transition areas

along freshwater wetlands and other features that are also regulated under this chapter. Compliance with the riparian zone requirements of this chapter does not constitute compliance with the requirements imposed under any other Federal, State or local statute, regulation or ordinance.

(c) As used in this section, the total area of vegetation disturbed in a riparian zone shall include the following:

1. The area of any vegetation within the limit of disturbance shown on submitted drawings;

2. The area under the canopy of any trees to be cleared, cut or removed; and

3. All other areas from which any vegetation is to be temporarily or permanently cleared, cut or removed.

(d) The following table sets forth limits on the area of vegetation that can be disturbed for various regulated activities, provided the requirements for each activity as described in (e) through (r) below are satisfied, and provided the applicant demonstrates the following:

1. The basic purpose of the project cannot be accomplished onsite without disturbing vegetation in the riparian zone;

2. Disturbance to the riparian zone is eliminated where possible; where not possible to eliminate, disturbance is minimized through methods including relocating the project, reducing the size or scope of the project and/or situating the project in portions of the riparian zone where previous development or disturbance has occurred;

3. All temporarily cleared, cut or removed vegetation within a riparian zone is replanted with indigenous, non-invasive vegetation upon completion of the project in accordance with (u) below; and

4. All additional restrictions for the specific proposed activity described elsewhere in this chapter are satisfied. For example, while (o) below sets limits on disturbance to the riparian zone resulting from a flood control project, N.J.A.C. 7:13-11.12 includes further specific requirements to ensure that disturbance to the channel and riparian zone is avoided or minimized for such projects.

Table C

#### MAXIMUM ALLOWABLE DISTURBANCE TO RIPARIAN ZONE VEGETATION

| Proposed Regulated Activity                                          | See Paragraph<br>Below for<br>Further Detail | Maximum Area of Vegetation Disturbance Based on the Width<br>of the Riparian Zone |                           |                           |                        |
|----------------------------------------------------------------------|----------------------------------------------|-----------------------------------------------------------------------------------|---------------------------|---------------------------|------------------------|
|                                                                      |                                              | 50-foot Riparian<br>Zone                                                          | 150-foot Riparian<br>Zone | 300-foot Riparian<br>Zone |                        |
| • Railroad or public roadway                                         |                                              |                                                                                   |                           |                           |                        |
| New                                                                  | Crossing a water                             | (e)                                                                               | 5,000 ft <sup>2</sup>     | 15,000 ft <sup>2</sup>    | 30,000 ft <sup>2</sup> |
|                                                                      | Not crossing a water                         |                                                                                   | 2,000 ft <sup>2</sup>     | 6,000 ft <sup>2</sup>     | 12,000 ft <sup>2</sup> |
| Expanded or Improved                                                 | Crossing a water                             | (f)                                                                               | 2,500 ft <sup>2</sup>     | 7,500 ft <sup>2</sup>     | 15,000 ft <sup>2</sup> |
|                                                                      | Not crossing a water                         |                                                                                   | 1,000 ft <sup>2</sup>     | 3,000 ft <sup>2</sup>     | 6,000 ft <sup>2</sup>  |
| • Private roadway that serves as a driveway to one private residence |                                              |                                                                                   |                           |                           |                        |

|                                                                       |                      |     |                                      |                       |                        |
|-----------------------------------------------------------------------|----------------------|-----|--------------------------------------|-----------------------|------------------------|
| New                                                                   | Crossing a water     | (g) | 1,500 ft <sup>2</sup>                | 4,500 ft <sup>2</sup> | 9,000 ft <sup>2</sup>  |
|                                                                       | Not crossing a water |     | 600 ft <sup>2</sup>                  | 1,800 ft <sup>2</sup> | 3,600 ft <sup>2</sup>  |
| Expanded or Improved                                                  | Crossing a water     | (h) | 750 ft <sup>2</sup>                  | 2,250 ft <sup>2</sup> | 4,500 ft <sup>2</sup>  |
|                                                                       | Not crossing a water |     | 300 ft <sup>2</sup>                  | 900 ft <sup>2</sup>   | 1,800 ft <sup>2</sup>  |
| • All other private roadways                                          |                      |     |                                      |                       |                        |
| New                                                                   | Crossing a water     | (g) | 3,000 ft <sup>2</sup>                | 9,000 ft <sup>2</sup> | 18,000 ft <sup>2</sup> |
|                                                                       | Not crossing a water |     | 1,200 ft <sup>2</sup>                | 3,600 ft <sup>2</sup> | 7,200 ft <sup>2</sup>  |
| Expanded or Improved                                                  | Crossing a water     | (h) | 1,500 ft <sup>2</sup>                | 4,500 ft <sup>2</sup> | 9,000 ft <sup>2</sup>  |
|                                                                       | Not crossing a water |     | 600 ft <sup>2</sup>                  | 1,800 ft <sup>2</sup> | 3,600 ft <sup>2</sup>  |
| • Bank stabilization or channel restoration                           |                      |     |                                      |                       |                        |
| Accomplished with vegetation alone                                    |                      | (i) | No limit if disturbance is justified |                       |                        |
| Other permanent disturbance                                           |                      |     | 2,000 ft <sup>2</sup>                | 2,000 ft <sup>2</sup> | 2,000 ft <sup>2</sup>  |
| Other temporary disturbance                                           |                      |     | 1,000 ft <sup>2</sup>                | 3,000 ft <sup>2</sup> | 6,000 ft <sup>2</sup>  |
| • Stormwater discharge (including pipe and conduit outlet protection) |                      |     |                                      |                       |                        |
| Permanent disturbance                                                 |                      | (j) | 1,000 ft <sup>2</sup>                | 1,000 ft <sup>2</sup> | 1,000 ft <sup>2</sup>  |
| Temporary disturbance                                                 |                      |     | 1,000 ft <sup>2</sup>                | 3,000 ft <sup>2</sup> | 6,000 ft <sup>2</sup>  |
| • Utility line (temporary disturbance only)                           |                      |     |                                      |                       |                        |
| Crossing a water                                                      |                      | (k) | 2,000 ft <sup>2</sup>                | 6,000 ft <sup>2</sup> | 12,000 ft <sup>2</sup> |
| Not crossing a water                                                  |                      | (l) | 800 ft <sup>2</sup>                  | 2,400 ft <sup>2</sup> | 4,800 ft <sup>2</sup>  |
| • Other projects                                                      |                      |     |                                      |                       |                        |
| Private residence                                                     |                      | (m) | 2,500 ft <sup>2</sup>                | 5,000 ft <sup>2</sup> | 5,000 ft <sup>2</sup>  |
| Addition, garage, barn or shed                                        |                      | (n) | 1,000 ft <sup>2</sup>                | 2,000 ft <sup>2</sup> | 2,000 ft <sup>2</sup>  |
| Flood control project                                                 |                      | (o) | 3,000 ft <sup>2</sup>                | 9,000 ft <sup>2</sup> | 18,000 ft <sup>2</sup> |
| Public accessway or public access area                                |                      | (p) | No limit if disturbance is justified |                       |                        |
| Water dependent development                                           |                      | (q) | No limit if disturbance is justified |                       |                        |
| All other regulated activities                                        |                      | (r) | 1,000 ft <sup>2</sup>                | 3,000 ft <sup>2</sup> | 6,000 ft <sup>2</sup>  |

(e) The Department shall issue an individual permit for the construction of a new railroad or public roadway, which results in clearing, cutting and/or removing vegetation in a riparian zone, only if the following requirements are satisfied:

1. The total area of vegetation cleared, cut and/or removed within the riparian zone does not exceed the limits set forth in Table C above;
2. The width of the railroad or public roadway is minimized;
3. Any crossing of a regulated water is designed and constructed as nearly perpendicular to the channel as possible; and
4. If the project impacts a 150-foot or 300-foot riparian zone, the applicant demonstrates that there is a compelling public need to construct the new railroad or public roadway, which cannot be satisfied without impacting the riparian zone. This demonstration shall include an analysis of alternate routes and other alternative projects that would avoid impacting the riparian zone.

(f) The Department shall issue an individual permit for the expansion or improvement of a lawfully existing railroad or public roadway, which results in clearing, cutting and/or removing vegetation in a riparian zone, only if the following requirements are satisfied:

1. The total area of vegetation cleared, cut and/or removed within the riparian zone does not exceed the limits

set forth in Table C above, unless the applicant demonstrates that public safety cannot be adequately ensured without exceeding these limits. In such a case, the applicant shall provide 2:1 compensation for all cleared, cut and removed vegetation in excess of the limit set forth in Table C in a manner described at (t) below;

2. The width of the railroad or public roadway is minimized; and

3. If the project impacts a 150-foot or 300-foot riparian zone, the applicant demonstrates that there is a compelling public need to expand or improve the railroad or public roadway, which cannot be satisfied without impacting the riparian zone. This demonstration shall include an analysis of alternate routes and other alternative projects that would avoid impacting the riparian zone.

(g) The Department shall issue an individual permit for the construction of a new private roadway, which results in clearing, cutting and/or removing vegetation in a riparian zone, only if the following requirements are satisfied:

1. The total area of vegetation cleared, cut and/or removed within the riparian zone does not exceed the limits set forth in Table C above;
2. The width of the roadway is minimized;
3. Any crossing of a regulated water is designed and constructed as nearly perpendicular to the channel as possible;

4. The roadway accesses a lot that did not receive preliminary or final subdivision approval after October 2, 2006;

5. If the roadway does not cross a regulated water, but impacts a 150-foot or 300-foot riparian zone, the applicant demonstrates that there is no other means of constructing a roadway to access the developable area onsite, which would reduce or eliminate the impact to the riparian zone; and

6. If the roadway crosses a regulated water that has a 150-foot or 300-foot riparian zone, the applicant demonstrates that there is developable land onsite that cannot feasibly be accessed without crossing the water, including accessing the site through neighboring properties.

(h) The Department shall issue an individual permit for the expansion or improvement of an existing private roadway, which results in clearing, cutting and/or removing vegetation in a riparian zone, only if the following requirements are satisfied:

1. The total area of vegetation cleared, cut and/or removed within the riparian zone does not exceed the limits set forth in Table C above;

2. The width of the roadway is minimized; and

3. If the expansion or improvement impacts a 150-foot or 300-foot riparian zone, the applicant demonstrates the proposed reconstruction is necessary for the continued safe access to the site.

(i) The Department shall issue an individual permit to restore to a stable condition a bank or channel, which has become eroded, unstable and/or ecologically degraded, which results in clearing, cutting and/or removing vegetation in a riparian zone, only if the following requirements are satisfied:

1. If the bank or channel is restored and revegetated as described at N.J.A.C. 7:13-11.14(c)2, and the applicant demonstrates the project is necessary pursuant to N.J.A.C. 7:13-11.14(b), the area of vegetation cleared, cut and/or removed within the riparian zone is minimized;

2. If the bank or channel is restored by any means other than that which is described in (i)1 above, the total area of vegetation permanently cleared, cut and/or removed within the riparian zone does not exceed the limits set forth in Table C above, unless the applicant demonstrates that the bank or channel cannot be adequately stabilized or restored without exceeding these limits. In such a case, the applicant shall provide 2:1 compensation for all areas permanently cleared of vegetation in excess of the limit set forth in Table C in a manner described at (t) below; and

3. The total area of vegetation temporarily cleared, cut and/or removed within the riparian zone in order to provide access to perform the stabilization or restoration does not exceed the limits for temporary disturbance set forth in

Table C above, and all such disturbed areas are replanted with indigenous, non-invasive vegetation.

(j) The Department shall issue an individual permit to construct a stormwater discharge (including the stormwater pipe leading to the discharge), which results in clearing, cutting and/or removing vegetation in a riparian zone, only if the following requirements are satisfied:

1. The total area of vegetation cleared, cut and/or removed within the riparian zone does not exceed the limits set forth in Table C above; and

2. No portion of the stormwater discharge, including any associated conduit outlet protection and/or conveyance swale, is placed within a 150-foot or 300-foot riparian zone, except in the following cases (note that new discharges along Category One waters and certain upstream tributaries are restricted in certain cases under the Stormwater Management rules at N.J.A.C. 7:8-5.5(h)):

i. The reconstruction of an existing stormwater discharge provided:

(1) The reconstruction is necessary to ameliorate erosion and/or flooding; and

(2) The volume, rate and quality of stormwater being discharged is not altered. Compliance with this requirement shall be determined in accordance with the standards of the Department's Stormwater Management rules at N.J.A.C. 7:8;

ii. The construction of a new stormwater discharge along an existing roadway provided:

(1) The discharge is necessary to ameliorate erosion and/or flooding; and

(2) There is no feasible alternative means of constructing the discharge outside the riparian zone due to topography, soil type, vegetative cover and/or location of the roadway or other existing structures;

iii. The construction of a new stormwater discharge associated with the construction of a new roadway provided:

(1) There is no feasible alternative location or alignment for either the new roadway or the new discharge, which would eliminate the need to construct a discharge in the riparian zone;

(2) In the case of a public roadway, the applicant demonstrates that there is a compelling public need to construct the new roadway and the new discharge, which cannot be satisfied without impacting the riparian zone. This demonstration shall include an analysis of alternate routes for the new roadway and other alternative projects that would avoid impacting the riparian zone; and

(3) In the case of a private roadway, the applicant demonstrates that there is developable land onsite that cannot feasibly be accessed without constructing a new roadway and/or discharge that impacts the riparian zone, including accessing the site through neighboring properties; and

iv. The construction or reconstruction of any storm-water discharge not described in (j)2i, ii or iii above, which is located in a Special Water Resource Protection Area pursuant to N.J.A.C. 7:8-5.5(h), provided the requirements at N.J.A.C. 7:8-5.5(h)3 are met.

(k) The Department shall issue an individual permit to construct a utility line, which crosses a regulated water and results in clearing, cutting and/or removing vegetation in a riparian zone, only if the following requirements are satisfied:

1. The total area of vegetation cleared, cut and/or removed within the riparian zone does not exceed the limits set forth in Table C above, unless the applicant demonstrates that:

i. The construction of an open trench through the riparian zone is necessary to install the utility line; and

ii. The width of the trench required to safely install the utility line necessitates that disturbance to vegetation in the riparian zone exceeds the limits set forth in Table C, as described at N.J.A.C. 7:13-11.9(b)4; and

2. The applicant demonstrates, pursuant to N.J.A.C. 7:13-11.9(b)1 through 4, that disturbance in the riparian zone is unavoidable.

(l) The Department shall issue an individual permit to construct a utility line, which does not cross a regulated water but which results in clearing, cutting and/or removing vegetation in a riparian zone, only if the following requirements are satisfied:

1. The total area of vegetation cleared, cut and/or removed within the riparian zone does not exceed the limits set forth in Table C above;

2. The applicant demonstrates that it is not feasible to construct the line either outside the riparian zone completely, or otherwise in such a way that no vegetation in the riparian zone is disturbed; and

3. The line is placed at least 25 feet from any top of bank or edge of water.

(m) The Department shall issue an individual permit for the construction of a new private residence, which results in clearing, cutting and/or removing vegetation in a riparian zone, only if the following requirements are satisfied:

1. The total area of vegetation cleared, cut and/or removed within the riparian zone does not exceed the limits set forth in Table C above;

2. The private residence is being constructed on a lot that did not receive preliminary or final subdivision approval after October 2, 2006;

3. The private residence is not being constructed as part of a larger residential subdivision; and

4. The applicant demonstrates the following:

i. There is no other reasonable use for the site under the applicable zoning for the property, which would reduce or eliminate the impact to the riparian zone;

ii. There is no other feasible location onsite to construct a private residence, which would reduce or eliminate the impact to the riparian zone; and

iii. All disturbance within the riparian zone is located at least 25 feet from any top of bank or edge of water and as far from the regulated water as possible, unless the private residence is constructed adjacent to a manmade tidal water in cases where such waters possess a riparian zone.

(n) The Department shall issue an individual permit for the construction of an addition to an existing building, or the construction of a building appurtenant to an existing building, such as a garage, barn or shed, which results in clearing, cutting and/or removing vegetation in a riparian zone, only if the following requirements are satisfied:

1. The total area of vegetation cleared, cut and/or removed within the riparian zone does not exceed the limits set forth in Table C above; and

2. The applicant demonstrates the following:

i. There is no other feasible location onsite to construct the addition or building, which would reduce or eliminate the impact to the riparian zone; and

ii. All disturbance within the riparian zone is located at least 25 feet from any top of bank or edge of water and as far from the regulated water as possible, unless the addition or building is constructed adjacent to a manmade tidal water in cases where such waters possess a riparian zone.

(o) The Department shall issue an individual permit for the construction of a flood control project, which results in clearing, cutting and/or removing vegetation in a riparian zone, only if the total area of vegetation cleared, cut and/or removed within the riparian zone does not exceed the limits set forth in Table C above, unless the applicant demonstrates that public safety cannot be adequately ensured without exceeding these limits. In such a case, the applicant shall provide 2:1 compensation for all cleared, cut and removed vegetation in excess of the limit set forth in Table C in a manner described at (t) below.

(p) The Department shall issue an individual permit for the construction of a public accessway or public access area



along a tidal water, which results in clearing, cutting, and/or removing vegetation in a riparian zone, only if the following requirements are met:

1. The public accessway or public access area is designed in accordance with the public access to the waterfront rule, N.J.A.C. 7:7E-8.11, in which case such construction need not comply with (d)1 and 2 above;

2. No building is constructed within 25 feet of any top of bank or edge of water; and

3. For any proposed parking area, the applicant demonstrates that there is no other feasible location onsite to construct the parking area, which would reduce or eliminate the impact to the riparian zone;

(q) The Department shall issue an individual permit for the construction of a water dependent development along a tidal water, which results in clearing, cutting, and/or removing vegetation in a riparian zone, only if the following requirements are met:

1. The development is designed in accordance with the Coastal Zone Management rules, N.J.A.C. 7:7E, and meets the definition of water dependent at N.J.A.C. 7:7E-1.8;

2. No building is constructed within 25 feet of any top of bank or edge of water; and

3. For any proposed development, the applicant demonstrates that there is no other feasible location onsite to construct the development, which would reduce or eliminate the impact to the riparian zone.

(r) The Department shall issue an individual permit for a regulated activity not listed in (e) through (q) above, which results in clearing, cutting and/or removing vegetation in a riparian zone, only if the following requirements are satisfied:

1. The total area of vegetation cleared, cut and/or removed within the riparian zone does not exceed the limits set forth in Table C above;

2. No building is constructed within 25 feet of any top of bank or edge of water;

3. The applicant demonstrates the following:

- i. There is no other reasonable means of accomplishing the project, which would reduce or eliminate the impact to the riparian zone;

- ii. There is no other feasible location onsite to undertake the project, which would reduce or eliminate the impact to the riparian zone; and

- iii. All disturbance within the riparian zone is located as far from the regulated water as possible; and

4. The applicant provides 2:1 compensation for all cleared, cut and removed vegetation in the riparian zone in a manner described at (t) below.

(s) If the Department determines that requiring an applicant to meet a limit of disturbance set forth in Table C above constitutes a hardship under N.J.A.C. 7:13-9.8, and the Department subsequently grants an individual permit for an activity that exceeds that limit, the applicant shall provide 2:1 compensation for all cleared, cut and removed vegetation in excess of that limit set forth in Table C in a manner described at (t) below.

(t) The 2:1 compensation required under (f)1, (i)2, (o), (r)4 and (s) above shall be accomplished as follows:

1. In the case of (f)1, (i)2, (o) and (s) above, at least twice the area of all cleared, cut and removed vegetation in excess of the limit in Table C above shall be replanted;

2. In the case of (r)4 above, at least twice the area of all cleared, cut and removed vegetation shall be replanted;

3. The area selected for 2:1 compensation is deed restricted against future development that would remove the vegetation being planted; and

4. All replanting of vegetation shall be accomplished as described in (u) below and in one or both of the following ways. (Replanting vegetation that was removed in violation of this chapter does not constitute compensation under this section):

- i. The applicant shall remove lawfully existing structures and/or impervious surfaces in the riparian zone, and replant the area with vegetation; and/or

- ii. The applicant shall plant new trees in the riparian zone in an area that is substantially devoid of trees at the time of application because the trees were removed due to previous, lawful development.

(u) All replanting of riparian zone vegetation required under this section shall meet the following requirements:

1. All replanting shall be located in the riparian zone of the same regulated water as the cleared, cut or removed vegetation;

2. All replanting shall be located as close in proximity to the cleared, cut or removed vegetation as possible;

3. All replanting shall consist of indigenous, non-invasive vegetation;

4. The replanted vegetation shall be of equal or greater density as the cleared, cut or removed vegetation;

5. The applicant shall monitor and maintain the replanted vegetation for at least three growing seasons to ensure proper establishment and survival; and

6. The location, nature, area and schedule for replanted vegetation shall be shown on drawings submitted with the application for the individual permit which necessitates the replanting. No replanting required under this section shall commence without the prior approval of the Department.

(v) In cases where an applicant proposes to redevelop a site within 25 feet of any top of bank or edge of water, all existing impervious surface within 25 feet of the top of bank or edge of water shall be removed and the riparian zone in this area shall be adequately stabilized and replanted with indigenous, non-invasive vegetation, except in the following cases:

1. The applicant demonstrates that removing the existing impervious surface and/or preventing the replacement of the existing impervious surface within 25 feet of the top of bank or edge of water would likely threaten public safety, exacerbate flooding or erosion and/or cause an undue economic hardship upon the applicant. In such a case, the riparian zone within 25 feet of the top of bank or edge of water shall be restored, stabilized and/or replanted to the extent feasible; and/or
2. The applicant proposes to construct a public walkway within 25 feet of the top of bank or edge of water, provided the walkway is constructed of permeable material where feasible, and provided the remainder of the area within 25 feet of the top of bank or edge of water is restored, stabilized and replanted with indigenous, non-invasive vegetation.

#### **7:13-10.3 Requirements for a regulated activity in a floodway**

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in a floodway.

(b) Except as provided in (c) below, the Department shall not issue an individual permit for the following activities:

1. The placement of any aboveground structure in or above a floodway;
2. Any regulated activity that would result in the placement of fill in a floodway;
3. Any regulated activity that would raise the ground elevation in a floodway; or
4. Any regulated activity that would obstruct the passage of floodwaters in a floodway.

(c) Notwithstanding (b) above, the Department shall issue an individual permit for the following regulated activities in a floodway, provided all other requirements of this chapter are satisfied for each activity:

1. The construction of a building on a pier in the Hudson River, provided the requirements of the Coastal Zone Management rules at N.J.A.C. 7:7E-3.48 are satisfied;
2. The reconstruction of a lawfully existing building, in accordance with N.J.A.C. 7:13-11.5(e);

3. The construction of an addition to a lawfully existing building, in accordance with N.J.A.C. 7:13-11.5(f);

4. The construction of a water control structure, such as a bridge, culvert, footbridge, dam or flood control project, in accordance with N.J.A.C. 7:13-11.7, 11.8, 11.11 and 11.12, respectively;

5. The construction of a stormwater outfall structure, in accordance with N.J.A.C. 7:13-11.10;

6. The restoration and/or stabilization of a bank or channel, in accordance with N.J.A.C. 7:13-11.14, which requires the placement of fill, provided:

- i. The placement of the fill is necessary to protect nearby structures or trees from undermining or failure, or to restore or improve the ecological health or habitat value of a regulated water, and not simply to reclaim land that has been lost due to erosion; and
- ii. The cross-sectional area of the channel open to flow will not be reduced to less than the pre-eroded condition of the channel;

7. The placement of dredged material adjacent to the water from which the material was removed, in accordance with N.J.A.C. 7:13-11.15(f);

8. The placement of fill in an isolated shallow depression or other area that does not contribute to the hydraulic capacity of the floodway; and

9. The placement of fill in a portion of a manmade impoundment of water, such as a pond or lake, provided:

- i. An equal or greater amount of excavation is performed elsewhere in the same pond or lake at similar elevations as the proposed fill;
- ii. The applicant demonstrates that the fill will not obstruct flood flows;
- iii. The fill will extend no further than 20 percent of the width of the water, measured perpendicularly across the water from the shoreline along which the fill is being placed; and
- iv. The applicant demonstrates that placing the fill will not cause adverse environmental impacts.

#### **7:13-10.4 Requirements for a regulated activity in a flood fringe**

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in a flood fringe.

(b) This section provides standards for the volume of material that may be placed aboveground in a flood fringe as well as other activities that would reduce the flood storage volume on a site. When material is placed aboveground in a flood fringe, it will occupy a space that would otherwise be filled with floodwaters during a flood, and, thus, will reduce

the flood storage volume on the site. Construction also reduces the flood storage volume by preventing floodwaters from entering a space that it would otherwise occupy, such as the space inside a building or stormwater management basin, or behind an embankment. For example, although the space within a building may be empty, the building's walls might prevent floodwaters from entering that space. Since the entire space within the walls has been rendered inaccessible to floodwaters, the entire space, though empty, displaces flood storage volume. The Department also recognizes that some structures, such as garages, sheds and other buildings that are not dry flood-proofed are not likely to prevent the entry of floodwaters, and, therefore, the space within the walls of such a structure may not actually displace flood storage volume.

(c) The Department shall issue an individual permit for a regulated activity (or combination of regulated activities) in a flood fringe only if one of the following is satisfied:

1. The regulated activity is not subject to the flood storage volume displacement limits of this section, in accordance with (d) below;

2. The regulated activity will displace no flood storage volume onsite, as calculated for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground, in accordance with (e) below; or

3. The regulated activity will displace no more than 20 percent of the flood storage volume onsite, as calculated for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground, and all flood storage displacement onsite will be compensated offsite as follows:

i. If the regulated activity is located within the Central Passaic Basin, the requirements at (g) below shall be met;

ii. If the regulated activity is a Major Highlands Development, as defined at N.J.A.C. 7:38-1.4, the requirements at (h) below shall be met; or

iii. If the regulated activity is not located within the Central Passaic Basin and is not a Major Highlands Development, the requirements at (i) below shall be met.

(d) The following regulated activities (or combination of regulated activities) are not subject to the flood storage volume displacement limits of this section, provided the activity is not associated with a Major Highlands Development:

1. Any activity located in a tidal flood hazard area;
2. Any activity that displaces no more than five cubic yards of flood storage volume;
3. The reconstruction of a lawfully existing railroad or public roadway, including any improvement or enlargement, provided flood storage volume displacement is minimized;

4. The construction or improvement of a driveway across a regulated water provided:

i. The driveway serves only one private residence, which is not being constructed as part of a larger residential subdivision;

ii. In the case of the construction of a new driveway, the applicant demonstrates that there is developable land onsite that cannot feasibly be accessed without crossing the water, including accessing the site through neighboring properties; and

iii. Any flood storage volume displacement resulting from the driveway is minimized;

5. The construction of one private residence provided:

i. The residence is not being constructed as part of a larger residential subdivision;

ii. Any enclosed area beneath the flood hazard area design flood elevation meets the requirements of N.J.A.C. 7:13-11.5(n), (o), and (p); and

iii. Except for the construction of a driveway across a regulated water, which meets the requirements of (d)4 above, the site is not graded to accommodate the construction of the residence in such a way that flood storage volume would be displaced;

6. The construction of a flood control project, provided flood storage volume displacement is minimized; and

7. The depositing of sediment removed from a channel, which meets the requirements of N.J.A.C. 7:13-11.15(f).

(e) The following shall apply to any regulated activity that is designed to displace no flood storage volume in accordance with (c)2 above:

1. The existing flood storage volume onsite ( $V_E$ ) is the volume of floodwater that is able to occupy the flood fringe onsite before the proposed regulated activity is undertaken. To determine the existing flood storage volume, calculate the volume of space within the flood fringe between the flood elevation and the ground surface as it exists on the date of application to the Department, and subtract the volume occupied by any structures that lawfully exist as of that date.

2. The proposed flood storage volume onsite ( $V_P$ ) is the volume of floodwater that will be able to occupy the flood fringe onsite once all proposed construction, excavation, filling and grading is completed. To determine the proposed flood storage volume, calculate the volume of space within the flood fringe between the flood elevation and the proposed ground surface, and subtract the volume occupied by any structures that will lawfully exist once all proposed construction is completed.

3. The proposed flood storage volume onsite ( $V_P$ ) shall be greater than or equal to the existing flood storage

volume onsite ( $V_E$ ), for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground. Certain considerations should be made in calculating both ( $V_P$ ) and ( $V_E$ ), as set forth in (j) below. Additional flood storage volume can also be created onsite to compensate for proposed flood storage displacement in accordance with (m) below.

(f) Table D below sets forth the percentage of flood storage volume that a regulated activity (or combination of activities) can lawfully displace in various geographic areas

of New Jersey. As described in further detail in this section below, a project cannot displace more than 20 percent of the flood storage volume that originally existed onsite, and all proposed displacement onsite must ultimately be compensated offsite. Table D indicates the dates from which the original and proposed flood storage volumes should be calculated for different geographic areas. Flood storage calculations shall be performed for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground, as described at (j) below, to show that the 20-percent and zero-percent limitations are met for both of these areas.

Table D

## ALLOWABLE PERCENTAGES OF FLOOD STORAGE VOLUME DISPLACEMENT

(Which shall be met for both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground)

| Geographic Area              | Maximum onsite percentage of flood storage volume that a project can lawfully displace<br>( $P_{\text{ONSITE}}$ ) | Maximum total percentage of flood storage volume that a project can lawfully displace including all offsite credits<br>( $P_{\text{TOTAL}}$ ) |
|------------------------------|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Central Passaic Basin        | 20 percent of flood storage that existed onsite on March 25, 1977                                                 | 0 percent of flood storage that existed onsite on March 25, 1977                                                                              |
| Highlands Preservation Area* | 20 percent of flood storage that existed onsite on January 31, 1980                                               | 0 percent of flood storage that existed onsite on August 10, 2004                                                                             |
| Remainder of State           | 20 percent of flood storage that existed onsite on January 31, 1980                                               | 0 percent of flood storage that existed onsite on November 5, 2007                                                                            |

\*If associated with Major Highlands Development, as defined at N.J.A.C. 7:38-1.4.

(g) The following shall apply to any project located within the Central Passaic Basin that does not meet the requirements of (d) or (e) above:

1. The onsite percentage of flood storage volume that a project displaces shall be determined as follows:

- i. Calculate the base flood storage volume onsite on March 25, 1977 ( $V_{1977}$ ) according to (j) and (k) below;
- ii. Calculate the proposed flood storage volume onsite ( $V_P$ ) according to (j) and (l) below; and
- iii. Calculate the percentage of flood storage volume displaced onsite ( $P_{\text{ONSITE}}$ ) as follows:

$$P_{\text{ONSITE}} = (V_{1977} - V_P) / V_{1977}$$

2. The total percentage of flood storage volume that a project displaces, including any offsite compensation, shall be determined as follows:

- i. Calculate any offsite compensation ( $V_C$ ) according to (o) below; and
- ii. Calculate the total percentage of flood storage volume displaced ( $P_{\text{TOTAL}}$ ) as follows:

$$P_{\text{TOTAL}} = (V_{1977} - V_P - V_C) / V_{1977}$$

(h) The following shall apply to any Major Highlands Development within the Highlands Preservation Area that does not meet the requirements of (d) or (e) above:

1. The onsite percentage of flood storage volume that a project displaces shall be determined as follows:

- i. Calculate the base flood storage volume onsite on January 31, 1980 ( $V_{1980}$ ) according to (j) and (k) below;
- ii. Calculate the proposed flood storage volume onsite ( $V_P$ ) according to (j) and (l) below; and
- iii. Calculate the percentage of flood storage volume displaced onsite ( $P_{\text{ONSITE}}$ ) as follows:

$$P_{\text{ONSITE}} = (V_{1980} - V_P) / V_{1980}$$

2. The total percentage of flood storage volume that a project displaces, including any offsite compensation, shall be determined as follows:

- i. Calculate the base flood storage volume onsite on August 10, 2004 ( $V_{2004}$ ) according to (j) and (k) below;

- ii. Calculate any offsite compensation ( $V_C$ ) according to (o) below; and
- iii. Calculate the total percentage of flood storage volume displaced ( $P_{TOTAL}$ ) as follows:

$$P_{TOTAL} = (V_{2004} - V_P - V_C) / V_{2004}$$

(i) The following shall apply to any project located outside the Central Passaic Basin (except for Major Highlands Development as described at (h) above) that does not meet the requirements of (d) or (e) above:

1. The onsite percentage of flood storage volume that a project displaces shall be determined as follows:

- i. Calculate the base flood storage volume onsite on January 31, 1980 ( $V_{1980}$ ) according to (j) and (k) below;
- ii. Calculate the proposed flood storage volume onsite ( $V_P$ ) according to (j) and (l) below; and
- iii. Calculate the percentage of flood storage volume displaced onsite ( $P_{ONSITE}$ ) as follows:

$$P_{ONSITE} = (V_{1980} - V_P) / V_{1980}$$

2. The total percentage of flood storage volume that a project displaces, including any offsite compensation, shall be determined as follows:

- i. Calculate the base flood storage volume onsite on November 5, 2007 ( $V_{2007}$ ) according to (j) and (k) below;
- ii. Calculate any offsite compensation ( $V_C$ ) according to (o) below; and
- iii. Calculate the total percentage of flood storage volume displaced ( $P_{TOTAL}$ ) as follows:

$$P_{TOTAL} = (V_{2007} - V_P - V_C) / V_{2007}$$

(j) The following factors shall be considered when calculating flood storage volumes under this section:

1. The flood storage displacement limits in this section apply to both the volume between the flood hazard area design flood and the 10-year flood, and the volume between the 10-year flood and the ground. As such, applicants must demonstrate that a proposed project meets these limits for both floods unless the entire project lies above the 10-year flood elevation.

2. Flood storage displacement proposed above the 10-year flood elevation onsite must be compensated for by the creation of flood storage above the 10-year flood elevation. Similarly, flood storage displacement proposed below the 10-year flood elevation onsite must be compensated for by the creation of flood storage below the 10-year flood elevation. This applies whether the compensation occurs onsite, as described at (m) below, or offsite, as described at (o) below.

3. In cases where the 10-year flood elevation is not provided on State or Federal flood maps, calculations can instead be performed using a flood depth halfway between the flood hazard area design flood elevation and the lowest ground elevation within the flood fringe onsite. For example, at a given cross-section through a site, if the flood hazard area design flood elevation is 90.0 feet NGVD and the lowest ground elevation within the flood fringe is 80.0 feet NGVD, flood storage calculations can be performed at that cross-section using a flood elevation of 85.0 feet NGVD at that location, if the 10-year flood elevation is unknown. Furthermore, this halfway depth must be determined separately for each cross-section in the flood fringe, and at close intervals throughout the site in order to provide an accurate estimate of the upper and lower flood storage volumes. An illustration of how to properly calculate these volumes is provided in the Flood Hazard Area Technical Manual.

4. The volume inside a stormwater management basin or other impoundment is considered displaced flood storage volume. For instance, when calculating the flood storage volume onsite during the 10-year flood, the volume below the 10-year water surface elevation in the basin is considered displaced flood storage volume.

5. The volume behind a dike, levy or similar barrier that prevents the free flow of water is considered displaced flood storage volume.

6. The volume inside a building that prevents floodwaters from entering is considered displaced flood storage volume.

7. The construction of a channel modification, or the reconstruction of a water control structure such as a bridge or culvert, can result in lower flood elevations at some point along the water. In such a case, the volume in the flood fringe between the existing and proposed flood elevations is considered displaced flood storage volume.

(k) The base flood storage volume onsite ( $V_{1977}$ ,  $V_{1980}$ ,  $V_{2004}$  and/or  $V_{2007}$ ) is the volume of floodwater that was able to occupy the flood fringe onsite on the appropriate date shown in Table D depending on the geographic location of the project. To determine the base flood storage volume, calculate the volume of space within the flood fringe between the flood elevation and the ground surface as it existed on the appropriate date in Table D, and subtract the volume occupied by any structures that lawfully existed on that date.

(l) The proposed flood storage volume onsite ( $V_P$ ) is the volume of floodwater that will be able to occupy the flood fringe onsite once all proposed construction, excavation, filling and grading is completed. To determine the proposed flood storage volume, calculate the volume of space within the flood fringe between the flood elevation and the proposed ground surface, and subtract the volume occupied by any structures that will lawfully exist once all proposed construction is completed.

(m) Additional flood storage volume may be created onsite to compensate for proposed flood storage displacement only on land that meets the requirements of (n) below and in the following ways:

1. Removing material that has been previously lawfully placed within the flood fringe, such as fill or structures, and properly disposing the material outside a flood hazard area, as described in (q) below; and/or
2. Excavating material from below the surface of the ground and properly disposing the material outside a flood hazard area, as described in (r) below.

(n) Flood storage volume may be created onsite to compensate for regulated activities that displace flood storage as described in (m) above provided the onsite compensation:

1. Is created within or adjacent to the flood hazard area of the same water as the proposed flood storage displacement, or a tributary to the same water as the proposed flood storage displacement, provided the tributary lies upstream of the site or the flood hazard area of both waters connect onsite;
2. Is not created in a floodway;
3. Is not created within the following areas, unless the area where the compensation will be created has been subject to previous, lawful disturbance:
  - i. Within a riparian zone, pursuant to N.J.A.C. 7:13-4.1 and 10.2;
  - ii. Within 300 feet of a Highlands open water, if the project is a major Highlands development as defined in the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38-1.4; and/or
  - iii. Within a Special Water Resource Protection Area, if the project is a major development as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2; and
4. Would not have other significant adverse environmental consequences; the proposed compensation shall not merely substitute the adverse effects of the proposed activities with adverse impacts upon threatened or endangered species, aquatic biota, fishery resources or Highlands resource areas.

(o) Offsite compensation (VC) is additional flood storage volume created offsite to compensate for proposed flood storage displacement onsite. Offsite compensation can only be created on land that meets the requirements of (p) below, and only in the following ways:

1. Removing material that has been previously lawfully placed within the flood fringe, such as fill or structures, and properly disposing the material outside a flood hazard area, as described in (q) below;

2. Excavating material from below the surface of the ground and properly disposing the material outside a flood hazard area, as described in (r) below; and/or

3. Purchasing fill credits, where available, if the project is located in the Central Passaic Basin, as described in (s) and (t) below.

(p) Flood storage volume can be created offsite to compensate for regulated activities that displace flood storage as described in (o) above provided the offsite compensation:

1. Is created within or adjacent to the flood hazard area of the same water as the proposed flood storage displacement, or a tributary to the same water as the proposed flood storage displacement, provided the tributary lies upstream of the site or the flood hazard area of both waters connect onsite;
2. Is not separated from the proposed flood storage displacement by a water control structure, such as a bridge, culvert or dam, unless the applicant demonstrates that the water control structure causes no significant change in the flood hazard area design flood elevation;
3. Is situated within the same HUC-14 watershed as the proposed flood storage displacement;
4. Is not created in a floodway;
5. Is not created within the following areas, unless the area where the compensation will be created has been subject to previous, lawful disturbance:
  - i. Within a riparian zone, pursuant to N.J.A.C. 7:13-4.1 and 10.2;
  - ii. Within 300 feet of a Highlands open water, if the project is a major Highlands development as defined in the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38-1.4; and/or
  - iii. Within a Special Water Resource Protection Area, if the project is a major development as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2;
6. Would not have other significant adverse environmental consequences; the proposed compensation shall not merely substitute the adverse effects of the proposed activities with adverse impacts upon threatened or endangered species, aquatic biota, fishery resources or Highlands resource areas;
7. Is agreed to in writing by the owners of the land on which the offsite compensation is proposed; and
8. Is proposed on land which, subsequent to the creation of the offsite compensation, is deed restricted against future flood storage volume displacement. The modified deed shall be filed with the local county clerk, a copy of which shall be provided to the Department within 90 calendar days of the issuance of the individual permit.



(q) For the purposes of (m)1 and (o)1 above, flood storage volume can be created by removing material previously placed within the flood fringe, such as fill or structures, provided:

1. The material to be removed was not placed in violation of this chapter;
2. The material to be removed is not associated with an activity permitted-by-rule under N.J.A.C. 7:13-7;
3. The area disturbed by the removal of the material is properly graded so that floodwaters can freely enter and exit;
4. The material to be removed is properly disposed of outside of any regulated area; and
5. The removal of the material is approved under an individual permit and is completed concurrent with or prior to the commencement of the activities for which the compensation is intended.

(r) For the purposes of (m)2 and (o)2 above, flood storage volume can be created by excavating material from below the surface of the ground, provided:

1. The excavation is located in a flood fringe, or is located adjacent and connected to a flood hazard area so that floodwaters can enter the excavated area;
2. The excavation is located below the flood hazard area design flood elevation;
3. The excavation is located above the seasonal high water table;
4. The excavation is located above the normal water surface elevation of the nearest regulated water;
5. The area disturbed by the excavation is properly graded so that floodwaters can freely enter and exit;
6. The excavated material is properly disposed of outside of any regulated area; and
7. The excavation is approved under an individual permit and is completed concurrent with or prior to the commencement of the activities for which the compensation is intended.

(s) For the purposes of (o)3 above, offsite compensation in the Central Passaic Basin can be accomplished in certain cases described in (t) below through the purchase of fill credits. A fill credit is a unit of flood storage volume that has been created in the Central Passaic Basin by excavation and/or removal of fill, and which can be sold to a permittee to compensate for proposed fill elsewhere in the Central Passaic Basin. The Department has previously permitted several facilities to create fill credits. However, the Department shall no longer accept new applications to allow a person or facility to create additional fill credits in this manner. In order for fill credits to be valid under this section, an application to create

the fill credits must have been received by the Department prior to October 2, 2006 and the fill credits, once approved, must be lawfully created by the applicant prior to October 2, 2011. Once all approved fill credits have been purchased, offsite compensation in the Central Passaic Basin will no longer be possible through fill credits.

(t) For the purposes of (o)3 above, offsite compensation in the Central Passaic Basin can be made through the purchase of fill credits, as described in (s) above, provided the following requirements are satisfied:

1. The fill credits are purchased from a person or facility that has been authorized by the Department to create and sell fill credits in accordance with (s) above;
2. The flood storage volume on which the fill credits are based was created prior to the submittal of the application for the activities for which compensation is required;
3. The Department approves the use of the particular fill credits for the particular activity; and
4. The applicant provides the Department with adequate documentation of the purchase of the fill credits.

(u) If the percentage of flood storage volume displacement on a site already exceeds a limit at Table D above due to activities that were previously undertaken in accordance with this chapter, the Department shall issue an individual permit for a new regulated activity on the site only if an equal amount of flood storage volume is created to compensate onsite for any displaced flood storage volume that would result from the new regulated activity, in accordance with (e) above. Compensatory flood storage volume shall not be created offsite in such a case, and shall only be created onsite, as described in (m) above. The volume of fill in excess of the limits in Table D does not need to be removed from the site.

(v) If the percentage of flood storage volume displacement on a site already exceeds a limit at Table D above due to activities that were previously undertaken in violation of this chapter, the Department shall issue an individual permit for a new regulated activity on the site only if the following requirements are satisfied:

1. The applicant either obtains an individual permit for the activities undertaken in violation of this chapter, or else removes from the flood hazard area any fill or structure that was placed in violation of this chapter;
2. All displaced flood storage volume in excess of the limit in Table D is restored onsite; and
3. An equal amount of flood storage volume is created to compensate onsite for any displaced flood storage volume that would result from the new regulated activity, in accordance with (e) above. Compensatory flood storage volume shall not be created offsite in such a case, and shall only be created onsite, as described in (m) above.

(w) If the Department issues or has issued an individual permit for a regulated activity that displaces flood storage volume on a site, and that activity was subject to a flood storage displacement limit at the time the permit was issued, subsequent subdivision of that site shall not increase the total amount of flood storage volume that can be displaced on the site under future applications. Instead, the following shall apply:

1. Flood storage volume can be displaced within a portion of the subdivided site only to the extent that the total flood storage volume displaced within the entire subdivided site does not exceed the flood storage displacement limits of this section;

2. If the subdivided site involves multiple lots owned (or to be owned) by different persons, any remaining allowable flood storage volume shall be divided equally among all lots in the flood fringe, unless the owners of all lots in the flood fringe otherwise agree in writing; and

3. The volume of flood storage displacement permissible on each lot shall be described in any individual permit issued for the site as well as in the deed of record for each affected property. The modified deed shall be filed with the applicable county clerk, a copy of which shall be provided to the Department within 90 calendar days of the issuance of the individual permit.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (d)5ii, substituted "7:13-11.5(n), (o), and (p)" for "7:13-11.5(l)".  
Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

#### **7:13-10.5 Requirements for a regulated activity in or along a water with fishery resources**

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in the channel and/or riparian zone of a regulated water containing fishery resources. Further standards for the construction of a bridge or culvert in or along waters with fishery resources are described at N.J.A.C. 7:13-11.7.

(b) The waters identified by the Department as containing fishery resources are listed in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B, and are further supplemented by the following reports as updated, which are included here by reference. Copies of these reports are included in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g):

1. "Classification of New Jersey Waters as Related to Their Suitability for Trout";

2. "List of Waters Stocked with Trout by the New Jersey Division of Fish and Wildlife"; and

3. "Locations of Anadromous American Shad and River Herring During Their Spawning Period in New Jersey's Freshwaters Including Known Migratory Impediments and Fish Ladders."

(c) The Department shall issue an individual permit for a regulated activity in the channel and/or riparian zone of a regulated water containing fishery resources only if the following requirements are satisfied:

1. Except as provided in (e) below, the activity meets the timing restrictions of (d) below;

2. Unset or raw cement is not allowed to come into contact with water in the channel during construction;

3. No logs or boulders that provide fish habitat are removed from the channel, unless the Department determines that such removal is necessary to accomplish the project; and

4. Low-flow aquatic passage is maintained in the channel throughout the entire area of disturbance during and after the performance of the regulated activity. In order to provide low-flow aquatic passage, the depth of flow in the modified channel during low-flow conditions must be equal to or greater than pre-project conditions. Where feasible, the applicant shall also provide low-flow aquatic passage in areas that do not currently contain low-flow aquatic passage.

(d) Except as provided at (e) below, certain activities are prohibited during times when fish are breeding or are especially sensitive to disturbance. The following activities are prohibited during the restricted periods listed in Table E below:

1. Any construction, excavation, filling or grading in the channel; and

2. Any construction, excavation, filling or grading in the riparian zone, unless the applicant demonstrates that appropriate soil erosion and sediment control measures are in place which will prevent sediment from reaching the channel. All proposed measures shall meet the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90.

Table E

## RESTRICTED TIME PERIODS FOR WATERS WITH FISHERY RESOURCES

| Water and classification                                                                                                                                                                                | Time period (inclusive) during which activities are prohibited |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| <b>1. Trout Waters</b>                                                                                                                                                                                  |                                                                |
| • All trout production waters except rainbow trout                                                                                                                                                      | September 15 through March 15                                  |
| • Rainbow trout production waters                                                                                                                                                                       | February 1 through April 30                                    |
| • Trout stocked waters<br>• Trout maintenance waters<br>• Any water located within one mile upstream of a trout stocked or a trout maintenance water                                                    | March 15 through June 15                                       |
| <b>2. Non-Trout Waters</b>                                                                                                                                                                              |                                                                |
| • Waters that support general game fish                                                                                                                                                                 | May 1 through June 30                                          |
| • Waters that support pickerel                                                                                                                                                                          | Ice out through April 30                                       |
| • Waters that support walleye                                                                                                                                                                           | March 1 through May 30                                         |
| <b>3. Anadromous Waters</b>                                                                                                                                                                             |                                                                |
| • All unimpeded tidal waters open to the Atlantic Ocean or any coastal bay<br>• All waters identified as anadromous migratory pathways                                                                  | April 1 through June 30                                        |
| • Delaware River upstream of U.S. Route 202                                                                                                                                                             | April 1 through June 30 and September 1 through November 30    |
| • Delaware River between U.S. Route 202 and Interstate 276 (Pennsylvania Turnpike Bridge)                                                                                                               | March 1 through June 30                                        |
| • Delaware River between Interstate 276 (Pennsylvania Turnpike Bridge) and Interstate 295 (Delaware Memorial Bridge)<br>• Tidal portions of Raccoon, Rancocas Creek, Crosswicks Creeks and Cooper River | March 1 through June 30 and September 1 through November 30    |
| • All unimpeded tidal waters open to the Delaware River downstream of Interstate 295 (Delaware Memorial Bridge)<br>• Tidal portions of the Maurice River, Cohansey River and Salem River                | March 1 through June 30 and October 1 through November 30      |

(e) An applicant may request that the Department reduce, extend or otherwise modify a timing restriction listed in Table E. The Department shall grant such a request if one or more of the following requirements is satisfied:

1. The applicant demonstrates that the adverse impacts to fishery resources will be less if a regulated activity occurs during the restricted time period rather than during an unrestricted time period;

2. A regulated activity is subject to more than one restricted time period, the combined effect of which would limit the regulated activity to fewer than 183 calendar days per year. In such a case, the Department shall allow the regulated activity to occur for up to 183 calendar days, provided the applicant demonstrates that additional measures shall be taken to reduce adverse impacts to fishery resources to a level acceptable to the Department. Note that the 183-day period during which the Department determines that activities may occur need not be consecutive. For example, the Department may determine that restricting activities for three months in the spring and three

months in the fall best protects fishery resources in a particular case;

3. The Department determines that observance of a timing restriction for the reconstruction of a public road crossing would cause increased risks or excessive delays to school buses or vans, and the applicant demonstrates that additional measures shall be taken to reduce adverse impacts to fishery resources to an acceptable level; or

4. The Department determines that, due to the nature of the project or an unusual circumstance onsite, the timing restriction must be modified in order to prevent a substantial adverse impact to the fishery resource or to the environment.

(f) The Delaware River Basin Commission (DRBC) may impose timing restrictions in addition to those listed in Table E above on certain activities in waters under DRBC jurisdiction. Contact the U.S. Fish and Wildlife Service's River Basin Coordinator through the DRBC at (609) 883-9500 for information on these additional timing restrictions.

**7:13-10.6 Requirements for a regulated activity in a documented habitat for threatened or endangered species**

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in a documented habitat for a threatened or endangered species.

(b) For the purposes of this chapter, the Department identifies present and/or documented habitat for most threatened or endangered wildlife species using the Landscape Project method, which focuses on habitat areas required to support local populations of threatened and endangered wildlife species. This method is further described in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g). The report entitled New Jersey's Landscape Project provides additional information on mapping methodology and is available at the website [www.nj.gov/dep/fgw/ensphome.htm](http://www.nj.gov/dep/fgw/ensphome.htm) or by contacting the address given below. The Department's Landscape Maps may be updated periodically and may be obtained via file download from [www.nj.gov/dep/fgw/ensphome.htm](http://www.nj.gov/dep/fgw/ensphome.htm) or through the Interactive I-map NJ website: [www.state.nj.us/dep/gis/imapnj/imapnj.htm](http://www.state.nj.us/dep/gis/imapnj/imapnj.htm) or by writing to the Division of Fish and Wildlife, Endangered and Nongame Species Program at:

The Landscape Project  
State of New Jersey Department of Environmental  
Protection  
Division of Fish and Wildlife Endangered and  
Nongame Species Program  
P.O. Box 400  
Trenton, NJ 08625-0400

(c) For endangered or threatened plant species and for those wildlife species for which a landscape model in the Landscape Project has not been developed (models do not exist for certain aquatic species), the Department shall rely on the New Jersey Natural Heritage Database for site-specific information. To determine which animal species are not included in the Landscape Project, see Appendix IV of the New Jersey Landscape Mapping Project, Version 2.0 report, available at [www.nj.gov/dep/fgw/ensphome.htm](http://www.nj.gov/dep/fgw/ensphome.htm). Information regarding the Natural Heritage Program Database is available at: [www.nj.gov/dep/parksandforests/natural/heritage/](http://www.nj.gov/dep/parksandforests/natural/heritage/).

(d) The Department shall issue an individual permit for a regulated activity only if the activity will not adversely affect either of the following:

1. A threatened or endangered species; or
2. A documented habitat for a threatened or endangered species.

(e) The Department shall require a survey and/or a habitat assessment for threatened or endangered species as part of an environmental report, as described at N.J.A.C. 7:13-15.5(c), for an individual permit for any regulated activity which is likely to do either of the following:

1. Disturb an area known to contain a threatened or endangered species; or
2. Disturb any habitat that could support a threatened or endangered species.

(f) Persons seeking information pertaining to threatened or endangered species sightings on or near a particular site can contact:

State of New Jersey  
Department of Environmental Protection  
Natural Heritage Program  
P.O. Box 404  
Trenton, New Jersey 08625  
Telephone: (609) 984-1339  
Website:  
[www.nj.gov/dep/parksandforests/natural/heritage/](http://www.nj.gov/dep/parksandforests/natural/heritage/)

(g) The Department shall restrict a regulated activity during times of year when a threatened or endangered species is especially sensitive to disturbance, such as during mating or migratory periods. The Department shall not limit the regulated activity to fewer than 183 calendar days per year under this section. Note that the 183-day period during which the Department determines that activities may occur need not be consecutive. For example, the Department may determine that restricting activities for three months in the spring and three months in the fall best protects a threatened or endangered species in a particular case.

**7:13-10.7 Requirements for a regulated activity in an area with acid producing soils**

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in an area containing acid producing soils.

(b) The Department shall issue an individual permit for an activity in a regulated area known or suspected to contain acid producing soils only if the applicant submits for Department approval a plan to minimize the adverse effects of exposing acid producing soils. The plan shall, at a minimum, address how the applicant will meet the following requirements:

1. Exposure of acid producing soils to air and/or water shall be minimized;
2. All exposed areas with acid producing soils shall be promptly stabilized to prevent such soils from washing into the water;
3. Any acid that is generated or exposed shall be properly neutralized;
4. The area shall be treated to ensure that post exposure oxidation rates do not exceed pre exposure oxidation rates;

5. Acid producing soils shall be disposed of properly and shall not be mixed into or spread over non acid producing soils; and

6. Any acid producing soils remaining after construction shall be covered with lime and a layer of non-acid producing soil sufficient to facilitate the growth of vegetation.

(c) The following steps shall be taken if acid producing soils are unexpectedly exposed in a regulated area:

1. Soil disturbance shall cease immediately;

2. The soils that have been disturbed shall be quickly stabilized so as to prevent acid producing soils from washing into any nearby water;

3. Any uncovered acid producing soil shall be immediately isolated from any flowing water;

4. The Department shall be contacted immediately for further guidance;

5. The plan required in (b) above shall be prepared and submitted to the Department; and

6. Soil disturbance shall not resume until the Department has approved the plan.

(d) The Flood Hazard Area Technical Manual, available at the Department at the address listed at N.J.A.C. 7:13-1.1(g), provides further information to assist in preparation of the plan required in (b) and (c) above.

## SUBCHAPTER 11. INDIVIDUAL PERMIT REQUIREMENTS FOR VARIOUS REGULATED ACTIVITIES

### 7:13-11.1 Requirements that apply to all regulated activities

(a) This section sets forth design and construction standards that apply to any regulated activity proposed in any regulated area.

(b) The Department shall issue an individual permit for a regulated activity only if it determines that the regulated activity is not likely to cause significant and adverse effects on the following:

1. Water quality;
2. Aquatic biota;
3. Water supply;
4. Flooding;
5. Drainage;
6. Channel stability;

7. Threatened and endangered species or their current or documented historic habitats;

8. Navigation;

9. Energy production; and

10. Fishery resources.

(c) A permittee shall obtain all necessary approvals from the local Soil Conservation District or its designee prior to commencing any activity approved in an individual permit issued under this chapter.

(d) A permittee shall obtain all necessary approvals from the USDA Natural Resource Conservation Service or its designee prior to commencing any activity designed or overseen by the NRCS, which is approved in an individual permit issued under this chapter.

(e) If neither the Soil Conservation District nor the USDA Natural Resource Conservation Service has jurisdiction over an activity approved in an individual permit issued under this chapter, the permittee shall commence the activity only if the following soil erosion and sediment control standards, as specified in the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90, are implemented:

1. Sediment control measures shall be installed around the proposed construction sufficient to prevent sediment from entering any riparian zone or channel outside the construction area;

2. If construction is proposed in a channel, sediment control measures, such as coffer dams, shall be installed around the activity sufficient to prevent flowing water from coming in contact with construction for the duration of the project where feasible;

3. All slopes shall be graded and stabilized to prevent post-construction erosion; and

4. Permanent, indigenous, non-invasive vegetation shall be established on all exposed soils immediately following construction. The applicant shall monitor and maintain all such vegetation for at least three growing seasons to ensure proper establishment and survival.

(f) The Department shall issue an individual permit for a regulated activity that adversely impacts a property not owned by an applicant only if the applicant demonstrates that one or more of the requirements at N.J.A.C. 7:13-9.2(f) are satisfied for each adversely impacted property. A regulated activity shall be considered to adversely impact a property not owned by an applicant if the activity meets any of the following requirements (for the purpose of determining compliance with (f)3, 4 and 5 below, calculations shall be rounded to the nearest 0.1 feet):

1. The regulated activity is situated, in whole or in part, on property that is not owned by the applicant;

2. A stormwater discharge is directed overland onto property that is not owned by the applicant and the Department determines that the discharge will significantly increase overland flow on the property not owned by the applicant;

3. The regulated activity will cause a building situated on property not owned by the applicant to be subject to increased frequency or depth of flooding during any flood event up to and including the flood hazard area design flood;

4. The applicant owns (or has development rights on) both sides of a regulated water, and the regulated activity will cause the flood hazard area design flood elevation to increase by more than 0.2 feet on any property not owned by the applicant; and/or

5. The applicant owns (or has development rights) on only one side of a regulated water, and the regulated activity will cause the flood hazard area design flood elevation to increase by more than 0.1 feet on any property not owned by the applicant.

(g) If a project results in a significant change in the cross-sectional area and/or hydraulic capacity of a channel or floodway, the Department shall presume that the project has the potential to adversely impact a property not owned by the applicant, as described at (f) above. In such a case, the Department shall require the applicant to provide hydrologic and/or hydraulic calculations that identify the properties that would be adversely impacted, or which demonstrate that such impacts will not in fact occur. Examples of projects that may require such an analysis include a channel modification, flood control project, the construction or removal of a water control structure and the placement of a significant volume of fill in a floodway.

#### 7:13-11.2 Requirements for stormwater management

(a) This section sets forth stormwater management requirements and specific design and construction standards that apply to any major development, as defined at N.J.A.C. 7:8-1.2, which requires an individual permit under this chapter.

(b) The Department shall issue an individual permit for a regulated activity associated with a major development only if the requirements of the Stormwater Management rules at N.J.A.C. 7:8 are satisfied.

(c) The Department shall issue an individual permit for a stormwater management basin located within or discharging within a flood hazard area only if the following requirements are satisfied:

1. The basin is designed and constructed to function properly during both flood and non-flood conditions;
2. The effects of flooding and tailwater conditions on any proposed discharge are accounted for in the stormwater

management calculations for the proposed basin. Tailwater conditions refer to situations where the discharge pipe will be submerged during a flood in such a way that floodwaters prevent the basin from draining properly. The effects of flooding and tailwater conditions are of particular concern in the following cases:

- i. The basin will be overtopped and flooded during the flood hazard area design flood, because it is not feasible to construct the emergency spillway in accordance with (c)3 below;
- ii. The drainage area of the basin is similar in size to the drainage area of the water receiving the proposed discharge;
- iii. The basin reaches its maximum storage volume during or near the time flooding peaks within the water receiving the proposed discharge; and/or
- iv. The elevation of the lowest discharge orifice or weir in the basin lies below the flood hazard area design flood elevation;

3. If a basin is proposed within the flood hazard area, the emergency spillway shall be constructed above the flood hazard area design flood elevation where feasible, in order to prevent floodwaters from overtopping the berm and flooding the basin; and

4. If the elevation of the lowest discharge orifice or weir in the basin lies below the flood hazard area design flood elevation, the discharge pipe shall be equipped with mechanical devices where appropriate to prevent floodwater from backing up the pipe into the basin.

#### 7:13-11.3 Requirements for excavation, fill and grading activities

(a) This section sets forth specific design and construction standards that apply to any excavation, fill and/or grading proposed in any regulated area.

(b) The Department shall issue an individual permit for excavation, fill and/or grading only if the following requirements are satisfied:

1. The overland flow of stormwater is not impeded and floodwaters can freely enter and exit the disturbed area, unless the area is graded to impound water for a stormwater management structure that meets the requirements of the Stormwater Management rules at N.J.A.C. 7:8;
2. Any slope of greater than 50 percent (a ratio of two horizontal to one vertical) is stabilized using soil bioengineering, retaining walls, rip-rap or other appropriate slope protection;
3. The excavation, fill and/or grading does not endanger the integrity of any existing structure; and
4. All excavated material is disposed of lawfully.



**7:13-11.4 Requirements for a structure**

(a) This section sets forth specific design and construction standards that apply to any structure proposed in any regulated area.

(b) The Department shall issue an individual permit to construct or reconstruct a structure only if the entire structure is designed and constructed to be suitably anchored in order to:

1. Resist impact from water and debris during the flood hazard area design flood;
2. Resist uplift, flotation, collapse and displacement due to hydrostatic and hydrodynamic forces resulting from the flood hazard area design flood;
3. Resist overturning and sliding pressure, as well as pressure from the freeze/thaw cycle of the soil; and
4. If the structure is located in or adjacent to a channel, resist undermining caused by channel erosion.

**7:13-11.5 Requirements for a building**

(a) This section sets forth specific design and construction standards that apply to any building proposed in the areas listed in (b) below. Subsection (c) below establishes standards that apply to all buildings, and subsections (d) through (f) below provide additional standards for various types of buildings.

(b) The requirements in this section apply to a building that is constructed or reconstructed in the following areas:

1. A flood hazard area; and
2. An area that was previously situated in a flood hazard area, but which was filled, raised or otherwise removed from the flood hazard area after January 31, 1980, whether in accordance with or in violation of this chapter, except in the following cases:
  - i. A Department delineation is available for the site, and the Department approves a revision of its delineation that removes the area in question from the flood hazard area; or
  - ii. No Department delineation is available for the site, but FEMA issues a Letter of Map Amendment that removes the area in question from the 100-year flood plain.

(c) The Department shall issue an individual permit to construct or reconstruct a building of any kind only if the following requirements are satisfied:

1. Any new building is located at least 25 feet from any top of bank or edge of water;
2. If an existing building located near any top of bank or edge of water is to be expanded, the expanded portion is

located at least 25 feet from the top of bank or edge of water, where possible;

3. If an existing building located near any top of bank or edge of water is to be reconstructed, the new building shall be relocated at least 25 feet from the top of bank or edge of water, where possible;

4. Any exterior wall being constructed or reconstructed is designed to resist hydrostatic and hydrodynamic pressure caused by flooding up to the flood hazard area design flood elevation; and

5. All applicable requirements contained in (d) through (t) below are satisfied.

(d) The Department shall not issue an individual permit for the construction of a new building in a floodway, except for the construction of a building on a pier in the Hudson River satisfying the requirements of N.J.A.C. 7:7E-3.48.

(e) The Department shall issue an individual permit to elevate or reconstruct a lawfully existing building in a floodway only if the following requirements are satisfied:

1. The building has not been unoccupied for more than five years prior to the date of application to the Department to reconstruct;
2. The reconstruction shall not convert a non-residential use to a residential use; and
3. All construction takes place within the same footprint as the original building.

(f) The Department shall issue an individual permit for the construction of an addition to a lawfully existing building in a floodway only if the following requirements are satisfied:

1. The building has not been unoccupied for more than five years prior to the date of application to the Department to construct the addition;
2. The addition does not result in any further obstruction to the flow of floodwaters; and
3. The existing building, in combination with the addition, is modified to withstand the hydrodynamic and hydrostatic forces due to flooding up to the flood hazard area design flood elevation.

(g) The Department shall issue an individual permit to construct a new habitable building only if the following requirements are satisfied:

1. The lowest floor of a private residence is set at least one foot above the flood hazard area design flood elevation;
2. The lowest floor of a public building is set at least one foot above the flood hazard area design flood elevation;

3. The lowest floor of a multi-residence building is set at least one foot above the flood hazard area design flood elevation, unless all of the following are satisfied:

i. The building is used for both residential and non-residential purposes;

ii. The lowest floor of any residential portion of the building, including any common area, such as a lobby or other portion of the building that is used for both residential and non-residential purposes, is set at least one foot above the flood hazard area design flood elevation;

iii. The applicant demonstrates that it is not feasible to set the lowest floor of any or all of the non-residential portions of the building at least one foot above the flood hazard area design flood elevation;

iv. The lowest floor of the non-residential portions of the building identified in (g)3iii above is set as close as feasible to one foot above the flood hazard area design flood elevation; and

v. An architect or engineer certifies that the non-residential portions of the building identified in (g)3iii above will be constructed in accordance with the flood-proofing requirements at (q) below; and

4. The lowest floor of any habitable building not identified in (g)1, 2, or 3 above, such as a commercial business, house of worship, office complex, or shopping center, is set at least one foot above the flood hazard area design flood elevation, unless all of the following are satisfied:

i. The applicant demonstrates that it is not feasible to construct the lowest floor of any or all portions of the building at least one foot above the flood hazard area design flood elevation;

ii. The lowest floor of the portions of the building identified in (g)4i above is constructed as close as feasible to one foot above the flood hazard area design flood elevation; and

iii. An architect or engineer certifies that the portions of the building identified in (g)4i above will be constructed in accordance with the flood-proofing requirements at (q) below.

(h) The Department shall issue an individual permit to undertake the substantial improvement of a lawfully existing habitable building that has been damaged by fire, flooding, or other natural disaster only if the following requirements are satisfied:

1. The lowest floor of the entire building is constructed or modified where necessary to meet the requirements of (g) above to the extent feasible. In no case shall the lowest floor be set below the FEMA 100-year flood elevation, except as provided in (g)3 and 4 above; and

2. Any enclosed area beneath the lowest floor of the entire building is modified as necessary to meet the requirements of (n), (o), and (p) below, as appropriate.

(i) The Department shall issue an individual permit to undertake the substantial improvement of a lawfully existing building that has not been damaged by fire, flooding, or other natural disaster only if the following requirements are satisfied:

1. The lowest floor of any constructed, elevated, enlarged, or modified portion of the building meets the requirements of (g) above;

2. The lowest floor of the remainder of the building is modified where necessary to meet the requirements of (g) above to the extent feasible. In no case shall the lowest floor of this portion of the building be set below the FEMA 100-year flood elevation, except as provided in (g)3 and 4 above; and

3. Any enclosed area beneath the lowest floor of the entire building is modified as necessary to meet the requirements of (n), (o), and (p) below, as appropriate.

(j) The Department shall issue an individual permit to elevate, enlarge, or otherwise modify all or a portion of a lawfully existing building, which does not result in a substantial improvement, only if the following requirements are satisfied:

1. The lowest floor of the elevated, enlarged, or modified portion of the building meets the requirements of (g) above.

i. Where only a portion of a building is elevated, enlarged, or modified, the lowest floor of the remainder of the building is not required to be elevated or otherwise modified to meet the requirements of (g) above; and

2. Any enclosed area beneath the lowest floor of the elevated, enlarged, or modified portion of the building is modified as necessary to meet the requirements of (n), (o), and (p) below, as appropriate.

(k) The Department shall issue an individual permit to reconstruct, elevate, enlarge, or otherwise modify a habitable building that was constructed in violation of this chapter only if the existing building is modified as necessary to meet the requirements of (g) through (j) above, as applicable.

(l) The Department shall issue an individual permit to convert an existing building from a non-residential use to a residential use only if the lowest floor of the converted building is modified as necessary to meet the requirements of (g) above.

(m) The Department shall issue an individual permit to construct a public building or multi-residence building, or to convert an existing building to one of these uses, only if the following requirements are met:

1. If the building is located in a fluvial flood hazard area, the applicant demonstrates that the building is served by at least one existing or proposed roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation; and

2. If the building is located in a tidal flood hazard area, the applicant demonstrates either that the building is served by at least one existing or proposed roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation, or that such access is not feasible.

(n) The Department shall issue an individual permit to enclose an area that lies below the lowest floor of a habitable building only if the following requirements are satisfied:

1. The enclosure is used solely for parking of vehicles, building access or storage;

2. The floor of the enclosure is situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area; and

3. The enclosure is constructed with permanent flood openings that meet the requirements of the Uniform Construction Code at N.J.A.C. 5:23.

(o) The Department shall issue an individual permit for an enclosure that lies below the flood hazard area design flood elevation and that is intended to be used as a garage for one private residence, whether the enclosure is attached to or below a private residence or is freestanding, only if the following requirements are satisfied:

1. The garage meets the requirements for an enclosure under (n)1, 2, and 3 above;

2. The garage is not being constructed as part of a residential subdivision or multi-unit development; and

3. The lot on which the garage is being constructed did not receive preliminary or final subdivision approval after November 5, 2007.

(p) The Department shall issue an individual permit for an enclosure under (n) above that is greater than six feet in height, or for a garage under (o) above, only if:

1. The deed for the lot on which the enclosure or garage is constructed is modified to:

i. Explain that the enclosure or garage is likely to be inundated by floodwaters, which may result in damage and/or inconvenience;

ii. Disclose the depth of flooding that the enclosure or garage would experience during the FEMA 100-year flood and flood hazard area design flood, if either elevation is known;

iii. Prohibit habitation of the enclosure or garage; and

iv. Explain that converting the enclosure or garage into a habitable area may subject the property owner to enforcement under this chapter; and

2. Within 90 calendar days of the issuance of the individual permit for the enclosure or garage, a copy of the modified deed as filed with the local county clerk is provided to the Department at the address set forth at N.J.A.C. 7:13-1.1(f).

(q) The Department shall issue an individual permit for a building that is flood-proofed only if one of the following requirements is satisfied:

1. The applicant dry flood-proofs the building in accordance with (r) below; or

2. The applicant demonstrates that it is not feasible to dry flood-proof the building in accordance with (r) below and instead wet flood-proofs the building in accordance with (s) below.

(r) The Department shall issue an individual permit to dry flood-proof a building only if the building is designed and constructed with measures to prevent floodwaters from entering the building during a flood depth of at least one foot above the flood hazard area design flood elevation.

(s) The Department shall issue an individual permit to wet flood-proof a building only if the building is designed and constructed to be flood-resistant during a flood depth of at least one foot above the flood hazard area design flood elevation, so that floodwaters can enter the building through permanent openings, while not damaging the structural integrity of the building.

(t) The Department shall not issue an individual permit to flood-proof a new private residence, a new public building, or any residential portions of a new multi-residence building.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (a) and (c)5, substituted "(t)" for "(q)"; in the introductory paragraph of (e), substituted "to elevate or reconstruct" for "for the reconstruction of"; rewrote (g) through (q); and added (r) through (t).

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

#### Case Notes

Determination by the Department of Environmental Protection (DEP) that a proposed major development in a Special Water Resource Protection Area (SWRPA) should not receive Stream Encroachment and Freshwater Wetland Permits was upheld. Although the property had previously been used as a landfill and thus had been developed and disturbed, the administrative law judge found that the proposed development would result in a loss of all four functional values of the SWRPA, including habitat, nonpoint source pollutant load reduction, temperature moderation, and channel integrity. Further the proposed project did not comply with stormwater runoff mitigation requirements,

basement depth requirements, and post-construction runoff requirements. The DEP was not under an obligation to provide the developer with notice and an opportunity to amend the stormwater runoff defects. *JDME Acquisitions, LLC and Shamrock Creek, LLC. v. New Jersey Dep't of Env'tl. Protection, Div. of Land Use Regulation, OAL Dkt. No. ELU-FH 13080-09, 2011 N.J. AGEN LEXIS 924, Initial Decision (September 12, 2011).*

### 7:13-11.6 Requirements for a railroad, roadway or parking area

(a) This section sets forth specific design and construction standards that apply to any railroad, roadway or parking area proposed in a flood hazard area.

(b) The Department shall issue an individual permit to construct or reconstruct a railroad or public roadway only if one of the following requirements is satisfied:

1. The travel surface of the railroad or public roadway is constructed at least one foot above the flood hazard area design flood elevation; or

2. The applicant demonstrates that it is not feasible to construct the travel surface of the proposed railroad or public roadway at least one foot above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface as close to this elevation as feasible.

(c) The Department shall issue an individual permit to construct or reconstruct a driveway that only serves one private residence, which is not being constructed as part of a larger residential subdivision, only if one of the following requirements is satisfied:

1. The travel surface of the driveway is constructed at least one foot above the flood hazard area design flood elevation; or

2. The applicant does the following:

- i. Demonstrates that it is not feasible to construct the travel surface of the proposed driveway at least one foot above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface as close to this elevation as feasible; and

- ii. Modifies the deed of the property to disclose (c)2ii(1) through (3) below. The modified deed shall be filed with the local county clerk, a copy of which shall be provided to the Department within 90 calendar days of the issuance of the individual permit.

- (1) That the driveway is likely to be inundated by floodwaters, which may result in damage and/or inconvenience;

- (2) The minimum frequency storm at which the driveway will be inundated; and

- (3) The depth of flooding during the flood hazard area design flood.

(d) The Department shall issue an individual permit to construct or reconstruct a private roadway that serves a public building or multi-residence building only if one of the following requirements is satisfied:

1. The travel surface of the private roadway is constructed at least one foot above the flood hazard area design flood elevation;

2. For a new private roadway in a fluvial flood hazard area, the applicant demonstrates that the public building or multi-residence building is already served by one or more roadways having a travel surface at least one foot above the flood hazard area design flood elevation, which is of adequate size and capacity to serve the building, and instead constructs the travel surface of the roadway as close to this elevation as feasible; or

3. For a new private roadway in a tidal flood hazard area, or for any reconstructed private roadway that currently lies below the flood hazard area design flood elevation, the applicant demonstrates that it is not feasible to construct the travel surface of the roadway at least one foot above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface of the roadway as close to this elevation as feasible.

(e) The Department shall issue an individual permit to construct or reconstruct a parking area that serves a public building or multi-residence building only if one of the following requirements is satisfied:

1. The travel surface of the parking area is constructed at least one foot above the flood hazard area design flood elevation; or

2. The applicant demonstrates that it is not feasible to construct the travel surface of the parking area at least one foot above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface of the parking area as close to this elevation as feasible.

(f) The Department shall issue an individual permit to construct or reconstruct a private roadway and/or parking area that serves a building, or group of buildings, not covered by (c), (d) or (e) above, such as a commercial business, house of worship, office complex, shopping center or residential subdivision of two or more private residences, only if one of the following requirements is satisfied:

1. The travel surface of each proposed private roadway and parking area that serve the building or group of buildings is constructed at least one foot above the flood hazard area design flood elevation;

2. The applicant demonstrates the following:

- i. Each building or group of buildings is already served by one or more roadways having a travel surface at least one foot above the flood hazard area design flood

elevation, which is of adequate size and capacity to serve the building or group of buildings;

ii. The travel surface of each proposed roadway is constructed as close to one foot above the flood hazard area design flood elevation as feasible; and

iii. The travel surface of each proposed parking area is constructed at least one foot above the flood hazard area design flood elevation; or

3. The applicant demonstrates the following:

i. It is not feasible to construct the travel surface of each private roadway and parking area at least one foot above the flood hazard area design flood elevation pursuant to (g) below;

ii. The travel surface of each private roadway and parking area is constructed as close to one foot above the flood hazard area design flood elevation as feasible;

iii. Every effort has been taken to provide some parking areas or sections of roadway in the overall development that are situated at least one foot above the flood hazard area design flood elevation so that vehicles can be moved to higher ground during a flood;

iv. No extraordinary risk is posed to any person using each private roadway or parking area that is constructed at an elevation less than one foot above the flood hazard area design flood elevation; and

v. An adequate number of permanent signs are posted in prominent locations indicating which private roadways and parking areas are subject to flooding in the following cases:

(1) The roadway and/or parking area serves a residential subdivision of two or more private residences; or

(2) The parking area has 10 spaces or more.

(g) An applicant seeking to demonstrate that it is not feasible to construct the travel surface of a railroad, roadway or parking area at least one foot above the flood hazard area design flood elevation, as is required for various activities in this section, shall prove that strict compliance with this requirement would result in one or more of the following:

1. Prohibitively high construction costs;

2. Construction costs that are disproportionately high compared with any benefit that would be obtained by strict compliance;

3. A design that necessitates excessive volumes of fill that exceed the flood storage displacement limits at N.J.A.C. 7:13-10.4, for which flood storage cannot feasibly be created in compensation either onsite or offsite; and/or

4. A design that causes unavoidable and adverse impacts to the environment (such as to the channel, riparian

zone or fishery resources), or which would cause unavoidable and significant increases in the flood hazard area design flood elevation.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In the introductory paragraph of (d), (d)2, and the introductory paragraph of (e), inserted "or multi-residence building"; and in (d)2, deleted "public" preceding "building."

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.

#### 7:13-11.7 Requirements for a bridge or culvert

(a) This section sets forth specific design and construction standards that apply to any bridge or culvert proposed in any regulated area.

(b) The Department shall issue an individual permit to construct or reconstruct a bridge or culvert only if the following requirements are satisfied:

1. The bridge or culvert, and all embankments, are designed to remain stable, scour resistant and resistant to displacement and/or damage during any flood event up to and including the flood hazard area design flood. At a minimum, each bridge shall have stable abutments, each culvert shall have stable headwalls, and each abutment and headwall shall have footings that extend no less than three feet below the invert of the channel; and

2. The bridge or culvert, and its associated roadway, are designed to minimize flooding and adverse impacts to channel stability and fishery resources. To help achieve this goal, the bridge or culvert opening shall match or exceed the dimensions of the existing channel where feasible, so that the size and shape of the natural channel is preserved through the structure. If additional flood conveyance is required, parallel culverts can be placed alongside the primary structure to carry flows that exceed the banks. Examples of acceptable designs are provided in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g).

(c) The Department shall issue an individual permit to construct a new bridge or culvert only if the following requirements are satisfied (for the purpose of determining compliance with this subsection, calculations shall be rounded to the nearest 0.1 feet):

1. The new structure does not cause any offsite building, railroad, roadway or parking area to be subject to increased frequency or depth of flooding during any flood event up to and including the flood hazard area design flood; and

2. The new structure does not cause an increase of more than 0.2 feet in the flood hazard area design flood elevation offsite.

(d) The Department shall issue an individual permit to reconstruct an existing bridge or culvert only if the following requirements are satisfied (for the purpose of determining compliance with this subsection, calculations shall be rounded to the nearest 0.1 feet):

1. The reconstructed structure does not cause any off-site building, railroad, roadway or parking area to be subject to increased frequency or depth of flooding during any flood event up to and including the flood hazard area design flood;

2. The reconstructed structure does not cause an increase of more than 0.2 feet in the flood hazard area design flood elevation offsite within 500 feet of the structure; and

3. The reconstructed structure does not cause any increase in the flood hazard area design flood elevation offsite more than 500 feet from the structure.

(e) Subsections (f) through (m) below set forth standards for the protection of aquatic habitat and the maintenance of

low-flow aquatic passage associated with the construction of a bridge or culvert. Examples of various designs described in this section are depicted in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g). For the purposes of this section, regulated waters are divided into three classes as follows:

1. Class A waters, which include the following:

- i. Category One waters;
- ii. Trout production waters;
- iii. Trout maintenance waters;
- iv. Trout stocked waters;
- v. Anadromous waters;
- vi. Waters supporting cool and warmwater gamefish; and



vii. Waters supporting aquatic threatened and/or endangered species;

2. Class B waters, which include the following:

i. Waters supporting non-game cool and warm-water fish;

ii. Waters identified by the Department's Division of Fish and Wildlife as supporting aquatic biota, which are not otherwise listed as Class A in (e)1 above; and

iii. Waters that have been altered and/or degraded by lining, ditching, channel modification or other human activity, but which the Department determines can be restored and/or enhanced to support viable aquatic resources such as described in this paragraph; and

3. Class C waters, which include the following:

i. Waters that do not contain fishery resources;

ii. Waters that are wholly manmade (not naturally occurring waters that have been altered by human activity); and

iii. All other waters not otherwise included in Class A and Class B in (e)1 and 2 above.

(f) The Department shall issue an individual permit to construct or reconstruct a bridge or culvert in or across a Class A water that has a channel width of five feet or more as follows:

1. The channel shall be completely spanned with one bridge, arch culvert or three-sided culvert as described in (i) below.

2. If spanning under (i) below is not feasible due to prohibitively high construction costs, unstable substrate, adverse impacts to flooding and/or an irregular channel configuration, and the applicant meets the waiver requirements at (m) below, the channel shall be spanned with a smaller structure and adjoining side-relief culverts shall be constructed as described in (j) below.

3. If spanning the channel with side-relief culverts under (j) below is not feasible due to prohibitively high construction costs, unstable substrate, adverse impacts to flooding and/or an irregular channel configuration, one circular or elliptical culvert, or a system of culverts, shall be constructed as described in (k) below.

4. If constructing culverts under (k) below is not feasible due to hydraulic or structural design constraints, the applicant can construct a circular, elliptical or box culvert as described in (l) below.

(g) The Department shall issue an individual permit to construct or reconstruct a bridge or culvert in or across a Class B water, or a Class A water that has a channel width of less than five feet, as follows:

1. The channel shall be completely spanned with one bridge, arch culvert or three-sided culvert as described in (i) below.

2. If spanning under (i) below is not feasible due to prohibitively high construction costs, unstable substrate, adverse impacts to flooding and/or an irregular channel configuration, the channel shall be spanned with a smaller structure and adjoining side-relief culverts shall be constructed as described in (j) below.

3. If spanning the channel with side-relief culverts under (j) below is not feasible due to prohibitively high construction costs, unstable substrate, adverse impacts to flooding and/or an irregular channel configuration, and the applicant meets the waiver requirements at (m) below, one circular or elliptical culvert, or a system of culverts, shall be constructed as described in (k) below.

4. If constructing culverts under (k) below is not feasible due to hydraulic or structural design constraints, the applicant can construct a circular, elliptical or box culvert as described in (l) below.

(h) The Department shall issue an individual permit to construct or reconstruct a bridge or culvert in or across a Class C water as follows:

1. The channel shall be completely spanned with one bridge, arch culvert or three-sided culvert as described in (i) below.

2. If spanning under (i) below is not feasible due to prohibitively high construction costs, unstable substrate, adverse impacts to flooding and/or an irregular channel configuration, the channel shall be spanned with a smaller structure and adjoining side-relief culverts shall be constructed as described in (j) below.

3. If spanning the channel with side-relief culverts under (j) below is not feasible due to prohibitively high construction costs, unstable substrate, adverse impacts to flooding and/or an irregular channel configuration, one circular or elliptical culvert, or a system of culverts, shall be constructed as described in (k) below.

4. If constructing culverts under (k) below is not feasible due to hydraulic or structural design constraints, the applicant can construct a circular, elliptical or box culvert as described in (l) below.

(i) Spanning a channel under (f)1, (g)1 and (h)1 above shall be accomplished as follows:

1. The span shall be adequately sized to pass the flood hazard area design flood without a significant increase in the velocity of water in the channel;

2. A stable, natural, earthen channel with low-flow aquatic passage shall be provided throughout the structure; and

3. No armoring shall be placed under or across the channel bed, unless such armoring is necessary to prevent scour along the proposed abutments or footings. In such a case, the armoring shall be buried beneath at least two feet of native substrate where feasible.

(j) Spanning a channel with adjoining side-relief culverts under (f)2, (g)2 and (h)2 above shall be accomplished as follows:

1. The span shall consist of a bridge, arch culvert or three-sided culvert that is sized to match the width and cross-sectional area of the channel so as to convey bank-full flow without a significant increase in the velocity of water in the channel;

2. A stable, natural, earthen channel with low-flow aquatic passage shall be provided throughout the structure;

3. Additional culverts shall be constructed outside the channel, and parallel to the span, as needed to convey flood events that exceed the channel's capacity, up to and including the flood hazard area design flood; and

4. No armoring shall be placed under or across the channel bed, unless such armoring is necessary to prevent scour along the proposed abutments or footings. In such a case, the armoring shall be buried beneath at least two feet of native substrate where feasible.

(k) One circular or elliptical culvert, or a system of parallel circular and/or elliptical culverts, under (f)3, (g)3 and (h)3 shall be constructed as follows:

1. Where possible, one culvert shall be constructed, which is adequately sized so to pass the flood hazard area design flood without a significant increase in the velocity of water in the channel;

2. If construction under (k)1 above is not feasible, one culvert shall be sized to match the width and cross-sectional area of the channel, so as to convey bank-full flow without a significant increase in velocity, and additional culverts shall be constructed outside the channel, and parallel to the span, as needed to convey flood events that exceed the channel's capacity, up to and including the flood hazard area design flood;

3. The invert of the in-channel culvert shall be installed at least two feet below the invert of the natural channel where feasible;

4. The in-channel culvert shall be filled with native substrate up to the invert of the natural channel, in order to create a contiguous flow-path through the culvert that meets and matches the bottom inverts, cross-sections and profile of the channel beyond the culvert; and

5. The applicant shall demonstrate that the native substrate placed within the in-channel culvert will remain stable under expected storm flow conditions.

(l) A circular, elliptical or box culvert under (f)4, (g)4 and (h)4 shall be constructed as follows:

1. Where feasible:

i. The invert of the culvert shall be installed at least two feet below the invert of the natural channel where feasible;

ii. The culvert shall be filled with native substrate up to the invert of the natural channel, in order to create a contiguous flow-path through the culvert that meets and matches the bottom inverts, cross-sections and profile of the channel beyond the culvert; and

iii. The applicant shall demonstrate that the native substrate placed within the culvert will remain stable under expected storm flow conditions; and

2. If a culvert cannot be constructed as described at (k)1 above due to unstable substrate or other physical constraints, the culvert shall be constructed to incorporate an artificial low-flow treatment such as a V-notch, key-notch or concave floor (see the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g), for various examples).

(m) A waiver from the requirements of (f)1 and (g)2 above shall be granted provided:

1. The applicant clearly demonstrates that compliance with (f)1 or (g)2 is not possible or feasible, and/or that the cost of compliance greatly outweighs the environmental benefit that would be achieved. For the purposes of this subsection, the cost of compliance refers not only to economic cost to the applicant but also real or potential adverse impacts to the environment, flooding or public safety;

2. The applicant, if a public entity, demonstrates that:

i. There is a public need to cross the regulated water; and

ii. There is no other feasible means of constructing a bridge or culvert, which would reduce or eliminate adverse impacts to aquatic resources, flooding and public safety; and

3. The applicant, if a private entity, demonstrates that:

i. There is developable land onsite that cannot feasibly be accessed without crossing the regulated water, including accessing the site through neighboring properties; and

ii. There is no other feasible means of constructing a bridge or culvert to access the developable area onsite, which would reduce or eliminate adverse impacts to aquatic resources, flooding and public safety.

**7:13-11.8 Requirements for a footbridge**

(a) This section sets forth specific design and construction standards that apply to any footbridge proposed in any regulated area.

(b) The Department shall issue an individual permit to construct or reconstruct a footbridge only if the following requirements are satisfied (examples of various designs described in this section are depicted in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g)):

1. The structure is used exclusively to carry pedestrians, livestock and/or light vehicles such as bicycles, golf carts or lawn tractors over a regulated water;
2. The travel width is no more than 10 feet. If the travel width is more than six feet, bollards or similar devices shall be installed to prevent automobiles and other larger vehicles from utilizing the footbridge;
3. The structure completely spans the water so that no footings, piers or abutments are placed in the water or its channel;
4. All footings, piers and abutments proposed within 10 feet of the top of bank or edge of water extend at least three feet below the channel invert;
5. All footings, piers and abutments proposed more than 10 feet beyond the top of bank or edge of water extend at least three feet below grade;
6. No approach ramp or other part of the footbridge obstructs flow in a floodway;
7. If the footbridge provides access to a public building, its travel surface is constructed at least one foot above the flood hazard area design flood elevation where feasible, or as close to this elevation as feasible; and
8. The footbridge is designed to pass floodwaters in one of the following ways:
  - i. The low chord of the footbridge is set above the flood hazard area design flood elevation; or
  - ii. Open handrails are used instead of a solid parapet, and the vertical distance between the low chord and the top of the footbridge deck, including any curbing, is no more than eight inches.

(c) A structure that meets the requirements of (b) above is not subject to the requirements for a bridge or culvert at N.J.A.C. 7:13-11.7. Any footbridge or other similar crossing that does not comply with the requirements of (b) above is subject to the requirements at N.J.A.C. 7:13-11.7 for bridges and culverts instead of the requirements of this section.

**7:13-11.9 Requirements for a utility line**

(a) This section sets forth specific design and construction standards that apply to any utility line proposed in any regulated area.

(b) The Department shall issue an individual permit to construct or reconstruct a utility line across or under a channel or water only if the following requirements are satisfied, as applicable:

1. The applicant demonstrates that it is not feasible to directionally drill or "jack" the proposed utility line under the channel or water, as permitted-by-rule at N.J.A.C. 7:13-7.2(c)3;
2. The applicant demonstrates that it is not feasible to construct the utility line within a roadway that already crosses the channel or water, as permitted-by-rule at N.J.A.C. 7:13-7.2(c)4;
3. The applicant demonstrates that it is not feasible to attach the utility line to a bridge that already crosses the channel or water, as permitted-by-rule at N.J.A.C. 7:13-7.2(c)5;
4. The excavation of an open trench across a channel or water resulting in contact with flowing water is avoided. If the excavation of an open trench is unavoidable, the following requirements shall be met:
  - i. Any trench in a channel, water or riparian zone, is no more than 20 feet wide, unless the applicant demonstrates that such a width is not feasible and a wider trench is necessary for safe construction;
  - ii. The normal flow of the channel or water is piped or diverted around the open trench during construction where possible so that sediment cannot enter the regulated water; and
  - iii. The trench is backfilled to the pre excavation ground elevation using native substrate upon completion of the crossing;
5. All disturbed areas in the flood hazard area are restored to pre-construction topography;
6. A utility line that conveys a gas or liquid is protected in one of the following ways:
  - i. It is covered by at least four feet of stable material consisting of native substrate in the channel or water;
  - ii. It is encased in six inches of concrete and covered by at least three feet of stable material consisting of native substrate in the channel or water;
  - iii. It is encased within a steel sleeve, or protected above by a 0.25-inch thick stainless steel plate, and covered by at least three feet of stable material consisting of native substrate in the channel or water; or

iv. If the applicant demonstrates that it is not feasible to provide at least three feet of coverage beneath the channel or water, and that there is no feasible alternative location for crossing the channel or water where at least three feet of coverage is provided, the utility line is either:

(1) Covered by as much stable material consisting of native substrate in the channel or water as feasible, and encased within a steel sleeve; or

(2) Covered by as much stable material consisting of native substrate in the channel or water as feasible, protected above by a 0.25-inch thick stainless steel plate, and encased with six inches of concrete around the sides and bottom;

7. A utility line that does not convey a gas or liquid is covered by at least three feet of stable material consisting of native substrate in the channel or water where feasible;

8. The utility line is sealed to ensure that there will be no leakage or discharge in a regulated area; and

9. The following requirements are satisfied for each utility line that crosses a channel or water, unless the applicant demonstrates that one or more of these requirements is not feasible or that another configuration would pose less risk to life, property and the environment:

i. Each utility line is placed nominally horizontal under the entire channel or water, and remains so beyond each bank for a distance equal to twice the height of the bank, or 10 feet, whichever is greater. If there is no discernible bank, the utility line shall remain nominally horizontal for at least 10 feet beyond the normal edge of water;

ii. The inclined portion of each utility line approaching the channel or water has a slope no greater than 50 percent (a ratio of two horizontal to one vertical); and

iii. Encasement extends under the entire channel or water and 10 feet beyond each top of bank. If there is no discernible bank, the utility line shall be encased for at least 10 feet beyond the normal edge of water.

(c) The Department shall issue an individual permit to construct or reconstruct a utility line above a channel or floodway, which is not attached to a roadway or railroad crossing, or which is attached to such a crossing but does not meet the permit-by-rule at N.J.A.C. 7:13-7.2(c)5, only if the following requirements are satisfied:

1. The applicant demonstrates that it is not feasible to attach the utility line to a bridge that already crosses the channel or water, as permitted-by-rule at N.J.A.C. 7:13-7.2(c)5;

2. The utility line does not create any obstruction to the flow of floodwaters;

3. The utility line is suitably anchored and protected from damage by impact from floating debris;

4. The utility line is sealed to ensure that there will be no leakage or discharge in a regulated area; and

5. The utility line is placed at least one foot above the flood hazard area design flood elevation.

(d) The Department shall issue an individual permit to construct or reconstruct a manhole associated with a utility line in a regulated area only if the following requirements are satisfied:

1. The manhole is constructed at least 10 feet from any top of bank or edge of water (unless situated within a paved surface);

2. The manhole has a watertight cover if constructed along a sanitary sewer line;

3. The top of a manhole in a floodway is flush with the ground; and

4. The top of a manhole in a flood fringe is flush with the ground, where possible.

(e) The Department shall issue an individual permit for the placement of a cable directly on the bed of a channel or water only if the following requirements are satisfied:

1. The channel or water is large enough in both width and depth that the cable will not interfere with the normal flow of the channel or water; and

2. The cable is laid with enough slack so that it can be easily moved.

(f) The Department shall issue an individual permit that allows, over the five-year term of the permit, the necessary and periodic maintenance, repair or replacement of any section of a lawfully existing above or below ground utility line in a regulated area only if the following requirements are satisfied:

1. The applicant submits an application for an individual permit which, in addition to the normal application requirements, includes the following:

i. The exact location of the utility line network that is the subject of the application, identified on USGS quad maps; and

ii. Details of the types of maintenance, repair and/or replacement activities that can be expected to occur during the five-year period, including typical drawings of any anticipated repairs and a construction sequence;

2. The applicant agrees to provide public notice pursuant to N.J.A.C. 7:13-16.3(d) at least five working days before performing any repair or replacement;

3. The applicant agrees to replant all disturbed areas in the riparian zone with indigenous, non-invasive vegetation after each repair or replacement;

4. The applicant agrees to restore all disturbed areas in the flood hazard area to pre-construction topography after each repair or replacement; and

5. The applicant agrees to submit a report to the Department each January which includes the following:

- i. A description of each repair or replacement that occurred during the previous calendar year;
- ii. Color photographs of each regulated area before and after each repair or replacement; and
- iii. The fee for each repair or replacement, as provided at N.J.A.C. 7:13-17.

#### **7:13-11.10 Requirements for a stormwater outfall structure**

(a) This section sets forth specific design and construction standards that apply to any stormwater outfall structure proposed in any regulated area.

(b) The Department shall issue an individual permit to construct or reconstruct a stormwater outfall structure only if the following requirements are satisfied (examples of acceptable designs are provided in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g)):

1. The structure is built with a concrete headwall or flared-end section with footings that extend no less than three feet below grade;
2. The structure does not obstruct flow in a channel or floodway;
3. The structure includes adequate conduit outlet protection where required by the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90;
4. If the structure includes a rip-rap apron, a three feet deep by three feet wide rip-rap toe wall is constructed at the end of the apron; and
5. The structure does not interfere with the normal flow of the channel or threaten to change the dimensions or location of the channel. For example, a large discharge of stormwater into a small channel, or a discharge situated at a significant angle to the normal flow in a channel, may cause the channel to move over time, interfere with the direction of flow and/or cause increased erosion or deposition of sediment within the channel.

#### **7:13-11.11 Requirements for a dam or a low dam**

(a) This section sets forth specific design and construction standards that apply to any dam or low dam proposed in any regulated area.

(b) Activities performed in association with the construction of a dam or low dam, such as a channel modification, the excavation of a stormwater management basin or the creation of a stormwater collection and discharge system, shall be reviewed in accordance with the appropriate requirements for those activities under this chapter. This section applies only to the construction of the dam or low dam itself.

(c) The construction of a dam in a regulated area is subject to the requirements of this chapter only if the dam is part of a stormwater management basin that is located in a regulated area, or which discharges in a regulated area. Any dam that is constructed for another purpose is not subject to the requirements of this chapter, but is subject to the Dam Safety Standards at N.J.A.C. 7:20. Certain classes of dams require a permit from the Department's Dam Safety Section, which can be reached at (609) 984-0859 for further information. The requirements for removing a dam that is subject to this chapter are found at N.J.A.C. 7:13-11.19.

(d) The Department shall issue an individual permit to construct a dam or a low dam in a regulated area only if the following requirements are satisfied:

1. The dam or low dam does not increase offsite flooding in accordance with N.J.A.C. 7:13-11.1(f);
2. The dam or low dam is not located in a channel unless the applicant demonstrates that there is no feasible alternative that would cause less adverse impact to the environment; and
3. The dam or low dam is not located in a water with fishery resources, as described at N.J.A.C. 7:13-10.5, unless the dam or low dam includes a fish ladder or other mechanism that permits fish to pass the structure in either direction.

#### **7:13-11.12 Requirements for a flood control project**

(a) This section sets forth specific design and construction standards that apply to any flood control project proposed in any regulated area.

(b) The Department shall issue an individual permit for a flood control project only if the applicant is a public entity, and the applicant provides a detailed analysis of the existing flooding problem that is to be mitigated. At minimum, this analysis shall include the following:

1. The frequency and intensity of flooding;
2. The number of homes, businesses and other facilities historically affected by flooding;
3. A cost-benefit analysis for the proposed flood control project, which includes a comparison of any adverse environmental impacts that may be caused by the project with the benefits for flood relief for each investigated alternative;

4. A discussion regarding which storms the flood control project is designed to mitigate and why these storms were selected;

5. If the flood control project is not designed to alleviate flooding for the 100-year flood and/or the flood hazard area design flood, a demonstration as to why this is not feasible and/or possible; and

6. All hydrologic and hydraulic calculations necessary to demonstrate the need for and viability of the project.

(c) The Department shall issue an individual permit for a flood control project that results in disturbance to a channel and/or riparian zone only if the requirements of (b) above are satisfied and provided the applicant demonstrates that there is no feasible alternative project located outside the channel and riparian zone that would satisfactorily reduce flooding. At minimum, this analysis shall include the following:

1. A demonstration that the flooding problem cannot feasibly be solved through any of the following:

i. Raising, relocating and/or removing the flood prone structures;

ii. Replacing, removing or altering existing water control structures that are contributing to the flooding, such as dams or inadequately-sized bridges or culverts; and

iii. Improving the hydraulic capacity of existing water control structures, such as removing accumulated sediment and debris from bridges and culverts, or eliminating bends, inlets and blockages in culverts;

2. A demonstration that the flooding problem cannot feasibly be solved by reducing the volume and/or flow rate of floodwaters in the channel through either of the following:

i. Constructing regional stormwater management basins upstream of the flooding; and

ii. Redirecting excess flows into pipes or artificial channels to bypass the affected areas; and

3. A demonstration that the following steps have been taken to ensure that the flooding problem will not reoccur after the flood control project has been constructed:

i. Analysis of local stormwater management ordinances within the drainage area and modification, where necessary, or the ordinances to ensure that flows within the channel will not increase over time; and

ii. Development of a regional plan to preserve the existing flood storage within the drainage area.

(d) The Department shall issue an individual permit for the lining or piping of a channel as part of a flood control project only if the project meets the requirements at (b) and (c) above, and provided the applicant demonstrates the following:

1. There is no feasible alternative project that would satisfactorily reduce the flooding, which would avoid lining or piping the channel;

2. Lining or piping the channel is necessary to protect public health, safety and welfare; and

3. Adequate mitigation for all lost vegetation and aquatic biota will occur.

#### **7:13-11.13 Requirements for a retaining wall or bulkhead**

(a) This section sets forth specific design and construction standards that apply to any retaining wall or bulkhead proposed in any regulated area.

(b) The Department shall issue an individual permit to construct or reconstruct a retaining wall or bulkhead that is at least four feet in height in a fluvial flood hazard area only if the following requirements are satisfied:

1. The retaining wall or bulkhead is designed with stable footings that extend at least 3 feet below grade, unless the applicant demonstrates that such a footing is not possible to construct or necessary for stability;

2. The applicant provides a stability analysis, signed and sealed by an engineer, which demonstrates that the retaining wall or bulkhead is designed to withstand displacement, overturning and failure due to undermining and/or pressure from soil, water and frost; and

3. If located in a channel, the wall is designed to be resistant to erosion as well as the possibility of a shifting bed and/or bank over time.

(c) The Department shall issue an individual permit to construct or reconstruct a retaining wall or bulkhead that is at least four feet in height in a tidal flood hazard area only if an engineer certifies that the retaining wall or bulkhead is designed to withstand displacement, overturning and failure due to undermining and/or pressure from soil, water and frost.

(d) The Department shall issue an individual permit to construct or reconstruct a retaining wall or bulkhead that is less than four feet in height only if the wall is designed with stable footings and, if located in a channel, the wall is designed to be resistant to erosion as well as the possibility of a shifting bed and/or bank over time.

#### **7:13-11.14 Requirements for bank stabilization and channel restoration**

(a) This section sets forth specific design and construction standards that apply to any bank stabilization or channel restoration project proposed in any regulated area.

(b) The Department shall issue an individual permit to restore to a stable condition a bank or channel, which has become eroded, unstable and/or ecologically degraded, only if the applicant provides a detailed analysis of the specific



problem that is to be corrected. At minimum, this analysis shall include the following:

1. A complete description of the existing problem on-site including:

- i. A history of the site and the drainage area, including any previous attempts to restore the bank or channel; and
- ii. The likely causes of any erosion, instability or ecological degradation;

2. A demonstration of why the selected stabilization or restoration methods (as described at (c) below) are the most suitable for the site. At minimum, this demonstration should include and discuss the following (see Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g), for examples):

- i. The location of any headcut in the channel if present. A headcut is a sudden change in elevation in the stream bed, which usually occurs at the leading edge of a forming gully, and is indicative of erosive forces that are likely to continue to wash away the natural channel;
- ii. Any upstream or downstream stressors that may have contributed to and/or exacerbated any erosion, instability or ecological degradation, which should be addressed as part of the project;
- iii. How future development in the drainage area could impact the bank and/or channel and the proposed stabilization and/or restoration;
- iv. The anticipated lifetime of the proposed stabilization or restoration; and

3. A maintenance and monitoring plan to ensure the success of the proposed stabilization or restoration, which includes:

- i. An action plan in case of future failure of the project; and
- ii. A plan to reduce the likelihood of future erosion, instability and ecological degradation onsite.

(c) The Department shall issue an individual permit to restore to a stable condition a bank or channel, which has become eroded, unstable and/or ecologically degraded, only if the project is accomplished as follows:

- 1. The project is designed by an individual with experience in fluvial geomorphology (and soil bioengineering if used on site), as evidenced by documentation supplied with the individual permit application;
- 2. Where possible, a localized eroded bank or destabilized channel is restored solely by cutting back the bank to a stable slope and planting with vegetation suitable for stabilization. Generally a slope of no greater than 50

percent (a ratio of two horizontal to one vertical) is recommended to stabilize an eroded bank;

3. If cutting the bank and planting vegetation as described in (c)2 above cannot adequately restore the channel and/or fully prevent erosion due to excessive channel velocity, or if cutting the bank would destroy vegetation in excess of that which is allowed at N.J.A.C. 7:13-10.2(i), soil bioengineering is used to stabilize the eroded bank and/or restore the channel. In designing soil bioengineering installations, the existing soil characteristics, the bank and/or channel's physical structure and the hydrologic conditions on site shall be considered;

4. The Department shall issue an individual permit for bank stabilization or channel restoration that is not accomplished solely using vegetation or soil bioengineering, as described in (c)2 and 3 above, respectively, only if the applicant demonstrates that, given the velocity and configuration of the adjacent channel and/or other conditions of the site, vegetation and/or soil bioengineering alone are not adequate to stabilize the bank and/or restore the channel; and

5. The Department shall issue an individual permit for the lining or piping of a channel in order to stabilize erosion only if the applicant demonstrates the following:

- i. There is no feasible alternative project that would satisfactorily reduce the erosion, which would avoid lining or piping the channel;
- ii. Lining or piping the channel is necessary to protect public health, safety and welfare; and
- iii. Adequate mitigation for all lost vegetation and aquatic biota will occur.

(d) In cases where nuisance flooding is a related issue, flood capacity outside the regulated water shall be increased by terracing the overbank areas where appropriate, so that the channel is not forced to convey excessive flows (see the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g), for examples).

#### **7:13-11.15 Requirements for sediment and debris removal from a water**

(a) This section sets forth specific standards that apply to any proposed sediment and debris removal from a regulated water.

(b) This section does not apply to the removal of sediment and/or debris by a county or municipality in accordance with general permit 1 at N.J.A.C. 7:13-8.3, or the removal of sediment and/or debris conducted for agricultural purposes in accordance with general permit 2B at N.J.A.C. 7:13-8.4(c)2. In addition, the removal of trash and obstructions from a channel are permitted-by-rule under certain circumstance pursuant to N.J.A.C. 7:13-7.2(a)5 and (d)3.

(c) Except as provided in (d) below, the Department shall issue an individual permit for the removal of sediment and debris from a channel only if the following requirements are satisfied:

1. The applicant demonstrates the following:
  - i. That there is a flooding problem, mosquito control problem or other threat to public health, safety or welfare that cannot otherwise be remedied without removing the sediment and/or debris from the water; and
  - ii. That removing the sediment and/or debris will remedy the problem identified in (c)1i above;
2. The material to be removed from the water consists solely of accumulated silt, sediment and debris. Removal of material beyond or below the natural channel constitutes a channel modification and is subject to the requirements at N.J.A.C. 7:13-10.1(c);
3. In order to minimize the downstream transport of sediment during dredging, all areas being dredged are isolated from flowing water where possible. Means of isolation include erecting temporary berms or sheet-piles around the areas being dredged and pumping the normal channel flow around the work area, or, if channel flow is low, by blocking off sections of the channel being dredged and allowing the sediment to settle;
4. The applicant properly disposes of all material removed from the channel. Removed sediment can be disposed of in a regulated area provided the requirements at (f) below are satisfied. All removed trash and debris shall be disposed of in accordance with all applicable Federal, State and local laws outside any flood hazard area or riparian zone;
5. The project does not disturb the channel bank or the riparian zone, unless such disturbance is unavoidable, necessary to gain access to the channel and minimized;
6. The project is conducted from only one bank where possible;
7. The use of heavy equipment in the channel is avoided;
8. Vegetation and tree canopy on the more southerly or westerly bank is preserved in order to shade the channel;
9. All access points to the water are described in writing and with color photographs; and
10. All disturbed areas in the riparian zone are replanted with indigenous, non-invasive vegetation upon completion of the project.

(d) The Department shall issue an individual permit for the removal of sediment and debris from a channel, which does not meet one or more of the requirements at (c) above, only if the following requirements are satisfied:

1. The applicant is a public entity;
2. The project is intended solely for mosquito control;
3. The applicant demonstrates that the mosquito control problem cannot be solved by any other feasible methods;
4. The applicant submits an individual, site-specific proposal to the Administrator of the State Office of Mosquito Control Coordination, and said office determines that the project is necessary to control a documented mosquito problem;
5. The applicant explains in its public notice that the project does not meet the normal requirements under this chapter for sediment removal and that the applicant is seeking an exception for mosquito control purposes;
6. The applicant convenes a public hearing to discuss the project in cases of significant public interest; and
7. The applicant demonstrates that all adverse environmental impacts are minimized.

(e) The Department shall issue an individual permit for the removal of sediment and debris from an impounded water, such as a lake, pond or reservoir, only if the following requirements are satisfied:

1. In order to minimize the transport of sediment during dredging, all areas being dredged are isolated from flowing water where possible. Means of isolation include erecting temporary berms or sheet-piles around the areas being dredged, lowering the water level if controlled by a dam, plugging the downstream discharge of the water and pumping the incoming water around the impoundment;
2. The applicant obtains a lake lowering permit from the Department's Division of Fish and Wildlife, where necessary;
3. The applicant obtains any necessary approvals the Department's Dam Safety Section;
4. Machinery access to the water is restricted in order to minimize disturbance to the riparian zone;
5. The applicant properly disposes of all material removed from the impounded water. Removed sediment can be disposed of in a regulated area provided the requirements at (f) below are satisfied. All removed trash and debris shall be disposed of in accordance with all applicable Federal, State and local laws outside any flood hazard area or riparian zone; and
6. If dredging expands the area or depth of the impounded water beyond its original dimensions, the applicant demonstrates that such expansion will not adversely affect flooding, any structure or freshwater wetlands adjacent to the water, the seasonal high water table or any dam or low dam that may exist.

(f) The Department shall issue an individual permit to deposit sediment that has been removed from a regulated water, only if the following requirements are satisfied:

1. The applicant demonstrates that the transport of the sediment out of the regulated area is not economically or physically feasible, and/or would cause greater environmental damage than depositing the sediment within the regulated area;
2. The sediment is disposed of in accordance with all applicable Federal, State and local laws;
3. The sediment is deposited at least 25 feet from any top of bank or edge of water;
4. The placement of the sediment does not interfere with the positive overland drainage of the receiving area;
5. Sediment deposited in a floodway is placed no more than three inches deep; and
6. Sediment deposited is placed on land that lies below both the seasonal high water table and the normal water surface elevation of the nearest regulated water, unless the applicant demonstrates that the sediment cannot feasibly be deposited on such land.

(g) The Department shall issue an individual permit that allows an applicant to repeatedly remove sediment and debris from a regulated water during the term of the permit, only if the applicant does the following:

1. Demonstrates that there is no feasible means of preventing the accumulation of sediment and debris over time, which would therefore avoid the need for repeated cleanings;
2. Demonstrates that repeated cleanings are necessary to properly maintain existing bridges or culverts along the water, and/or to alleviate local flooding;
3. Demonstrates that repeated cleanings will not adversely impact fishery resources in the water;
4. Agrees to notify the Department in writing no less than 10 calendar days prior to each proposed sediment removal activity; and
5. Agrees to submit a report to the Department within 30 calendar days of the completion of each sediment removal activity. This report shall include color photographs of the work area and shall describe how the sediment removal was accomplished, where the dredged material was deposited and to what extent disturbed vegetation in the riparian zone was restored.

#### **7:13-11.16 Requirements for the storage of unsecured material**

(a) This section sets forth specific standards that apply to any proposed storage of unsecured material in any regulated area.

(b) This section governs the storage of unsecured material not addressed by the following:

1. The permits-by-rule at N.J.A.C. 7:13-7.2(e)1 through 4, which cover the storage of unsecured materials for construction activities, and for certain ongoing residential and commercial uses; and
2. The requirements at N.J.A.C. 7:13-11.17 and 11.18, which cover the placement of hazardous substances and solid waste in a regulated area, respectively, whether secured or unsecured.

(c) The Department shall not issue an individual permit for the storage of unsecured material in a floodway.

(d) The Department shall issue an individual permit for the storage of unsecured material in a regulated area outside a floodway only if the following requirements are satisfied:

1. No vegetation is cleared, cut or removed in a riparian zone;
2. The unsecured material is stored as part of a business or facility, the primary function of which is to store and distribute material, such as a bus or truck depot, car dealership or rental facility, gravel pit, junk yard, landscaping business, lumber yard or vehicle impoundment area;
3. The applicant demonstrates that the unsecured material cannot feasibly be stored outside the flood hazard area and riparian zone onsite;
4. The unsecured material to be stored is isolated from floodwaters by berms, or will be situated in a specially designed containment area onsite, so that, in the event of a flood, the stored material will not be transported off the site by floodwaters;
5. The applicant discloses the maximum volume of unsecured material that will be stored in the flood fringe and includes this volume in calculating the maximum flood storage volume displacement on the site pursuant to N.J.A.C. 7:13-10.4; and
6. The Department determines that the storage of unsecured material in a flood hazard area and riparian zone will not pose a threat to the environment or to public health, safety or welfare.

#### **7:13-11.17 Requirements for the placement, storage or processing of hazardous substances**

(a) This section sets forth specific design and construction standards that apply to any proposed placement, storage or processing of hazardous substances in any regulated area.

(b) A hazardous waste facility established on or before October 2, 2006 may be eligible to place, store or process hazardous substances under the permit-by-rule at N.J.A.C. 7:13-7.2(e)5, provided the size or capacity of the facility is

not increased. In addition, the placement of a fuel tank is permitted-by-rule under certain conditions pursuant to N.J.A.C. 7:13-7.2(b)15 and 16. All other placement, storage or processing of hazardous substances is subject to this section.

(c) The Department shall not issue an individual permit for the placement, storage or processing of hazardous substances in a floodway.

(d) The Department shall issue an individual permit for the placement, storage or processing of hazardous substances in a regulated area outside a floodway only if the following requirements are satisfied:

1. No vegetation is cleared, cut or removed in a riparian zone;

2. The placement, storage or processing of hazardous substances is part of an increase in the size or capacity of a lawfully existing hazardous waste facility established on or before October 2, 2006. The individual permit application shall include copies of all relevant State permits, licenses and authorizations in order to demonstrate that the facility is operating lawfully;

3. The applicant demonstrates that the hazardous substances cannot feasibly be placed, stored or processed outside the flood hazard area and riparian zone onsite;

4. The hazardous substances to be placed, stored or processed is isolated from floodwaters by berms, or will be situated in a specially designed containment area onsite, so that in the event of a flood, the hazardous substances will not be transported off the site by floodwaters;

5. The applicant discloses the maximum volume of hazardous substances to be placed, stored or processed in the flood fringe and includes this volume in calculating the maximum flood storage displacement volume on the site pursuant to N.J.A.C. 7:13-10.4; and

6. The Department determines that the placement, storage or processing of hazardous substances in the flood hazard area and riparian zone will not pose a threat to the environment or to public health, safety or welfare.

#### **7:13-11.18 Requirements for the placement, storage or processing of solid waste**

(a) This section sets forth specific standards that apply to any proposed placement, storage or processing of solid waste in any regulated area.

(b) A solid waste facility established on or before October 2, 2006 may be eligible to continue to place, store or process solid waste under the permit-by-rule at N.J.A.C. 7:13-7.2(e)6, provided the size or capacity of the facility is not increased. All other placement storage or processing of solid waste is subject to this section.

(c) The Department shall not issue an individual permit for the placement, storage or processing of solid waste in a floodway.

(d) The Department shall issue an individual permit for the placement, storage or processing of solid waste in a regulated area outside a floodway only if the following requirements are satisfied:

1. No vegetation is cleared, cut or removed in a riparian zone;

2. The placement, storage or processing of solid waste is part of an increase in the size or capacity of a lawfully existing solid waste facility established on or before October 2, 2006. The individual permit application shall include copies of all relevant State permits, licenses and authorizations in order to demonstrate that the facility is operating lawfully;

3. The applicant demonstrates that the solid waste cannot feasibly be placed, stored or processed outside the flood hazard area and riparian zone onsite;

4. The solid waste to be placed, stored or processed is isolated from floodwaters by berms, or will be situated in a specially designed containment area onsite, so that in the event of a flood, the solid waste will not be transported off the site by floodwaters;

5. The applicant discloses the maximum volume of solid waste to be placed, stored or processed in the flood fringe for the purpose of calculating the maximum flood storage displacement on the site pursuant to N.J.A.C. 7:13-10.4; and

6. The Department determines that the placement, storage or processing of solid waste in the flood hazard area and riparian zone will not pose a threat to the environment or to public health, safety or welfare.

#### **7:13-11.19 Requirements for the removal of existing fill or an existing structure**

(a) This section sets forth specific standards that apply to any proposed removal of existing fill or an existing structure in any regulated area.

(b) The removal of existing fill or an existing structure is subject to the requirements of this section only as follows:

1. The fill or structure to be removed lies in a floodway; or

2. The fill or structure to be removed lies in a regulated area outside a floodway, but does not qualify for the permit-by-rule at N.J.A.C. 7:13-7.2(b)2.

(c) The Department shall issue an individual permit for the removal of existing fill or an existing structure as described in (b) above only if the following requirements are satisfied:

1. All disturbed regulated areas are properly stabilized;
2. If the removed fill or structure lies in a floodway, the applicant demonstrates through a hydraulic analysis that the removal will not adversely impact a property not owned by the applicant, pursuant to N.J.A.C. 7:13-11.1(f) and (g), unless it is clear to the Department that the proposed removal poses no threat to offsite properties;
3. Any removed fill is disposed of in accordance with all applicable Federal, State and local laws;
4. Any removed structure is disposed of outside of any regulated area and in accordance with all applicable Federal, State and local laws; and
5. No vegetation is cleared, cut or removed in a riparian zone, unless the following apply:
  - i. Vegetation in the riparian zone must be cleared, cut or removed in order to access the fill or structure;
  - ii. The area of disturbance within the riparian zone is minimized; and
  - iii. All vegetation cleared, cut or removed in the riparian zone is replanted with indigenous, non-invasive species, except where the removed material is to be replaced by a new structure. (Any replacement fill or structure is subject to the requirements of this chapter.)
2. The cause of the emergency;
3. The date and time at which the applicant learned of the emergency;
4. The nature and extent of the proposed regulated activities;
5. The date by which the applicant expects to begin the proposed regulated activities;
6. The date by which the applicant expects to complete the proposed regulated activities;
7. The precise location of the proposed regulated activities, including lot, block, municipality and county;
8. The identity of the owner of the site where the regulated activities are proposed;
9. A demonstration that the property owner has given permission for the regulated activities to be performed or, in the case of a public entity intending to undertake regulated activities on private property through power of eminent domain, a written statement of the public entity's intent; and
10. If notice to the Department is also made by fax, electronic mail or letter, photographs of the area in question and a drawing of the proposed emergency activities, where feasible.

## SUBCHAPTER 12. EMERGENCY PERMITS

### 7:13-12.1 Requirements for issuing an emergency permit

(a) An emergency permit is an authorization to undertake a regulated activity that the Department will issue when conditions warrant immediate action to protect the environment and/or public health, safety and welfare.

(b) The Department shall approve an emergency permit only if the following requirements are satisfied:

1. Severe environmental degradation will occur if an emergency permit is not issued and/or there is an immediate and extraordinary risk to property or the public health, safety and welfare; and
2. There is a high probability that the environmental degradation or impact to property or the public health, safety and welfare will occur before a flood hazard area individual permit or general permit authorization could be obtained under the otherwise applicable requirements of this chapter.

(c) An applicant for an emergency permit shall provide the Department with the following by telephone, and in addition by fax, electronic mail or letter, if possible:

1. The nature of the emergency;

(d) If the Department determines that the requirements of (b) and (c) above are satisfied, the Director of the Division of Land Use Regulation, or the Director's designee, shall provide verbal approval of the necessary activities. This verbal approval shall be followed within five working days by a written confirmation of the emergency permit from the Department.

(e) No public notice or fee is required for an emergency permit. However, either an individual permit (which requires public notice and an application fee) or a general permit authorization (which requires an application fee, except for general permits 1 and 6) must be obtained after an emergency permit is issued under N.J.A.C. 7:13-12.2.

### 7:13-12.2 Procedures after an emergency permit is issued

(a) The permittee shall commence the approved emergency activities within 30 calendar days after the Department's verbal approval of the emergency permit, unless extended in accordance with (d) below. If the emergency activities are not commenced within 30 calendar days of the Department's verbal approval, the emergency permit is void.

(b) Once commenced, all regulated activities authorized under the emergency permit shall be completed, and the emergency permit shall expire, within 60 calendar days of the Department's verbal approval, unless extended in accordance with (d) below. If the regulated activities authorized under the emergency permit are not completed by this expiration date,

these regulated activities shall cease until an individual permit, general permit authorization or another emergency permit is obtained from the Department for the regulated activities.

(c) The permittee shall submit to the Department a complete application for an individual permit or a general permit authorization for the completed activities within 90 calendar days of the Department's verbal approval of the emergency permit, unless extended in accordance with (d) below. The application shall include the following:

1. A demonstration that the regulated activities comply with this chapter; and
2. "As-built" drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, showing the regulated activities that were conducted under the emergency permit.

(d) The Department shall extend the 30-day, 60-day and/or 90-day periods established in (a), (b) and (c) above if the applicant demonstrates that the specified requirements cannot feasibly be satisfied within these allotted time frames.

(e) Any activity performed under an emergency permit shall meet all requirements that apply to that activity under this chapter to the fullest extent possible. Upon review of the permit application and associated as-built drawings required in (c) above, the Department shall require modification, restoration and/or stabilization measures as necessary to ensure compliance with this chapter.

## SUBCHAPTER 13. REVISION OF AN APPROVAL

### 7:13-13.1 Revision of a verification

(a) This section applies to the revision of a flood hazard area design flood elevation, flood hazard area limit, floodway limit, riparian zone limit and/or other related feature on an approved drawing after a verification has been issued. A verification must be valid in order to be revised. A revision shall not extend the term of a verification.

(b) The Department shall, in response to an applicant's request, revise an entire verification or any portion of a verification, provided the requirements of this section are satisfied.

(c) There are two types of verification revisions, as follows:

1. A minor revision of a verification is a change in the flood hazard area design flood elevation, flood hazard area limit, floodway limit, riparian zone limit and/or other related feature, which does not require the Department to review detailed engineering calculations in order to determine that the revision is accurate. Any type of verification under N.J.A.C. 7:13-6 can be the subject of a

minor revision. Examples of a minor revision include the following, provided no review of calculations is required:

- i. Correcting a drafting error;
- ii. Improving topographical data;
- iii. Revising a previously approved riparian zone limit or metes and bounds description of the flood hazard area limit and/or floodway limit to more closely match their actual location;
- iv. Deletion or addition of structures that were previously unmapped or mapped in error (unless said structure would alter the original hydraulic modeling); and
- v. Adding notes, labels or other clarifying information required by the Department or another governing body; and

2. A major revision of a verification is a change in the flood hazard area design flood elevation, flood hazard area limit, floodway limit and/or other related feature, which requires the Department to review detailed engineering calculations in order to determine that the revision is accurate. Only a verification based on Method 4 (pursuant to N.J.A.C. 7:13-3.4) or Method 6 (pursuant to N.J.A.C. 7:13-3.6) can be the subject of a major revision. Examples of a major revision include:

- i. Correcting the floodway limit;
- ii. Improving the hydrologic modeling upon which the verification is based, resulting in a new peak flow rate; and
- iii. Improving the hydraulic modeling upon which the verification is based, such as adding cross-sections, revising, improving or correcting topography, or altering data for a water control structure, resulting in a new water surface profile.

(d) The Department shall not revise a verification if the Department determines that the proposed revision constitutes a substantial change in the approved flood hazard area design flood elevation, flood hazard area limit and/or floodway limit. In such a case, the applicant shall submit an application for a new verification and the Department shall review the proposed redelineation as if it were a new project. Examples of a substantial change include:

1. The redelineation of all or most of the verified flood hazard area and/or floodway limit based on new hydrologic and hydraulic calculations; and
2. The addition of any previously unverified sections of a regulated water as described in (e) below.

(e) The Department shall revise a verification only for the section of water approved under the verification that the applicant seeks to revise. The Department shall not issue a revision that adds a new section of water to the verification.



(f) An application for a minor revision of a verification shall include the following:

1. The application fee required under N.J.A.C. 7:13-17;
2. One LURP application form completed as described at N.J.A.C. 7:13-15.1(f);
3. One copy of the verification that is the subject of the revision application;
4. One set of the originally approved drawings (if available);
5. A detailed written description of the proposed revisions to the flood hazard area design flood elevation, flood hazard area limit, floodway limit, riparian zone limit and/or other related feature; and
6. Six sets of revised drawings, signed and sealed by a engineer, land surveyor or architect, as appropriate, prepared in accordance with the application requirements for a verification at N.J.A.C. 7:13-6.1(c). For each revised flood hazard area design flood elevation, flood hazard area limit, floodway limit, riparian zone limit and/or other related feature, the applicant shall submit both the originally approved drawings showing the approved elevation, limits and/or features and new drawings showing the revised elevation, limits and/or features.

(g) An application for a major revision of a verification shall include the following:

1. All material listed in (f) above;
2. All supporting hydrologic and hydraulic calculations, which are necessary to demonstrate that the proposed revision meets the requirements of this chapter;
3. A narrative that explains the submitted calculations and describes why each particular calculation or methodology was used; and
4. All maps, references and other supporting materials that were used to prepare the submitted calculations.

(h) After reviewing an application for a revision of a verification, the Department shall:

1. Notify the applicant that the application did not include all the material required at (f) or (g) above, or that supplemental information is needed to determine if the application complies with this chapter, and request the missing information. The Department may cancel the application if the requested information is not provided within 60 calendar days. When the requested material is received, the Department shall take one of the actions in (h)2 or 3 below;
2. Notify the applicant in writing that the application does not meet the requirements of this section, deny the application, and provide the technical reasons for this decision; or

3. Determine that the application meets the requirements of this section and approve the revision in writing.

(i) Workload permitting, the Department shall make a final decision on an application for a revision of a verification within 60 calendar days of receiving a complete application.

(j) Within 90 calendar days after the Department revises a verification on a privately owned lot, or on a publicly owned lot other than a right-of-way, the applicant shall submit the following information to the clerk of each county in which the site is located, and shall send proof to the Department that this information is recorded on the deed of each lot referenced in the verification. Failure to have this information recorded in the deed of each lot and/or to submit proof of recording to the Department constitutes a violation of this chapter and may result in suspension or termination of the verification and/or subject the applicant to enforcement action under N.J.A.C. 7:13-19:

1. The Department file number for the verification;
2. The approval and expiration dates of the verification;
3. A metes and bounds description of each flood hazard area limit and/or floodway limit approved under the verification;
4. The flood hazard area design flood elevation, or range of elevations if variable, approved under the verification; and
5. The following statement: "The State of New Jersey has determined that all or a portion of this lot lies in a flood hazard area. Certain activities in flood hazard areas are regulated by the New Jersey Department of Environmental Protection and some activities may be prohibited on this site or may first require a permit. Contact the Division of Land Use Regulation at (609) 292-0060 for more information prior to any construction onsite."

### 7:13-13.2 Revision of a general permit

(a) This section applies to proposed changes to a regulated activity after the Department issues a general permit. A general permit must be valid in order to be revised. A revision shall not extend the term of a general permit.

(b) The Department shall only issue a minor revision to a general permit. A minor revision is a change in a project element that does not require the Department to review detailed engineering calculations in order to determine whether the revised project element complies with this chapter, whereas a major revision involves the review of calculations, which does not apply to general permits under this chapter. Examples of a minor revision include the following, provided no review of calculations is required:

1. Correcting a drafting error;
2. Improving topographical data;

3. Adding notes, labels or other clarifying information required by the Department or another governing body;

4. Adjusting the size, shape or location of a proposed structure or activity; and/or

5. Reducing the level of proposed development on site, such as deleting a proposed structure or activity, or reducing its footprint.

(c) The Department shall not issue a revision of a general permit if the Department determines that the proposed revision constitutes a substantial redesign of the project or will increase the environmental impact of the project. In such a case, the applicant shall submit an application for a new general permit and the Department shall review the proposed redesign as if it were a new project. Examples of a substantial redesign include:

1. Any change to the basic purpose or scope of a project;

2. Any increase in the amount of disturbance within the riparian zone; and

3. The addition of any previously unapproved project element.

(d) An application for a revision of a general permit shall include the following:

1. The application fee required under N.J.A.C. 7:13-17;

2. One LURP application form completed as described at N.J.A.C. 7:13-15.1(f);

3. One copy of the general permit that is the subject of the revision application;

4. One set of the originally approved drawings (if available);

5. One completed certification (available from the Department's website at [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse)), signed and sealed by an engineer, which lists each requirement of N.J.A.C. 7:13-8.1(b), as well as each requirement for the particular general permit being modified. The certification shall explain, as necessary, how each requirement for the particular general permit is met, as well as any changes that are being proposed to the project which necessitates the request to revise the general permit; and

6. Six sets of drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, which detail the proposed activities and show the project elements to be revised, including existing and proposed topography if fill or grading is proposed. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary. The limit of any riparian zone onsite shall also be shown, as well as any areas where riparian zone vegetation will be cleared, cut or removed.

(e) After reviewing an application for a revision of a general permit, the Department shall:

1. Notify the applicant that the application did not include all the material required at (d) above, or that supplemental information is needed to determine if the application complies with this chapter, and request the missing information. The Department may cancel the application if the requested information is not provided within 60 calendar days. When the requested material is received, the Department shall take one of the actions in (e)2 or 3 below;

2. Notify the applicant in writing that the application does not meet the requirements of this section, deny the application, and provide the technical reasons for this decision; or

3. Determine that the application meets the requirements of this section and approve the revision in writing.

(f) Workload permitting, the Department shall make a final decision on an application for a revision of a general permit authorization within 30 calendar days of receiving a complete application.

### 7:13-13.3 Revision of an individual permit

(a) This section applies to proposed changes to a regulated activity after the Department issues an individual permit. An individual permit must be valid in order to be revised. A revision shall not extend the term of an individual permit.

(b) The Department shall, in response to an applicant's request, revise an entire individual permit or any project element approved under an individual permit, provided the requirements of this section are satisfied.

(c) There are two types of individual permit revisions, as follows:

1. A minor revision of an individual permit is a change in a project element that does not require the Department to review detailed engineering calculations in order to determine whether the revised project element complies with this chapter. Examples of a minor revision include the following, provided no review of calculations is required:

i. Correcting a drafting error;

ii. Improving topographical data;

iii. Adding notes, labels or other clarifying information required by the Department or another governing body;

iv. Adjusting the size, shape or location of a proposed structure or activity; and

v. Reducing the level of proposed development on site, such as deleting a proposed structure or activity, or reducing its footprint.

2. A major revision of an individual permit is a change in a project element that requires the Department to review detailed engineering calculations in order to determine whether the revised project element complies with this chapter. A project element that does not require calculations in order to receive an individual permit, such as a footbridge or utility line, instead qualifies for a minor revision under (c)1 above. Examples of a major revision include the following:

- i. Adjusting the proposed flood storage displacement volume on site, thereby requiring re-review of cut and fill calculations;
- ii. Adjusting the size, shape or location of a proposed water control structure, thereby requiring a re-review of hydraulic calculations; and
- iii. Adjusting a characteristic of a proposed stormwater management system, thereby requiring a re-review of hydrologic and/or hydraulic calculations.

(d) The Department shall not issue a revision of an individual permit if the Department determines that the proposed revision constitutes a substantial redesign of the project or will increase the environmental impact of the project. In such a case, the applicant shall submit an application for a new individual permit and the Department shall review the proposed redesign as if it were a new project. Examples of a substantial redesign include:

1. Any change to the basic purpose or scope of a project, such as a change from the construction of a hospital to the construction of an apartment complex;
2. Any expansion of activity beyond that which was described in the public notice made for the individual permit application;
3. Any substantial redesign of the project or its stormwater management system, which would require a new hydrologic analysis of the site;
4. Any increase in the amount of disturbance within the riparian zone; and
5. The addition of any previously unapproved project element.

(e) An application for a minor revision of an individual permit shall include the following:

1. The application fee required under N.J.A.C. 7:13-17;
2. One LURP application form completed as described at N.J.A.C. 7:13-15.1(f);
3. One copy of the individual permit that is the subject of the revision application;
4. One set of the originally approved drawings (if available);

5. A detailed written description of the proposed revisions; and

6. Six sets of drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, which detail the proposed activities and show the project elements to be revised, including existing and proposed topography if fill or grading is proposed. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary. The limit of any riparian zone onsite shall also be shown, as well as any areas where riparian zone vegetation will be cleared, cut or removed.

(f) An application for a major revision of an individual permit shall include the following:

1. All material listed in (e) above;
2. All supporting hydrologic, hydraulic, flood storage volume, stormwater and structural calculations, which are necessary to demonstrate that the proposed project meets the requirements of this chapter;
3. A narrative that explains the submitted calculations and describes why each particular calculation or methodology was used; and
4. All maps, references and other supporting materials that were used to prepare the submitted calculations.

(g) After reviewing an application for a revision of an individual permit, the Department shall:

1. Notify the applicant that the application did not include all the material required at (e) or (f) above, or that supplemental information is needed to determine if the application complies with this chapter, and request the missing information. The Department may cancel the application if the requested information is not provided within 60 calendar days. When the requested material is received, the Department shall take one of the actions in (g)2 or 3 below;
2. Notify the applicant in writing that the application does not meet the requirements of this section, deny the application, and provide the technical reasons for this decision; or
3. Determine that the application meets the requirements of this section and approve the revision in writing.

(h) Workload permitting, the Department shall make a final decision on an application for a revision of an individual permit within 60 calendar days of receiving a complete application.

#### **7:13-13.4 Revision of a Department delineation by application**

(a) This section applies to the revision of a flood hazard area design flood elevation, flood hazard area limit, floodway limit and/or other related feature on a flood hazard area

delineation that has been promulgated by the Department. Appendix 2 of this chapter lists the Department delineated waters of New Jersey.

(b) There are two types of delineation revisions, as follows:

1. A minor revision of a delineation is a change in the flood hazard area design flood elevation, flood hazard area limit, floodway limit and/or other related feature, which does not require the Department to review detailed engineering calculations in order to determine that the revision is accurate. Examples of a minor revision include the following, provided no review of calculations is required:

- i. Correcting a drafting error;
- ii. Improving topographical data;
- iii. Deletion or addition of structures that were previously unmapped or mapped in error (unless said structure would alter the original hydraulic modeling); and
- iv. Adding notes, labels or other clarifying information required by the Department or another governing body; and

2. A major revision of a delineation is a change in the flood hazard area design flood elevation, flood hazard area limit, floodway limit and/or other related feature, which requires the Department to review detailed engineering calculations in order to determine that the revision is accurate. Examples of a major revision include:

- i. Correcting the floodway limit;
- ii. Improving the hydrologic modeling upon which the delineation is based, resulting in a new peak flow rate; and
- iii. Improving the hydraulic modeling upon which the delineation is based, such as adding cross-sections, revising, improving or correcting topography, or altering data for a water control structure, resulting in a new water surface profile.

(c) The Department shall issue a revision of a delineation only for a section of water already promulgated by the Department. The Department shall not add or remove a section of delineated water from Appendix 2 under this section.

(d) An application for a minor revision of a Department delineation shall include the following:

- 1. The application fee required under N.J.A.C. 7:13-17;
- 2. One LURP application form completed as described at N.J.A.C. 7:13-15.1(f);
- 3. One copy of the Department delineation that is the subject of the revision application;

4. A detailed written description of the proposed revisions to the flood hazard area design flood elevation, flood hazard area limit, floodway limit and/or other related feature; and

5. Three copies of revised drawings, signed and sealed by a engineer or land surveyor, as appropriate, depicting the existing and the revised flood hazard area design flood elevations, flood hazard area limits, floodway limits and/or other related features. These drawings shall be of the same scale as the Department delineation that is the subject of the revision, unless otherwise requested by the Department.

(e) After reviewing an application for a minor delineation revision, the Department shall:

1. Notify the applicant that the application did not include all the material required at (d) above, or that supplemental information is needed to determine if the application complies with this chapter, and request the missing information. The Department may cancel the application if the requested information is not provided within 60 calendar days. When the requested material is received, the Department shall take one of the actions in (e)2 or 3 below;

2. Notify the applicant in writing that the application does not meet the requirements of this chapter, deny the application, and provide the technical reasons for this decision; or

3. Determine that the revision is accurate and necessary, in which case the Department shall revise the delineation as necessary and provide the applicant and the affected municipalities with a copy of the revised flood hazard area and/or floodway maps.

(f) Workload permitting, the Department shall make a final decision on an application for a minor delineation revision within 60 calendar days of receiving a complete application.

(g) An application for a major revision of a Department delineation shall include the following:

- 1. All material listed in (d) above;
- 2. All supporting hydrologic and hydraulic calculations, which are necessary to demonstrate that the proposed revision meets the requirements of this chapter. The Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g), provides guidance in how to perform the calculations required for various delineation revisions;
- 3. A narrative that explains the submitted calculations and describes why each particular calculation or methodology was used; and
- 4. All maps, references and other supporting materials that were used to prepare the submitted calculations.

(h) After reviewing an application for a major delineation revision, the Department shall:

1. Notify the applicant that the application did not include all the material required at (g) above, or that supplemental information is needed to determine if the application complies with this chapter, and request the missing information. The Department may cancel the application if the requested information is not provided within 60 calendar days. When the requested material is received, the Department shall take one of the actions in (h)2 or 3 below;

2. Notify the applicant that the application does not meet the requirements of this section, deny the application, and provide the technical reasons for this decision; or

3. Determine that the revision is accurate and necessary and proceed with the revision according to (i) below.

(i) If the Department determines that a major delineation revision is accurate and necessary, the Department shall proceed with the revision as follows:

1. The Department shall publish notice of its intent to revise the delineation in the New Jersey Register, as well as in the official newspaper of each affected municipality (or in a newspaper of general circulation in each affected municipality if there is no official newspaper) and in one newspaper of regional circulation (relative to the location of the project). This notice shall include:

- i. The location of the delineation to be revised;
- ii. The reason the Department intends to revise the delineation;
- iii. An invitation for interested parties to submit written comments and to attend a public hearing to be held in one or more of the affected municipalities; and
- iv. The mailing address and telephone number of a contact person within the Department who is able to discuss the proposed revision.

2. During the public hearing, the Department shall:

- i. Explain the proposed revision, including any impacts the Department expects from revising the delineation; and
- ii. Collect public comments.

3. Upon consideration of the available information and public comments, if the Department concludes that revising the delineation is in the best interest of public health, safety and welfare, the Department shall:

- i. Revise the delineation as the Department deems necessary;
- ii. Publish a description of the revision in the New Jersey Register, including a response to any public comments;

- iii. Publish a public notice describing the revision in the official newspaper of each affected municipality (or in a newspaper of general circulation in each affected municipality if there is no official newspaper) as well as in one newspaper of regional circulation (relative to the location of the project); and

- iv. Provide the applicant and affected municipalities with a copy of the revised flood hazard area and/or floodway map (except in cases where the Department initiates the revision pursuant to N.J.A.C. 7:13-13.5).

(j) Workload permitting, the Department shall make a final decision on an application for a major delineation revision within 180 calendar days of receiving a complete application.

#### **7:13-13.5 Revision or suspension of a Department delineation by the Department**

(a) If the Department determines, independent of an application pursuant to N.J.A.C. 7:13-13.4, that an existing Department delineation as listed in chapter Appendix 2 underestimates the extent of the floodway and/or flood hazard area, and that it is in the best interest of public health, safety and welfare to revise a delineation, the Department shall do one of the following:

1. If the Department has sufficient topographic, hydrologic and hydraulic data to adequately revise the delineation, the Department shall initiate a revision as follows:

- i. For a minor delineation revision as described at N.J.A.C. 7:13-13.4(b)1, the Department shall revise the delineation as necessary; or
- ii. For a major delineation revision as described at N.J.A.C. 7:13-13.4(b)2, the Department shall follow the procedure described at N.J.A.C. 7:13-13.4(i); or

2. If the Department does not have sufficient topographic, hydrologic and hydraulic data to adequately revise the delineation, or if the Department determines that a serious threat to public health, safety and welfare will exist if an existing delineation is allowed to remain in place, the Department shall initiate an emergency suspension of the delineation for a one-year period pursuant to (b) below. The purpose of this suspension is to allow the Department adequate time to acquire data necessary to accurately revise the delineation.

(b) To initiate an emergency one-year suspension of a delineation as described in (a)2 above, the Department shall:

1. Publish notice of its intent to suspend the delineation in the New Jersey Register, as well as in the official newspaper of each affected municipality (or in a newspaper of general circulation in each affected municipality if there is no official newspaper) and in one newspaper of regional



circulation (relative to the location of the project). This notice shall include:

- i. The location of the delineation to be suspended;
- ii. The reason the Department is suspending the delineation;
- iii. An invitation for interested parties to submit written comments regarding the suspension and subsequent need for amendment of the suspended delineation; and
- iv. The mailing address and telephone number of a contact person within the Department who is able to discuss the suspension.

2. The Department shall consider the portion of the delineation described in the notice to be suspended for a one-year period beginning with the publication date of the notice in the New Jersey Register.

3. The Department shall, within one year of the suspension date:

- i. Revise the delineation in accordance with (a)1 above;
- ii. Reinstate the delineation without revision, and explain why the delineation was found to be acceptable after suspension; or
- iii. Take no action, in which case the delineation shall be automatically reinstated.

(c) During the suspended period described in (b)2 above, any application made under this chapter shall not reference the flood hazard area and/or floodway of the suspended delineation. Applicants must instead rely on another delineation method to determine the extent of the flood hazard area and/or floodway as provided at N.J.A.C. 7:13-3. Furthermore, the Department shall review all valid verifications, general permits and individual permits issued for the flood hazard area of the suspended delineation and will suspend or terminate such approvals where necessary to protect public safety, in accordance with N.J.A.C. 7:13-14.

(d) The Department shall issue a revision of a delineation only for a section of water already promulgated by the Department. The Department shall add or remove a section of delineated water from Appendix 2 only through an amendment to this chapter.

(e) If the Department approves an individual permit under this chapter for an activity which alters the flood hazard area design flood elevation, flood hazard area limit and/or floodway limit along a Department delineated water, such as the construction of a flood control project, or the construction, modification or removal of a bridge or culvert, the Department shall automatically revise the delineation as necessary after the construction is completed. No public notice or hearing is necessary to revise a Department delineation in such a case.

## SUBCHAPTER 14. TRANSFER, SUSPENSION, AND TERMINATION OF AN APPROVAL

### 7:13-14.1 Transfer of an approval

(a) An approval authorized under this chapter (see N.J.A.C. 7:13-1.3) can be transferred to another person, provided:

1. The approval is valid;
2. The approval is not an emergency permit or an individual permit based on a hardship exception;
3. The approval is transferred to a person who currently owns the site or who is under contract to purchase the site that is the subject of the approval. A transfer to a contract purchaser shall become valid only upon the actual transfer of the site to the new owner; and
4. The Department determines that the transfer will not alter a basic condition upon which the original approval was granted or otherwise circumvent a requirement of this chapter as described in (b) below.

(b) The Department shall not transfer an approval if doing so would alter a basic condition or premise upon which the original approval was granted or would otherwise circumvent a requirement of this chapter. For example, an existing lot may be shaped in such a way that the owner must construct a road across a channel in order to access the rear portion of the lot in order to construct a house. In some cases, the Department would, during the review of an individual permit application, consider whether there is another means of accessing the site that would reduce the amount of disturbance to the channel, or which would avoid crossing the channel altogether, such as crossing through a neighboring property. If the owner of a lot demonstrates that there is no feasible means of accessing the rear portion of the lot without crossing the channel, the Department would authorize a road crossing provided all other requirements of this chapter are met. However, if the owner of the lot first obtains an individual permit for such a road crossing, and then sells the lot to an adjacent land owner who already has a roadway across the channel, the basic premise upon which the individual permit was granted no longer exists. Therefore, the Department would not approve the transfer of the approval to the new owner in such a case.

(c) If the Department approves a regulated activity under a general permit authorization or an individual permit that is not based on a hardship exception, and the subject property is subsequently sold to a new owner, the new owner must obtain a transfer of said approval before commencing or continuing any work authorized under the approval. Should the new owner engage in a regulated activity without the prior transfer of the approval, the approval shall be void and the new owner shall be in violation of this chapter and subject to enforcement action pursuant to N.J.A.C. 7:13-19.



(d) An applicant seeking to transfer an approval to a new owner (or contract purchaser) shall submit to the Department a written request to transfer the approval, which includes the following:

1. The notarized signature of each original owner of the site, or any legal designee thereof;
2. The name and address of each new owner (or contract purchaser) of the site;
3. A list of any adjacent property already owned by the new owner(s); and
4. The date the property will be or has been transferred to the new owner(s).

(e) Workload permitting, the Department shall make a final decision on an application to transfer an approval within 30 calendar days of receiving a complete application.

(f) A person receiving a transferred approval shall comply with all conditions of the transferred approval.

Amended by R.2015 d.023, effective February 2, 2015.  
See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).  
Rewrote (d).

#### 7:13-14.2 Suspension of an approval

(a) The following are causes for the Department to suspend an approval authorized under this chapter:

1. The permittee has not complied with a condition of the approval;
2. The permittee has undertaken activities onsite that are in violation of this chapter;
3. The permittee has misrepresented or failed to fully disclose all relevant facts pertaining to the approval;
4. The approval was based on false or inaccurate information; or
5. The approval has caused significant flooding or unanticipated adverse environmental impacts which have become apparent during the performance of the regulated activities. Examples of unanticipated adverse environmental impacts include excessive erosion, destabilization or undue migration of the channel, and destruction of biota, habitat or vegetation not authorized by the permit.

(b) If the Department determines that cause exists to suspend an approval for a reason listed at (a) above, the Department shall provide written notice of suspension by certified mail to the permittee. This notice shall:

1. State the reasons the Department is suspending the approval;
2. Order the permittee to immediately cease all regulated activities onsite; and

3. Notify the permittee of the right to make a request, within 10 calendar days of receipt of the notice, for a meeting with the Department.

(c) Within 30 calendar days after receipt of a notice of suspension under (b) above, the permittee shall submit a plan to the Department proposing to remedy the reasons for the suspension as stated in the notice. Such a plan shall be implemented immediately upon approval by the Department and shall propose to remedy all noncompliance and unanticipated impacts within 60 calendar days of approval.

(d) Within 15 calendar days after the Department receives a complete remediation plan under (c) above, the Department shall:

1. Approve the remediation plan with conditions where necessary, and reinstate the approval with revisions where necessary to achieve compliance with this chapter; or
2. Determine that the remediation plan is inadequate to achieve compliance and notify the applicant of intent to terminate the approval pursuant to N.J.A.C. 7:13-14.3(b).

(e) Nothing in this section shall prevent the Department from taking enforcement action pursuant to N.J.A.C. 7:13-19.

#### 7:13-14.3 Termination of an approval

(a) The following are causes for the Department to terminate an approval which has been suspended under N.J.A.C. 7:13-14.2:

1. The permittee has not ceased all regulated activities pursuant to N.J.A.C. 7:13-14.2(b)2;
2. The permittee has not submitted a remediation plan pursuant to N.J.A.C. 7:13-14.2(c);
3. The Department has determined that the remediation plan submitted pursuant to N.J.A.C. 7:13-14.2(c) is inadequate to achieve compliance; or
4. The permittee fails to remedy non-compliance with a condition of the approval.

(b) If the Department determines that cause exists to terminate an approval for a reason listed at (a) above, the Department shall provide written notice of intent to terminate the approval by certified mail to the permittee. The permittee shall cease all regulated activities immediately upon receiving the notice. Within 10 calendar days after receiving the notice, the permittee shall:

1. Submit a plan to the Department proposing to remedy the causes for the termination as stated in the notice; or
2. Request an adjudicatory hearing under N.J.A.C. 7:13-18.

(c) If the permittee has not taken one of the actions required at (b) above within 10 calendar days after receiving

the Department's notice, the approval shall automatically terminate and the permittee shall remedy any violations of this chapter and/or unanticipated adverse impacts to flooding or the environment caused by the project, and shall restore the site to its pre activity condition where feasible. Once the impacts or violations are remedied, the Department may reinstate the permit or require the applicant to apply for a new permit.

(d) Nothing in this section shall prevent the Department from taking enforcement action pursuant to N.J.A.C. 7:13-19.

## SUBCHAPTER 15. APPLICATION REQUIREMENTS

### 7:13-15.1 General provisions

(a) For each approval being sought under this chapter, the applicant shall provide all information necessary for the Department to determine if the requirements of this chapter are satisfied. The application requirements for each type of approval are detailed in the sections pertaining to each approval under this chapter. However, the Department also provides application checklists, which include guidance and detail in order to assist applicants through the review and approval process. For example, the application checklist may recommend that the document to be folded or prepared in a certain manner to facilitate processing. To minimize application processing time, an applicant should carefully review the application checklist and verify that the application includes all required information. Checklists are provided at [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse) or can be obtained from the Department at the address listed in N.J.A.C. 7:13-1.1(f).

(b) If a proposed project requires more than one approval from the Division of Land Use Regulation, the Department encourages, but does not require, the applicant to submit one consolidated application for all the approvals. For example, an applicant wishing to construct a private residence can use one application to simultaneously apply for both an individual permit under this chapter and a freshwater wetlands permit under N.J.A.C. 7:7A. If an application requests more than one approval, the combined application shall comply with the application requirements of each permit program.

(c) An applicant is encouraged to keep copies of the data used to complete an application, the information submitted to the Department during the application review process, and all permits, approvals and Department-approved drawings for at least 10 years after the Department issues a decision.

(d) All calculations submitted under this chapter shall be performed at the applicant's expense and shall be signed and sealed by an engineer. The Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g), provides examples and guidance for performing the calculations that are included in this chapter. For example, while the calculations required for determining

the volume of flood storage that a project displaces are found at N.J.A.C. 7:13-10.4, the Flood Hazard Area Technical Manual provides samples of the different formats in which these calculations are often performed, as well as recommendations and guidance designed to facilitate their execution.

(e) All drawings submitted under this chapter shall be signed and sealed by an engineering, surveyor or architect as appropriate, unless the following apply, in which case the applicant can prepare his or her own drawings:

1. The applicant solely proposes one or more of the following activities on his or her own property:

- i. The construction of a private residence, which is not being constructed as part of a larger residential subdivision; and/or

- ii. The construction of a building appurtenant to a private residence, such as a garage, barn or shed; and

2. No topography or calculations are necessary to demonstrate compliance with the requirements of this chapter.

(f) All LURP application forms submitted under this chapter shall be completed as directed by the form for the type of application being requested. The LURP form requires basic information regarding the applicant and the proposed activities, such as the name and address of the applicant and any designated agents, the specific location of the project, the types of applications being requested and a brief description of the activities being proposed. Where signatures are required on the form, original signatures shall be provided. The form also requires State plane coordinates for the approximate center of the site, except as provided at (f)1 and 2 below. The accuracy of the State plane coordinates shall be within 50 feet of the actual center point of the site. For assistance in determining the State plane coordinates for a site contact the Department's Geographic Information (GIS) Office at (609) 777-0672.

1. State plane coordinates are not required if a project consists solely of the following activities:

- i. The construction of a private residence, which is not being constructed as part of a larger residential subdivision; and/or

- ii. The construction of a building appurtenant to a private residence, such as a garage, barn or shed.

2. State plane coordinates shall be provided for linear projects such as railroads, roadways and utility lines as follows:

- i. For a linear project of one-half mile or more in length, the State plane coordinates shall include the coordinates for the end points of the project and the coordinates for points located at 1,000 foot intervals along the entire length of the project; and

- ii. For a linear project of less than one-half mile in length, the State plane coordinates shall include the coordinates for the end points of the project.

Amended by R.2015 d.023, effective February 2, 2015.

See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

In (b), deleted the last sentence.

### 7:13-15.2 Pre-application conference

(a) A pre-application conference is a meeting between the Department and a prospective applicant to discuss the applicant's project. An applicant may request a pre-application conference for any project. A pre-application conference is highly recommended for large and/or complicated projects as it enables the Department to inform an applicant of the application procedures and standards that will apply to the project. There is no fee for a pre-application conference.

(b) A pre-application conference can be requested by telephone, electronic mail or by writing to the address listed at N.J.A.C. 7:13-1.1(f). Such a request shall be directed to the engineering supervisor or review engineer responsible for the county wherein the project is located and shall include a description of the project.

(c) Prior to scheduling a pre-application conference, the Department shall require the applicant to submit a set of drawings depicting the proposed development and an application report, as described at N.J.A.C. 7:13-15.3, if the Department determines that such information is necessary to properly advise the applicant regarding the proposed project and application procedures. The information contained in an application report enables the Department to be better prepared for a pre-application conference, which often saves the applicant and the Department both time and effort.

(d) At a pre-application conference, Department staff will discuss various requirements of this chapter as they relate to a project and may offer guidance to assist the applicant. However, no discussion or guidance offered at a pre-application conference shall compel the Department to approve or deny an application.

(e) If a project requires approvals from multiple Department programs, the applicant is advised to contact the Office of Pollution Prevention and Right to Know at (609) 292-3600 before filing an application under this chapter. The Office of Pollution Prevention and Permit Coordination can help the applicant coordinate the various applications.

(f) If an applicant has reason to believe that construction is proposed in freshwater wetlands or transition areas, the Department encourages the applicant to obtain a freshwater wetlands letter of interpretation under the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-8 prior to the pre-application conference.

(g) Workload permitting, the Department shall hold a pre-application conference within three weeks of receiving a

request that complies with this section. The Department is not obligated to hold a pre-application conference with a prospective applicant if the Department determines that the questions raised can be adequately addressed by telephone.

### 7:13-15.3 Application report

(a) An application report required under this chapter shall include the following (photocopies of maps and documents are acceptable, except for the LURP application form, which must include original signatures):

1. A complete written description of the project and all proposed activities;
2. One original LURP application form, completed as described at N.J.A.C. 7:13-15.1(f);
3. One copy of a USGS quad map with the site clearly outlined to scale;
4. One copy of a municipal tax map with the site clearly outlined to scale;
5. One copy of a Department flood hazard area map or FEMA flood insurance rate map with the site clearly outlined to scale, if such mapping exists;
6. One copy of each previous approval received from the Department concerning the site, if such approvals exist; and
7. One set of color photographs depicting the entire project area, mounted on 8½-inch by 11-inch paper and accompanied by a map showing the location and direction from which each photograph was taken. Copies of photographs are acceptable provided they are color copies. Black and white copies of photographs are not acceptable.

### 7:13-15.4 Engineering report

(a) An engineering report required under this chapter shall include the following, as applicable:

1. The signature and seal of an engineer;
2. The name, mailing address and telephone number of the engineer, as well as any other person designated by the engineer to answer questions about the report;
3. All supporting hydrologic, hydraulic, flood storage volume, stormwater and structural calculations, which are necessary to demonstrate that the proposed application meets the requirements of this chapter;
4. A narrative that explains the submitted calculations and describes why each particular calculation or methodology was used;
5. All maps, references and other supporting materials that were used to prepare the submitted calculations;

6. In the case of a verification application, all flood maps, drainage area maps and other material used to determine the flood hazard area and/or floodway limits;

7. In the case of an individual permit application, the total area of impervious surface proposed and the total land area that will be disturbed; and

8. In the case of an individual permit application for which stormwater management is required pursuant to N.J.A.C. 7:13-11.2, the following information where applicable:

i. An explanation of how nonstructural stormwater management strategies have been maximized on site, as required at N.J.A.C. 7:8-5.3;

ii. A demonstration of how the project meets the groundwater recharge standards at N.J.A.C. 7:8-5.4(a)2;

iii. A table which compares existing and proposed stormwater discharges for the two-year, 10-year and 100-year storm in order to demonstrate compliance with the runoff quantity standards at N.J.A.C. 7:8-5.4(a)3; and

iv. An explanation of how the project meets the water quality standards at N.J.A.C. 7:8-5.5.

#### 7:13-15.5 Environmental report

(a) An environmental report required under this chapter shall include the following, as applicable:

1. A narrative that describes the proposed design and the construction techniques that will be used;

2. Maps (such as freshwater wetlands maps and USDA soil surveys) which provide an environmental inventory of the site; and

3. An analysis of any potential adverse impacts to the following resources and a detailed description of how potential adverse impacts shall be minimized. This analysis shall include all temporary and permanent adverse impacts of each proposed activity, whether onsite or offsite, as follows:

i. Channels: compliance with the requirements of N.J.A.C. 7:13-10.1, as well as any anticipated effects on the size, shape and characteristics of existing channels, including low-flow aquatic passage, shall be addressed;

ii. Riparian zones: compliance with the requirements of N.J.A.C. 7:13-10.2 shall be addressed;

iii. Fishery resources: compliance with the requirements of N.J.A.C. 7:13-10.5 shall be addressed.

iv. Threatened or endangered species: if a survey for threatened or endangered species is required under N.J.A.C. 7:13-10.6(e), it shall meet the requirements of (c) below; and

v. Regulated waters: the effects on water quality due to stormwater runoff, exposure of acid producing soils, and potential for erosion and turbidity shall be addressed.

(b) If it is determined that a proposed project is likely to cause an adverse impact to any resource listed in (a)3 above, the environmental report shall include the following material, in addition to the information required at (a) above:

1. A justification for the project, including an explanation of why the proposed structures and their locations are the most appropriate for the site and how the proposed design minimizes environmental damage;

2. An analysis of alternatives to the proposed activity, including the no-build alternative;

3. A description of all measures to be taken to reduce temporary and permanent detrimental impacts to each resource listed at (a)3 above, whether onsite or offsite; and

4. A plan to mitigate the effects of all unavoidable adverse impacts.

(c) If the Department requires a survey for threatened or endangered species under N.J.A.C. 7:13-10.6(e), the survey shall be performed by a person with education and experience in wildlife biology, zoology and/or botany, as appropriate, and shall include the following:

1. The name, mailing address and qualifications of all persons participating in the survey;

2. The acreage of the surveyed area;

3. A USGS quad map with the surveyed area for each habitat outlined;

4. A description of each habitat and cover type onsite including vegetation, hydrology, soils and natural communities. These habitats shall be assessed for suitability and compatibility to the life history of the species being investigated. If no threatened or endangered species are observed, a discussion of the site's suitability for such species shall be provided;

5. The date and time of the investigation (including total number of hours spent by each individual for species observation);

6. The number of observers present on the site at any one time, including their location on the site relative to one another;

7. Site conditions during the survey, such as precipitation, temperature, wind speed and direction, artificial or natural noise, and nearest onsite or offsite human activity or development; and

8. If the survey reveals the presence or evidence of a threatened or endangered species, detailed information regarding each sighting, including:

- i. Whether the subject was sighted directly or identified by call, track, scat, remains or other indirect evidence of presence;
- ii. The date(s) and time(s) of each such sighting or discovery of evidence;
- iii. The relative age and condition of any indirect evidence observed and its location on the property;
- iv. A description of the techniques and methodologies employed by the observer during the site investigation;
- v. If an animal species is observed directly, the number of each species observed, likely age, observed activity, gender, location on or near the site, and proximity to the observer at each sighting; and
- vi. If a plant species is observed directly, the number of each species observed and its location on or near the site.

## SUBCHAPTER 16. PUBLIC NOTICE OF APPLICATIONS

### 7:13-16.1 General requirements for public notice of applications

(a) This subchapter sets forth the requirements for providing public notice of an application for a verification and/or an application for an individual permit. Public notice is not required for an application for an applicability determination, permit-by-rule, general permit, emergency permit or the revision or transfer of an approval.

(b) A person seeking a verification and/or an individual permit shall provide public notice of the application to the persons specified in this subchapter. The public notice shall be provided no more than 30 calendar days prior to the submittal of the application.

(c) If a person provides public notice for an application, and the Department determines that the application is incomplete, the following shall apply:

1. If the applicant submits the material requested by the Department to render the application complete within 90 calendar days of the date that the public notice was provided for the application, and the Department determines that the revised application is substantially the same as the original application, the Department shall consider the original public notice to be valid.
2. If the applicant submits the material requested by the Department more than 90 calendar days after the date that the public notice was provided, or if the Department determines that the revised application is substantially different from the original application, the applicant must provide a new public notice of the application.

(d) If a person concurrently applies for a verification and an individual permit, the joint application shall meet the public notice requirements for both a verification application under N.J.A.C. 7:13-16.2 and an individual permit application under N.J.A.C. 7:13-16.3.

(e) Except in cases where newspaper notice is allowed pursuant to N.J.A.C. 7:13-16.2(a)3, 16.3(c) and 16.3(d), the public notice required at N.J.A.C. 7:13-16.2 and 16.3 shall be provided by certified mail (return receipts requested) and shall be documented pursuant to N.J.A.C. 7:13-16.4.

### 7:13-16.2 Public notice requirements for an application for a verification

(a) An applicant for a verification based on Methods 4, 5 or 6, as provided at N.J.A.C. 7:13-3.4 and 3.5, shall provide public notice via certified mail, in the manner described at N.J.A.C. 7:13-16.6, as follows:

1. Three copies to the municipal clerk in each municipality in which the site is located;
2. One copy to the county clerk in each county in which the site is located; and
3. One copy to each owner of property located within 200 feet of the property boundary of the site. If a property within 200 feet of the property boundary of the site is located outside the flood hazard area, newspaper notice pursuant to N.J.A.C. 7:13-16.5 can be provided for that property instead of certified mail notice.

### 7:13-16.3 Public notice requirements for an application for an individual permit

(a) Except as provided in (b), (c) and (d) below, an applicant for an individual permit shall provide public notice via certified mail, in the manner described at N.J.A.C. 7:13-16.6, to the following:

1. Three copies to the municipal clerk in each municipality in which the site is located;
2. Three copies to the municipal clerk in any municipality located within one mile of the site;
3. One copy to the county clerk in each county in which the site is located;
4. One copy to the local Soil Conservation District if the project will disturb at least 5,000 square feet of land; and
5. One copy to each owner of property located within 200 feet of the property boundary of the site, except as provided in (c) below.

(b) Public notice does not need to be provided under (a) above if the project consists solely of the following activities:



1. The construction of a private residence, which is not being constructed as part of a larger residential subdivision; and/or

2. The construction of a building appurtenant to a private residence, such as a garage, barn or shed.

(c) Public notice to the owner of a property located within 200 feet of the property boundary of a site under (a)5 above may be satisfied via newspaper notice pursuant to N.J.A.C. 7:13-16.5 instead of via certified mail in the following circumstances:

1. To any property that is located outside the flood hazard area and at least 500 feet from all proposed regulated activities onsite; and

2. If the application is solely for a linear project of one-half mile or more in length, to any property that is located more than 200 feet from any aboveground structure that is part of the project. Examples of aboveground structures include pumping stations, treatment plants, power substations and elevated roadways or railroads, but not telephone poles or similar utility line support structures.

(d) An application for an individual permit for utility line maintenance, repair or replacement pursuant to N.J.A.C. 7:13-11.9(f) is not subject to the public notice requirements of (a) above. Instead, the applicant shall provide public notice of the individual permit application and of each repair and replacement as follows:

1. At the time the application is submitted to the Department, the applicant shall provide newspaper notice that meets the requirements at N.J.A.C. 7:13-16.5;

2. At least five working days before performing any repair or replacement, the applicant shall provide a written description of each proposed activity (including the method and duration of construction and the location of each proposed activity on a USGS quad map) to the following:

i. The Department, either at the address listed at N.J.A.C. 7:13-1.1(f) or by fax or electronic mail if prearranged with the Department;

ii. The municipal clerk for each municipality in which the work is located, via certified mail;

iii. The municipal engineer for each municipality in which the work is located, via certified mail; and

iv. The owners of each property on which the applicant will perform the work, via certified mail.

#### **7:13-16.4 Documenting public notice of an application**

(a) For applications that require public notice under this subchapter, the following shall be submitted to the Department to demonstrate that public notice was provided:

1. The original certified U.S. Postal Service receipt for each public notice that was mailed, mounted on 8 1/2-inch

by 11-inch paper. All certified mail shall be sent with return receipts requested. An applicant shall submit either the white postal receipt or the green return receipt card with an application. However, the green cards, if not sent with the application, shall be sent collectively to the Department once they are received from the post office by the applicant;

2. A list of the persons to whom public notice was mailed, as follows:

i. A certified list of all property owners within 200 feet of the site (including name, mailing address, lot and block) prepared by the municipal government for each municipality in which the project is located; and

ii. The mailing address of each public entity notified; and

3. A copy of any newspaper notice provided under N.J.A.C. 7:13-16.5.

#### **7:13-16.5 Newspaper notice**

(a) Newspaper notice required for an application under this chapter shall consist of either a legal notice or a display add (at the applicant's discretion) published in the official newspaper of the municipality (or in a newspaper of general circulation in the municipality if there is no official newspaper) as well as in one newspaper of regional circulation (relative to the location of the project). The newspaper notice shall include:

1. The mailing address and telephone number of the Department, as listed at N.J.A.C. 7:13-1.1(f);

2. The name and mailing address of the applicant;

3. The type of approval sought from the Department and a description of any proposed activities on site; and

4. The location of the site, including a street address, the name of any regulated water within or adjacent to the site, and a list of each lot, block, municipality and county involved in the project.

#### **7:13-16.6 Contents of public notice of an application**

(a) Except for the newspaper notice provided under N.J.A.C. 7:13-16.5, public notice required under this subchapter shall include the following:

1. A copy of the completed LURP application form that was submitted to the Department for the application;

2. A cover letter as follows:

i. For an application for a verification, the letter set forth at (c) below;

ii. For an application for an individual permit, the letter set forth at (d) below; and



iii. For a joint verification and individual permit application, the letter set forth at (e) below; and

3. If an application includes a request for a hardship exception under N.J.A.C. 7:13-9.8, the letter required under (a)2 above shall also include the following:

- i. A statement that a hardship exception is being requested;
- ii. The nature of the hardship; and
- iii. The citation and subject matter of each requirement in this chapter for which the hardship exception is being requested.

(b) Where public notice is required under this subchapter to be sent to a municipal or county clerk, the applicant shall send three copies of the public notice, accompanied by a letter requesting that the clerk keep one copy for public inspection, and distribute one copy of the public notice to the planning board and one copy to the environmental commission if any.

(c) The letter required in (a)2 above for an application for a verification shall state:

This letter is to notify you that an application for a flood hazard area verification will be submitted to the State of New Jersey Department of Environmental Protection (Department) for the site described on the attached application form. The Department regulates construction within flood hazard areas and riparian zones adjacent to certain waters. This application is a request for the Department to verify the extent of these areas on the subject property. A flood hazard area verification does not approve any construction. A separate application must be made to the Department if regulated activities are proposed within these areas. If you have any comments or questions regarding this application, please write to the Department at the following address and include a copy of the first page of the attached application form.

Attn: Engineering Supervisor for (the county or counties where the property that is the subject of the application is located)  
State of New Jersey Department of Environmental Protection  
Division of Land Use Regulation  
P.O. Box 439  
Trenton, New Jersey 08625-0439

Your comments must be sent within 15 calendar days of your receipt of this letter to ensure that the Department will be able to consider your concerns during its review of this application. You can submit comments after this date but the Department may not be able to address your concerns. You can also contact the Department by telephone at (609) 292-0060 and can obtain general information about the flood hazard area program at the following website: [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse).

(d) The letter required in (a)2 above for an application for an individual permit shall state:

This letter is to notify you that an application for a flood hazard area permit will be submitted to the State of New Jersey Department of Environmental Protection (Department) for the project described on the attached application form. A flood hazard area permit is required for this project because some or all of the work is proposed in a flood hazard area or in a riparian zone. If you have any comments or questions regarding this application, please write to the Department at the following address and include a copy of the first page of the attached application form:

Attn: Engineering Supervisor for (the county or counties where the property that is the subject of the application is located)  
State of New Jersey Department of Environmental Protection  
Division of Land Use Regulation  
P.O. Box 439  
Trenton, New Jersey 08625-0439

Your comments must be sent within 15 calendar days of your receipt of this letter to ensure that the Department will be able to consider your concerns during its review of this application. You can submit comments after this date but the Department may not be able to address your concerns. You can also contact the Department by telephone at (609) 292-0060 and can obtain general information about the flood hazard area program at the following website: [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse).

(e) The letter required in (a)2 above for a joint verification and individual permit application shall state:

This letter is to notify you that an application for a flood hazard area verification will be submitted to the State of New Jersey Department of Environmental Protection (Department) for the property described on the attached application form. The Department regulates construction within flood hazard areas and riparian zones adjacent to certain waters. This application is a request for the Department to verify the extent of these areas on the subject property. In addition, an application for a flood hazard area permit will also be submitted to the Department for the project described on the attached application form. A flood hazard area permit is required for this project because some or all of the work is proposed in a flood hazard area or in a riparian zone. If you have any comments or questions regarding this application, please write to the Department at the following address and include a copy of the first page of the attached application form:

Attn: Engineering Supervisor for (the county or counties where the property that is the subject of the application is located)  
State of New Jersey Department of Environmental Protection

Division of Land Use Regulation  
P.O. Box 439  
Trenton, New Jersey 08625-0439

Your comments must be sent within 15 calendar days of your receipt of this letter to ensure that the Department will be able to consider your concerns during its review of this application. You can submit comments after this date but the Department may not be able to address your concerns. You can also contact the Department by telephone at (609) 292-0060 and can obtain general information about the flood hazard area program at the following website: [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse).

## SUBCHAPTER 17. APPLICATION FEES

### 7:13-17.1 Application fees

(a) This subchapter establishes the application fees for:

1. A verification, pursuant to N.J.A.C. 7:13-6;
2. An authorization under a general permit pursuant to N.J.A.C. 7:13-8, except for:
  - i. General permit 1 for channel cleaning under the Stream Cleaning Act, N.J.A.C. 7:13-8.3; and
  - ii. General permit 6 for the reconstruction of a damaged or destroyed residence, N.J.A.C. 7:13-8.8;
3. An individual permit pursuant to N.J.A.C. 7:13-9, 10, and 11; and
4. A revision of a verification, authorization under a general permit, individual permit, or Department delineation pursuant to N.J.A.C. 7:13-13.

(b) There is no application fee for:

1. An applicability determination pursuant to N.J.A.C. 7:13-5.1;
2. A permit-by-rule pursuant to N.J.A.C. 7:13-7;
3. An authorization under the following general permits:
  - i. General permit 1 for channel cleaning under the Stream Cleaning Act N.J.A.C. 7:13-8.3; and
  - ii. General permit 6 for the reconstruction of a damaged or destroyed residence, N.J.A.C. 7:13-8.8;
4. An emergency permit pursuant to N.J.A.C. 7:13-12; and
5. A transfer of an approval pursuant to N.J.A.C. 7:13-14.1.

(c) All application fees shall be paid by money order, check (personal, bank, certified, or attorney) or government

purchase order payable to the "Treasurer, State of New Jersey."

(d) Any fee required under this chapter that is subject to N.J.A.C. 7:1L, Payment Schedule for Permit Application Fees, shall be payable in installments in accordance with N.J.A.C. 7:1L.

(e) The fees for applications under this chapter are set forth in Table F below:

Table F

### APPLICATION FEES

#### Verification pursuant to N.J.A.C. 7:13-6

|                                                                 | Fee                                                                                                  |
|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| Method 1 (Department delineation method; see N.J.A.C. 7:13-3.3) | \$1,000 <sup>1</sup>                                                                                 |
| Method 2 (FEMA tidal method; see N.J.A.C. 7:13-3.4(d))          | \$1,000 <sup>1</sup>                                                                                 |
| Method 3 (FEMA fluvial method; see N.J.A.C. 7:13-3.4(e))        | \$1,000 <sup>1</sup>                                                                                 |
| Method 4 (FEMA hydraulic method; see N.J.A.C. 7:13-3.4(f))      | \$4,000 plus \$400.00 per each 100 linear feet of regulated water (or fraction thereof) <sup>2</sup> |
| Method 5 (approximation method; see N.J.A.C. 7:13-3.5)          | \$1,000 <sup>1</sup>                                                                                 |
| Method 6 (calculation method; see N.J.A.C. 7:13-3.6)            | \$4,000 plus \$400.00 per each 100 linear feet of regulated water (or fraction thereof) <sup>2</sup> |

#### Authorization under a general permit pursuant to N.J.A.C. 7:13-8

|                          | Fee     |
|--------------------------|---------|
| General permits 1 and 6  | No fee  |
| Any other general permit | \$1,000 |

#### Individual permit pursuant to N.J.A.C. 7:13-9 through 11

|                                                                                                                                                                                                                                                              | Fee     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Individual permit for the construction of one private residence, which is not being constructed as part of a residential subdivision or multi-unit development, or for the construction of an addition or other structure appurtenant to a private residence | \$2,000 |
| Base fee for any other individual permit                                                                                                                                                                                                                     | \$3,000 |
| Additional review fee per project element <sup>1</sup>                                                                                                                                                                                                       |         |

|                                                                                               |                                                                                                     |                                                                                                      |
|-----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| Bank or channel stabilization, reestablishment, protection or modification project            | Review of hydrologic, hydraulic and/or flood storage displacement (net-fill) calculations required  | \$4,000 plus \$400.00 per each 100 linear feet of regulated water (or fraction thereof) <sup>2</sup> |
|                                                                                               | No review of calculations required                                                                  | \$1,000 per project                                                                                  |
| Bridge, culvert, footbridge, low dam or other water control structure                         | Review of hydrologic, hydraulic, and/or flood storage displacement (net-fill) calculations required | \$4,000 per structure                                                                                |
|                                                                                               | No review of calculations required                                                                  | \$1,000 per structure                                                                                |
| Review of flood storage displacement (net-fill) calculations for any project not listed above |                                                                                                     | \$4,000                                                                                              |
| Review of a hardship exception request                                                        |                                                                                                     | \$4,000                                                                                              |
| Utility line                                                                                  |                                                                                                     | \$1,000 per crossing of a regulated water                                                            |

Revision of a verification, general permit authorization, or individual permit pursuant to N.J.A.C. 7:13-13.1 through 13.3

|                     | Fee                                                                                 |
|---------------------|-------------------------------------------------------------------------------------|
| Each major revision | 30 percent of the original permit application fee or \$500.00, whichever is greater |
| Each minor revision | \$500.00                                                                            |

Revision of a Department delineation pursuant to N.J.A.C. 7:13-13.4

|                     | Fee                                                                                                                       |
|---------------------|---------------------------------------------------------------------------------------------------------------------------|
| Each major revision | \$4,000 plus \$400.00 per each 100-foot segment of regulated water (or fraction thereof) to be re-delineated <sup>2</sup> |
| Each minor revision | \$500.00                                                                                                                  |

Additional application fee stormwater review if a project is a "major development" pursuant to Stormwater Management Rules (see N.J.A.C. 7:8-1.2)

|                                    | Fee     |
|------------------------------------|---------|
| Base fee for any major development | \$3,000 |

|                                                                                                                      |                                                                                               |
|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Additional fee for review of groundwater recharge calculations (see N.J.A.C. 7:8-5.4)                                | \$250.00 per acre of land disturbed by the project (or fraction thereof)                      |
| Additional fee for review of runoff quantity calculations (see N.J.A.C. 7:8-5.4)                                     | \$250.00 per acre of land disturbed by the project (or fraction thereof)                      |
| Additional fee for review of water quality calculations (see N.J.A.C. 7:8-5.5)                                       | \$250.00 per acre of impervious surface subject to water quality review (or fraction thereof) |
| Additional fee if project disturbs vegetation within a Special Water Resource Protection Area (see N.J.A.C. 7:8-5.5) | \$2,000                                                                                       |

<sup>1</sup> This fee does not apply for any application associated with the construction of one private residence, which is not being constructed as part of a residential subdivision or multi-unit development, or for the construction of an addition or other structure appurtenant to a private residence.

<sup>2</sup> The length of the regulated water shall be measured along its centerline. The length of a regulated water in which no channel is discernible shall be determined by measuring along the approximate centerline of the regulated water.

Repeal and New Rule, R.2015 d.023, effective February 2, 2015.  
See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).  
Section was "Application fees".

#### 7:13-17.2 Annual adjustment of fees

(a) When, based on budget considerations, the Department determines to adjust the application fees established in this subchapter for the upcoming State fiscal year (which runs from July 1 to June 30), the Department shall:

1. Prepare an Application Fee Adjustment Report, in accordance with (b) below; and
2. Publish a notice of administrative change in the New Jersey Register that:
  - i. States that the Application Fee Adjustment Report is available on the Department's website at [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse); and
  - ii. Sets forth the adjusted application fees determined as provided at (b) below.

(b) In the Application Fee Adjustment Report, the Department shall:

1. Project the total amount of money required to fund the program in the upcoming State fiscal year. This projection shall consider the following:

i. The number and type of Department staff required to perform each activity for which fees are charged and the projected total salaries of those staff for the upcoming State fiscal year;

ii. The total cost of fringe benefits for those Department staff, calculated as the projected total salaries of those staff multiplied by a percentage set by the New Jersey Department of the Treasury that reflects costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;

iii. Indirect costs attributable to those Department staff, calculated as the total salaries and fringe benefits for those staff multiplied by a percentage known as the indirect cost rate. The indirect cost rate is negotiated annually with the U.S. Environmental Protection Agency and is the total of the Department's costs for management and administrative costs applicable to multiple cost objectives (including but not limited to, indirect management and administrative salary and non-salary costs, applicable fringe benefits, building rent, and the Department's share of the Statewide Cost Allocation Plan) divided by total Department direct salaries plus applicable fringe benefits; and

iv. Projected operating costs attributable to those Department staff, including, but not limited to, costs for postage, telephone, travel, supplies, and data system management;

2. Project the total amount of revenue expected to be received from application fees in the upcoming State fiscal year. This projection shall consider the following:

i. The number and type of applications received in previous State fiscal years;

ii. Any trend toward increasing or decreasing construction activities in regulated areas and such trend's impact, if any, on the number and type of applications anticipated for the upcoming State fiscal year;

iii. Other data concerning economic trends reasonably likely to influence the number and type of applications anticipated for the upcoming State fiscal year; and

iv. The application fees in effect at the time such projection is made;

3. Project the total amount of money to be available from sources other than application fees, such as State appropriations or Federal grants, for the upcoming State fiscal year;

4. Subtract the amounts in (b)2 and 3 above from the amount in (b)1 above. The remainder is the projected fee revenue shortfall for the upcoming State fiscal year; and

5. Divide the projected fee revenue shortfall in (b)4 above by the total amount of revenue expected to be received from application fees in (b)2 above to determine the fee adjustment factor. The amounts of the adjusted application fees for the upcoming State fiscal year shall be obtained by increasing the existing fees by the fee adjustment factor.

New Rule, R.2015 d.023, effective February 2, 2015.  
See: 46 N.J.R. 1839(a), 47 N.J.R. 422(a).

## SUBCHAPTER 18. REQUESTS FOR ADJUDICATORY HEARINGS

### 7:13-18.1 Requests for adjudicatory hearings

(a) Subject to the limitations of (j) below, a person may request an adjudicatory hearing to contest a decision on any of the following actions:

1. An application for a verification;
2. An application for authorization to act under a general permit; or
3. An application for an individual permit.

(b) To contest a decision listed at (a) above, a person shall submit a hearing request within 30 calendar days after public notice of the decision is published in the DEP Bulletin. If a person submits the hearing request after this time, the Department shall deny the request.

(c) A request for an adjudicatory hearing shall:

1. Be in writing on a hearing request form available from the Department at the address in N.J.A.C. 7:13-1.1(f) and shall set forth:

i. The name, address and daytime telephone number of the person requesting the hearing;

ii. When the request is submitted by someone other than the applicant, evidence that a copy of the hearing request has been mailed to the applicant;

iii. A copy of the Department notice or decision for which a hearing is being requested;

iv. The Department file number or project number on the notice or decision;

v. A statement requesting a hearing;

vi. A specific admission, denial or explanation of each fact appearing in the Department notice or decision or a statement that the person is without knowledge thereof; and

vii. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense; and

## 2. Be submitted to the Department as follows:

## i. Submit the original request to:

Office of Legal Affairs  
Attention: Adjudicatory Hearing Requests  
Department of Environmental Protection  
P.O. Box 402  
401 East State Street  
Trenton, New Jersey 08625-0402

## ii. Submit a copy of the request to:

Division of Land Use Regulation  
Attention: Director

Department of Environmental Protection  
P.O. Box 439  
501 East State Street  
Trenton, New Jersey 08625-0439

(d) As part of a request for an adjudicatory hearing, a person may request that the Department determine whether the matter for which the adjudicatory hearing is requested is suitable for mediation by the Department's Office of Dispute Resolution. The Department shall promptly notify the requester of its determination. If the Department determines the matter is suitable for mediation, the Department shall also notify the requester of the procedures and schedule for mediation.

(e) In some cases, a hearing request may result in a stay of operation of a general permit or individual permit being appealed, as follows:

1. If a permittee requests a hearing to appeal any portion of its permit, the hearing request shall automatically stay operation of the permit, unless the permittee shows good cause in writing why the permit should continue in effect while being contested. All permitted activities shall stop upon the date the hearing request is submitted, and shall not be started again until the matter is resolved, unless the Department grants an exception in writing; and

2. If a person other than the permittee requests a hearing on a permit, the requester may include with the hearing request a request for a stay of the permit. The Department shall stay operation of the permit only upon its determination that good cause exists. If a stay is imposed, all permitted activities shall stop upon the date the stay is imposed, and shall not be started again until the matter is resolved, unless the Department grants an exception in writing.

(f) The Department shall notify the requester if the request for a hearing is granted and, if denied, the reasons why. If a hearing request is granted, the Department shall refer the matter to the Office of Administrative Law for an adjudicatory hearing in accordance with 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.

(g) If the Department and the person seeking a hearing agree to settle a matter for which a hearing request has been submitted under this section, and the settlement will result in Department approval of a regulated activity, notice of the settlement shall be provided as follows:

1. The person who requested the hearing shall send by certified mail a "notice of intent to settle" the matter, using the notice form available from the Department at the address in N.J.A.C. 7:13-1.1(f), to the following persons:

i. Each person provided public notice of the application for the permit or approval which is the subject of the appeal; and

ii. Each person who commented on the application;

2. The Department shall publish in the DEP Bulletin the notice of intent to settle, and shall accept comments on the public notice for at least 30 calendar days;

3. After the 30-day comment period provided for in (g)2 above, the person who requested the hearing shall send by certified mail a "notice of settlement" using the notice form available from the Department at the address in N.J.A.C. 7:13-1.1(f), to the following persons:

i. Each person provided a notice of intent to settle under (g)1 above; and

ii. Each person who commented on the notice of intent to settle within the 30-day comment period provided under (g)2 above; and

4. If the Department thereafter determines that no good cause exists for the Department to decline the proposed settlement or to significantly modify it, the Department shall publish a notice of the final settlement in the DEP Bulletin.

(h) At the conclusion of any adjudicatory hearing in the Office of Administrative Law, the administrative law judge will submit an initial decision to the Commissioner. The Commissioner shall issue a final decision affirming, rejecting or modifying the initial decision, in accordance with 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.

(i) The Commissioner's decision under (h) above shall be considered final agency action for the purposes of the Administrative Procedure Act, and shall be subject only to judicial review in the Appellate Division of the Superior Court, as provided in the Rules of Court.

(j) Nothing in this section shall be construed to provide a right to an adjudicatory hearing in contravention of the Administrative Procedure Act, N.J.S.A. 52:14B-3.1 through 3.3.

## SUBCHAPTER 19. ENFORCEMENT

### 7:13-19.1 Penalties

(a) Pursuant to N.J.S.A. 58:16A-63, and subject to the grace period provisions applicable in accordance with N.J.A.C. 7:13-19.2, the Department may seek, in a court of competent jurisdiction, a civil penalty and/or injunctive relief for any violation of the Flood Hazard Area Control Act and/or this chapter, as follows:

1. Any person who knowingly violates any provision of the Act or this chapter shall be subject to a penalty of not more than \$2,500 for each offense; and

2. Any person who otherwise violates any provision of the Act or this chapter shall be subject to a penalty of not more than \$1,500 for each offense.

(b) If a violation is of a continuing nature, each day that the violation continues constitutes an additional, separate and distinct offense. A violation is of a continuing nature as long as the adverse impact of the violation continues. For example, if a violation involves placement of fill in a floodway, each day that the fill remains in the floodway is an additional, separate and distinct offense, because the increased flood hazard caused by the fill continues each day that the fill is present. In such a case, the Department may seek a separate penalty for each day that the fill remains in the floodway.



**7:13-19.2 Grace period applicability; procedures**

(a) Each violation identified in Table G at (f) below by an "M" in the Type of Violation column, for which the conditions of (d)1 through 6 below are satisfied, is a minor violation and is subject to a 30-day grace period as described at (e) below.

(b) Each violation identified in Table G at (f) below by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) If a violation is not listed in Table G at (f) below, the designation of the violation as minor or non-minor is determined as follows:

1. If the violation is not listed in Table G at (f) below but is comparable to a violation designated as "M" in Table G and the violation meets all of the criteria of (d)1 through 6 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 calendar days as described at (e) below.

2. If the violation is not listed in Table G at (f) below and is not comparable to a violation listed in Table G but the violation meets all of the criteria at (d)1 through 9 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 calendar days as described at (e) below.

3. If the violation is not listed in Table G at (f) below but is comparable to a violation designated as "NM" in Table G, then the violation is a non-minor violation and is not subject to a grace period.

4. If the violation is not listed in Table G at (f) below and is not comparable to a violation listed in Table G, and the violation does not meet all of the criteria at (d)1 through 9 below, the violation is non-minor and is not subject to a grace period.

5. Comparability of a violation to a violation in Table G at (f) below is based on the nature of the violation(s) (for example recordkeeping, accuracy of information provided to the Department, amount and type of impacts to the protected resources). A violation shall not be considered comparable to any violation designated as "M" in Table G unless the violation also meets the criteria at (d)7 through 9 below.

(d) The Department shall provide a grace period of 30 calendar days for any violation identified as minor under this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or a local government agency;

3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;

4. In the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period;

5. In the case of a violation of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq. or any rule or regulation promulgated thereunder, or permit issued pursuant thereto, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same site or any other site within the preceding 12-month period;

6. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible;

7. The violation poses minimal risk to the public health, safety and natural resources;

8. The violation does not materially and substantially undermine or impair the goals of the regulatory program; and

9. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

(e) For a violation determined to be minor under (a) or (c) above, the following provisions apply:

1. The Department shall issue a notice of violation to the person responsible for the minor violation that:

i. Identifies the condition or activity that constitutes the violation and the specific regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period of 30 calendar days.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (e)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation.

3. In response to a notice of violation, the person responsible for the minor violation shall submit to the Department, before the end of the specified grace period, written information, signed and certified to be true by the responsible person or his or her designee, detailing the corrective action taken or how compliance was achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period in writing no later than one week before the expiration of the specified grace period. The request shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The request shall be signed and certified to be true by the responsible party or their designee. The Department may, in its discretion, approve in writing an extension which shall not exceed 90 calendar days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;

ii. Whether the delay has been caused by circumstances beyond the control of the violator;

iii. Whether the delay will pose a risk to the public health, safety and natural resources; and

iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, or within any approved extension, the Department may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date on which the notice of violation under (e)1 above was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

(f) The designations of violations of the Flood Hazard Area Control Act and this chapter as minor (M) and non-minor (NM) are set forth in Table G below. The violation descriptions are provided for informational purposes only. In the event that there is a conflict between a violation description in Table G and the rule to which the violation description corresponds, the rule shall govern.

Table G

## MINOR AND NON-MINOR VIOLATIONS

| <u>Rule Citation</u>    | <u>Violation Description</u>                                                                                                                                                                                                                                                  | <u>Type of Violation</u> |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| N.J.A.C. 7:13-1.3(d)    | Failure of an applicant, or any consultant, engineer, surveyor or agent employed by an applicant, to provide all necessary information to the Department which is relevant to an application. Submittal of false information by the applicant, its consultants and/or agents. | NM                       |
| N.J.A.C. 7:13-1.4(a)2ii | Failure of a delegated county governing body to uphold the requirements of this chapter                                                                                                                                                                                       | NM                       |
| N.J.A.C. 7:13-1.4(c)    | Failure of a delegated county governing body to permanently retain a copy of all required documents that document that it has discharged its delegated duties                                                                                                                 | NM                       |
| N.J.A.C. 7:13-2.1(a)    | Initiating a regulated activity in a regulated area not in conformance with a permit-by-rule, general permit authorization, individual permit, emergency permit or appropriate CAFRA or waterfront development permit.                                                        | NM                       |
| N.J.A.C. 7:13-6.1(g)    | Failure of an applicant to record the metes and bounds description of a verified flood hazard area and/or floodway limit on the property deed within 90 calendar days of issuance of the verification                                                                         | NM                       |
| N.J.A.C. 7:13-6.1(g)    | Failure of an applicant to submit proof to the Department of recording of the metes and bounds description of the verified flood hazard area and/or floodway limit on the property deed within 90 calendar days of issuance of the verification                               | M                        |
| N.J.A.C. 7:13-8.2       | Failure to comply with all conditions of a general permit except as indicated directly below                                                                                                                                                                                  | NM                       |
| N.J.A.C. 7:13-8         | Failure to submit to the Department any documentation required by a general permit                                                                                                                                                                                            | M                        |

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |    |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| N.J.A.C. 7:13-9.5     | Failure to comply with all conditions of an individual permit except as indicated directly below                                                                                                                                                                                                                                                                                                                                                                                         | NM |
| N.J.A.C. 7:13-9       | Failure to submit to the Department any documentation required by an individual permit                                                                                                                                                                                                                                                                                                                                                                                                   | M  |
| N.J.A.C. 7:13-12.2    | Commencement of activities authorized under an emergency permit later than 30 calendar days after verbal approval; failure to complete commenced activities within 60 calendar days after verbal approval; failure to file a complete permit application and "as built" drawings for completed activities within 90 calendar days after verbal approval; and failure to modify the activities to comply with the requirements of this chapter where directed to do so by the Department. | NM |
| N.J.A.C. 7:13-13      | Failure of an applicant to record a revised verification                                                                                                                                                                                                                                                                                                                                                                                                                                 | NM |
| N.J.A.C. 7:13-13      | Failure of an applicant to provide proof that a revised verification has been properly recorded                                                                                                                                                                                                                                                                                                                                                                                          | M  |
| N.J.A.C. 7:13-16.1(c) | Failure of an applicant to comply with notice requirements                                                                                                                                                                                                                                                                                                                                                                                                                               | NM |

## APPENDIX 1

APPROXIMATING THE FLOOD HAZARD AREA  
DESIGN FLOOD ELEVATION

As described in detail at N.J.A.C. 7:13-3, the Department and FEMA have adopted flood mapping along many of the State's waters. In absence of a Department delineation<sup>1</sup>, or a FEMA flood insurance study that meets the requirements of N.J.A.C. 7:13-3.4(b), an applicant may use the approximation method described at N.J.A.C. 7:13-3.5 in conjunction with this appendix.

Note that this method approximates only the flood hazard area design flood elevation. This method does not approximate the floodway limit. Many activities are restricted within floodways and some calculations cannot be performed if the floodway limit is unknown. Therefore, the Department shall issue a individual permit for a regulated activity within an approximated flood hazard area only if the regulated activity meets the requirements at N.J.A.C. 7:13-9.7.

HOW TO USE METHOD 5 (APPROXIMATION  
METHOD)

1. Determine which Watershed Management Area (WMA) the project is located within based on Figure 5 below. The Department can help in this determination at the applicant's request.<sup>2</sup>

2. Determine the contributory drainage area (CDA) of the water in question. USGS provides topographical mapping that can be used to make this determination. The Department can also help in this determination at the applicant's request.

3. Find the approximate depth of flooding from Table 1 below based on the WMA and CDA.

4. Find the low point elevation of each roadway crossing or other water control structure within 1 mile downstream of the site.<sup>3</sup> Figure 1 illustrates a typical roadway profile with a low point.

5. The approximate flood hazard area design flood elevation will be the higher of the following (see Figures 1 through 4):

- The depth from Table 1, measured above the average streambed.<sup>4</sup>
- The depth from Table 2, measured above the highest roadway low point described in 4 above.

## NOTES

1. See Appendix 2 for a complete list of delineations and N.J.A.C. 7:13-3.3 for more detail.

2. If a project spans more than one WMA, the approximate flood hazard area shall be determined separately within each WMA.

3. Some roadway or railroad crossings over very large bridges need not be included if the Department determines that such crossings will not affect flooding on the site. Contact the Department for further information.

4. The average streambed is the general "smooth" grade of the bottom of the channel, and does not include small pockets of erosion, individual boulders or other minor irregularities. The average streambed always has a positive slope toward downstream.

| WMA <sup>1</sup><br>↓ | CONTRIBUTORY DRAINAGE AREA <sup>2</sup>                                          |     |     |     |     |     |      |                           |     |      |      |      |      |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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|                       | Shaded box indicates area in acres. Unshaded box indicates area in square miles. |     |     |     |     |     |      |                           |     |      |      |      |      |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 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|                       | FOR DRAINAGE AREAS UP TO ➡                                                       |     |     |     |     |     |      | THE FLOOD DEPTH IS SHOWN↓ |     |      |      |      |      |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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| 1                     |                                                                                  | 80  | 195 | 495 | 1.9 | 4.8 | 12.1 | 30.0                      |     |      |      |      |      |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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| 2                     |                                                                                  | 80  | 195 | 495 | 1.9 | 4.8 | 12.1 | 30.0                      |     |      |      |      |      |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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| 3                     |                                                                                  |     | 80  | 150 | 290 | 550 | 1.7  | 3.2                       | 6.1 | 11.8 | 22.6 | 30.0 |      |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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| 4                     |                                                                                  | 70  | 130 | 235 | 430 | 1.2 | 2.3  | 4.1                       | 7.6 | 13.9 | 25.4 | 30.0 |      |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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| 5                     |                                                                                  | 95  | 255 | 1.0 | 2.8 | 7.3 | 19.2 | 30.0                      |     |      |      |      |      |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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| 6                     |                                                                                  |     |     | 85  | 280 | 1.4 | 4.7  | 15.3                      |     |      |      |      |      |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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| 7                     |                                                                                  |     |     |     |     |     | 115  | 245                       | 510 | 1.7  | 3.5  | 7.4  | 15.6 | 30.0 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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| 8                     |                                                                                  |     | 60  | 115 | 210 | 395 | 1.2  | 2.2                       | 4.0 | 7.5  | 14.1 | 26.3 | 30.0 |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   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| 9                     |                                                                                  | 80  | 130 | 200 | 310 | 485 | 1.2  | 1.8                       | 2.9 | 4.5  | 7.0  | 11   | 17.1 | 26.7 | 30.0                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              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| 10                    | 70                                                                               | 110 | 165 | 255 | 390 | 605 | 1.5  | 2.2                       | 3.4 | 5.3  | 8.2  | 12.6 | 19.4 | 30.0 | 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|

TABLE 1  
APPROXIMATE FLOOD DEPTHS ABOVE AVERAGE  
STREAMBED ELEVATION

(SEE N.J.A.C. 7:13-3.5)

EXAMPLE: Going from left to right in any row, each number represents the upper drainage area limit for the flood depth shown at the bottom of the column. For example, in the row for WMA 10, a water with a drainage area of 70 acres or less has a flood depth of 5 feet. Similarly, any water draining between 70 and 110 acres has a flood depth of 6 feet. In the

example illustrated with arrows above, any water with a drainage area of between 19.4 and 30.0 square miles in WMA 10 has a flood depth of 18 feet.

#### NOTES

1. The numbers in this column denote the Watershed Management Areas shown in Figure 5.

2. Flood depths shall be measured above the average streambed elevation as described elsewhere in this Appendix and as shown in Figure 3 below.

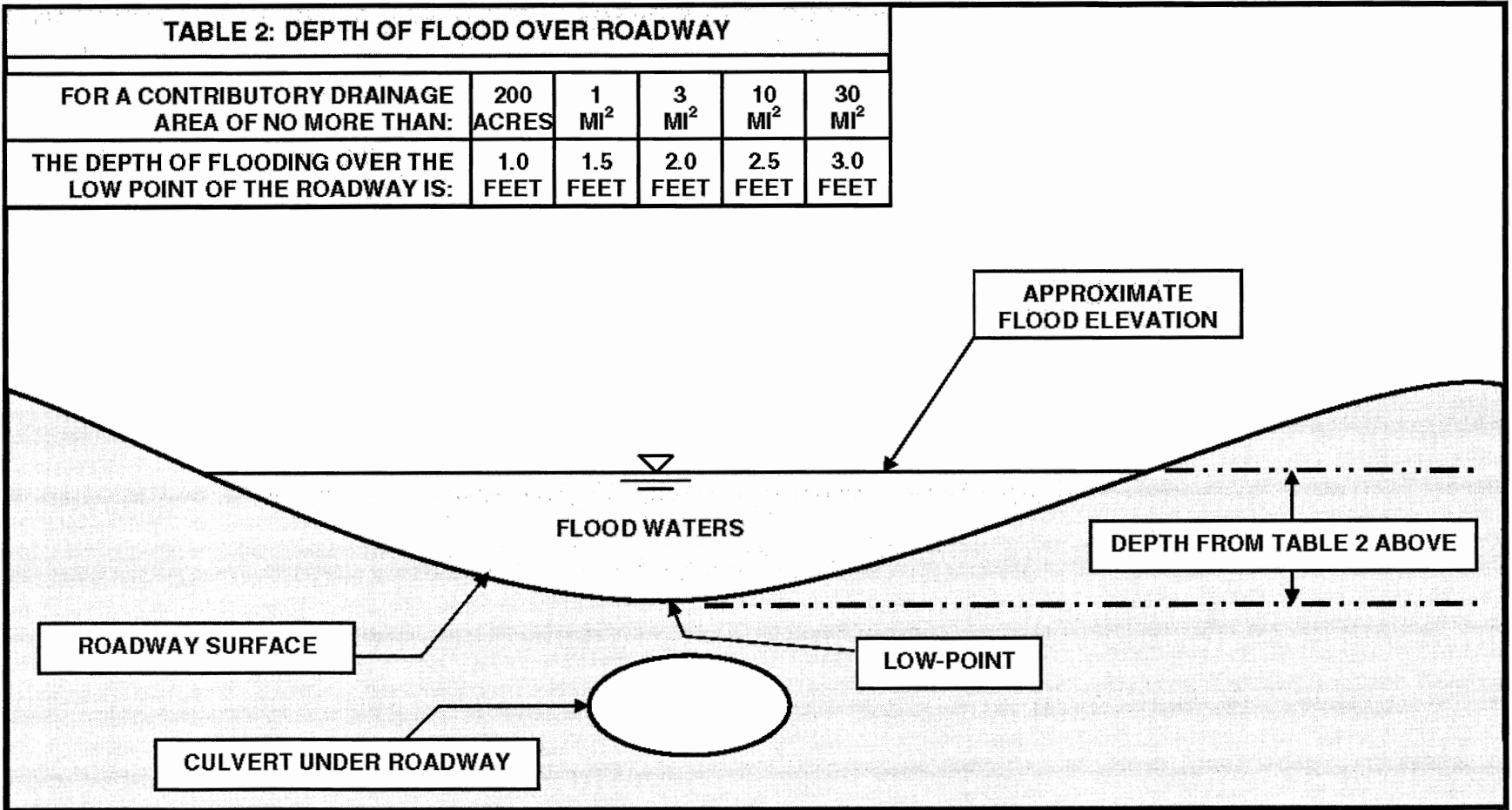
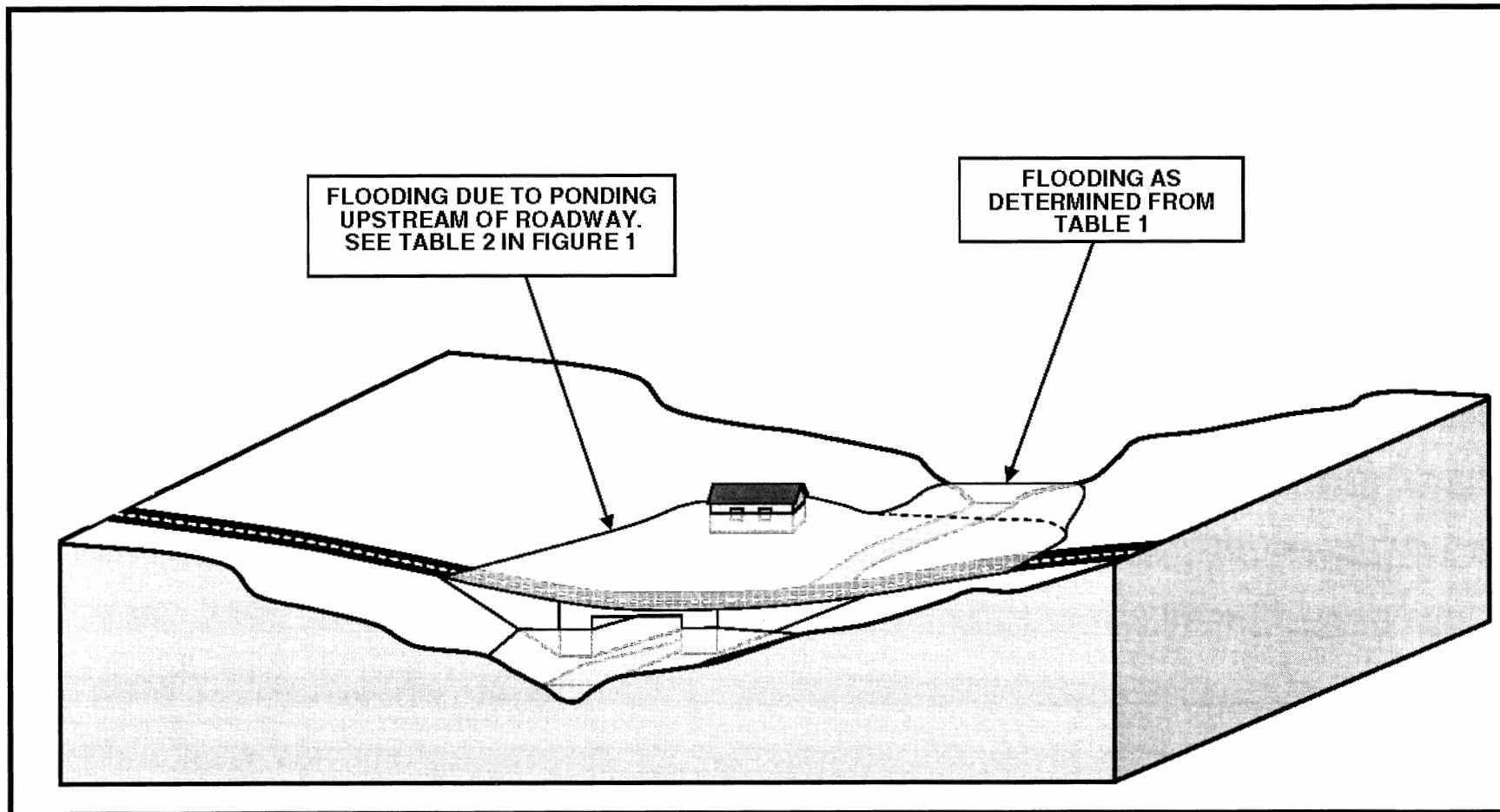
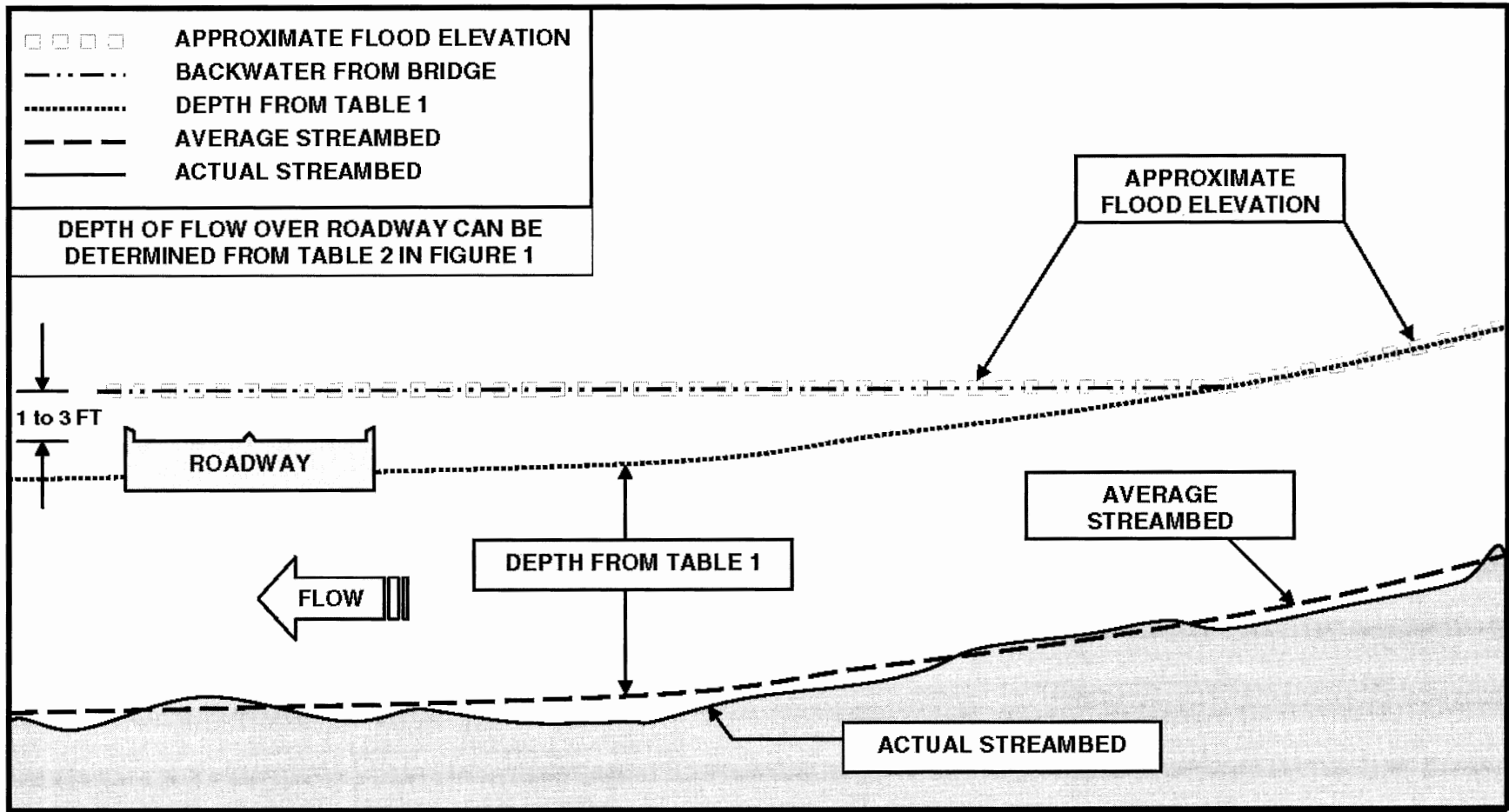


FIGURE 1  
 PROFILE OF A ROADWAY OVERTOPPED BY FLOOD WATERS  
 NOT DRAWN TO SCALE



**FIGURE 2**  
**THREE-DIMENSIONAL VIEW OF APPROXIMATE FLOOD HAZARD AREA**  
NOT DRAWN TO SCALE





**FIGURE 3**  
**PROFILE OF A TYPICAL CHANNEL WITH AN APPROXIMATE FLOOD HAZARD AREA**  
 NOT DRAWN TO SCALE

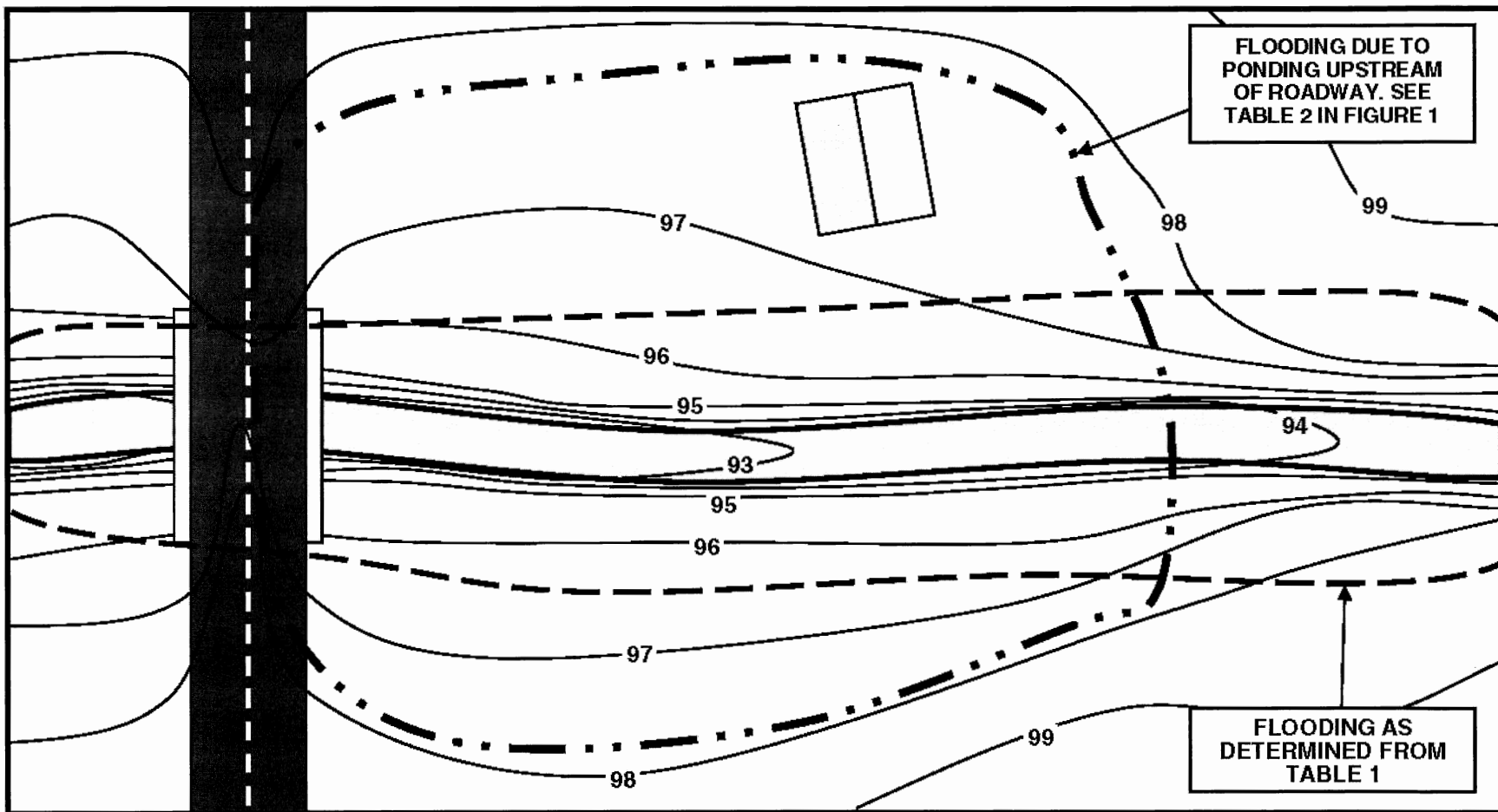


FIGURE 4  
PLAN VIEW OF AN APPROXIMATE FLOOD HAZARD AREA  
NOT DRAWN TO SCALE

# New Jersey's Watersheds, Watershed Management Areas and Water Regions

## Watershed Management Areas

- 01. Upper Delaware
- 02. Wallkill
- 03. Pompton, Wanaque, Ramapo
- 04. Lower Passaic and Saddle
- 05. Hackensack and Passaic
- 06. Upper Passaic, Whippany, and Rockaway
- 07. Arthur Kill
- 08. North and South Branch Raritan
- 09. Lower Raritan, South River, and Lawrence
- 10. Millstone
- 11. Central Delaware
- 12. Monmouth
- 13. Barnegat Bay
- 14. Mullica
- 15. Great Egg Harbor
- 16. Cape May
- 17. Maurice, Salem, and Cohansey
- 18. Lower Delaware
- 19. Rancocas
- 20. Assiscunk, Crosswicks, and Doctors



NJDEP June 2000

- LEGEND**
- Watershed Management Areas
  - County Boundaries
  - Watershed Boundaries
  - Water Regions**
    - Atlantic Coastal
    - Lower Delaware
    - Northeast
    - Northwest
    - Raritan

## APPENDIX 2

## LIST OF DEPARTMENT DELINEATED WATERS

The following table lists the waters for which the Department has promulgated a delineation of the flood hazard area. This list is organized by county and municipality. In most cases the delineation includes both the flood hazard area

design flood elevation and the floodway limit. To determine which mapping is available for a particular water, or to obtain copies of maps or other information regarding the use or revision of these studies, contact the Department as described at N.J.A.C. 7:13-3.3. An asterisk indicates that the Department delineation for that studied water was promulgated on or after January 24, 2013.

## Atlantic County

| <u>Municipality</u>  | <u>Name of Studied Water</u>     | <u>Section Studied</u>                          |
|----------------------|----------------------------------|-------------------------------------------------|
| Absecon City         | None                             | N/A                                             |
| Atlantic City        | None                             | N/A                                             |
| Brigantine City      | None                             | N/A                                             |
| Buena Borough        | None                             | N/A                                             |
| Buena Vista Township | None                             | N/A                                             |
| Corbin City          | Tuckahoe River                   | Entire reach                                    |
| Egg Harbor City      | Landing Creek                    | Upstream of confluence with Union Creek         |
|                      | Mullica River                    | Entire reach                                    |
|                      | Union Creek                      | Upstream of confluence with Landing Creek       |
|                      | Union Creek Tributary            | Entire reach                                    |
| Egg Harbor Township  | None                             | N/A                                             |
| Estell Manor City    | None                             | N/A                                             |
| Folsom Borough       | Great Egg Harbor River           | Upstream of State Highway 54                    |
|                      | Great Egg Harbor River Tributary | Entire reach                                    |
|                      | Hospitality Brook                | Upstream of State Highway 54                    |
| Galloway Township    | None                             | N/A                                             |
| Hamilton Township    | None                             | N/A                                             |
| Hammonton Township   | Cedar Brook                      | Between Wharton State Forest and Liberty Street |
| Linwood City         | None                             | N/A                                             |
| Longport Borough     | None                             | N/A                                             |
| Margate City         | None                             | N/A                                             |
| Mullica Township     | Mullica River                    | Downstream of County Route 542                  |
| Northfield City      | None                             | N/A                                             |
| Pleasantville City   | None                             | N/A                                             |
| Port Republic City   | None                             | N/A                                             |
| Somers Point City    | None                             | N/A                                             |
| Ventnor City         | None                             | N/A                                             |
| Weymouth Township    | None                             | N/A                                             |

## Bergen County

| <u>Municipality</u> | <u>Name of Studied Water</u> | <u>Section Studied</u> |
|---------------------|------------------------------|------------------------|
| Allendale Borough   | None                         | N/A                    |
| Alpine Borough      | None                         | N/A                    |
| Bergenfield Borough | Hirschfield Brook            | Entire reach           |

|                          |                             |                                                                         |
|--------------------------|-----------------------------|-------------------------------------------------------------------------|
|                          | Hirschfield Brook Tributary | Entire reach                                                            |
| Bogota Borough           | Hackensack River            | Entire reach                                                            |
| Carlstadt Borough        | None                        | N/A                                                                     |
| Cliffside Park Borough   | None                        | N/A                                                                     |
| Closter Borough          | Dwars Kill                  | Downstream of Piermont Road                                             |
|                          | Kips Brook                  | Entire reach                                                            |
|                          | Oradell Reservoir           | Entire reach                                                            |
|                          | Steinals Ditch              | Entire reach                                                            |
|                          | Tenakill Brook              | Entire reach                                                            |
| Cresskill Borough        | Cresskill Brook             | Entire reach                                                            |
|                          | Demarest Brook              | Entire reach                                                            |
|                          | Tenakill Brook              | Entire reach                                                            |
| Demarest Borough         | Cresskill Brook             | Downstream of County Road                                               |
|                          | Demarest Brook              | Downstream of County Road                                               |
|                          | Tenakill Brook              | Entire reach                                                            |
| Dumont Borough           | Hirschfield Brook           | Entire reach                                                            |
|                          | Hirschfield Brook Tributary | Downstream of Rucereto Avenue                                           |
| Elmwood Park Borough     | Passaic River               | Entire reach                                                            |
| East Rutherford Borough  | Passaic River               | Entire reach                                                            |
| Edgewater Borough        | None                        | N/A                                                                     |
| Emerson Borough          | Haunsmans Ditch             | Downstream of Orchard Avenue                                            |
|                          | Musquapsink Brook           | Entire reach                                                            |
|                          | Oradell Reservoir           | Entire reach                                                            |
|                          | Pascack Brook               | Entire reach                                                            |
| Englewood City           | Flat Rock Brook             | Downstream of Flatbrook Nature Center                                   |
|                          | Metzlers Creek              | Entire reach                                                            |
|                          | Overpeck Creek              | Entire reach                                                            |
|                          | Overpeck Creek Tributary 1  | Downstream of a point located 350 feet downstream of Forest Avenue      |
| Englewood Cliffs Borough | None                        | N/A                                                                     |
| Fair Lawn Borough        | Beaverdam Brook             | Downstream of a point located 1,050 feet upstream of Morlot Avenue      |
|                          | Diamond Brook               | Entire reach                                                            |
|                          | Henderson Brook             | Downstream of New Jersey Transit Railroad                               |
|                          | Jordan Brook                | Downstream of Berdan Avenue                                             |
|                          | Passaic River               | Entire reach                                                            |
|                          | Saddle River                | Entire reach                                                            |
| Fairview Borough         | Wolf Creek                  | Downstream of a point located 1,250 feet upstream of South Broad Avenue |
| Fort Lee Borough         | None                        | N/A                                                                     |
| Franklin Lakes Borough   | Hohokus Brook               | Downstream of a point located 400 feet upstream of Old Mill Drive       |
|                          | Pond Brook                  | Downstream of Franklin Lake                                             |
| Garfield City            | Passaic River               | Entire reach                                                            |

|                       |                                        |                                                                         |
|-----------------------|----------------------------------------|-------------------------------------------------------------------------|
| Raritan Township      | Neshanic River                         | Downstream of the Third Neshanic River                                  |
|                       | Third Neshanic River                   | Entire reach                                                            |
|                       | South Branch Raritan River             | Entire reach                                                            |
| Readington Township   | Chambers Brook                         | Downstream of a point located 400 feet downstream of Pulaski Road       |
|                       | Holland Brook                          | Downstream of County Route 523                                          |
|                       | Lamington River                        | Entire reach                                                            |
|                       | Pleasant Run                           | Downstream of U.S. Highway 202                                          |
|                       | Rockaway Creek                         | Entire reach                                                            |
|                       | South Branch Raritan River             | Entire reach                                                            |
|                       | South Branch Raritan River Tributary A | Downstream of a point located 100 feet upstream of Barley Sheaf Road    |
|                       | South Branch Rockaway Creek            | Entire reach                                                            |
| Stockton Borough      | Brookville Creek                       | Entire reach                                                            |
|                       | Delaware River*                        | Entire reach                                                            |
|                       | Wickecheoke Creek                      | Entire reach                                                            |
| Tewksbury Township    | Lamington River                        | Entire reach                                                            |
|                       | Lamington River Tributary A            | Downstream of a point located 650 feet upstream of Homestead Road       |
|                       | Rockaway Creek                         | Downstream of County Route 512                                          |
|                       | Rockaway Creek Tributary B             | Downstream of a point located 1,400 feet upstream of Guinea Hollow Road |
|                       | South Branch Raritan River             | Entire reach                                                            |
| Union Township        | Mulhockaway Creek                      | Downstream of a point located 420 feet upstream of Gravel Hill Road     |
|                       | South Branch Raritan River Tributary A | Downstream of Conrail Railroad (7,960 feet upstream of Race Street)     |
|                       | Spruce Run                             | Entire reach                                                            |
|                       | Mulhockaway Creek Tributary B          | Entire reach                                                            |
|                       | Mulhockaway Creek Tributary C          | Entire reach                                                            |
|                       | Mulhockaway Creek Tributary D          | Downstream of Interstate Highway 78                                     |
|                       | Mulhockaway Creek Tributary E          | Downstream of Interstate Highway 78                                     |
|                       | Mulhockaway Creek Tributary F          | Downstream of a point located 200 feet upstream of Baptist Church Road  |
|                       | Spruce Run                             | Entire reach                                                            |
| West Amwell Township  | Alexauken Creek                        | Downstream of State Highway 179                                         |
|                       | Delaware River*                        | Entire reach                                                            |
| Mercer County         |                                        |                                                                         |
| <u>Municipality</u>   | <u>Name of Studied Water</u>           | <u>Section Studied</u>                                                  |
| East Windsor Township | Bear Creek                             | Downstream of a point located 3,800 feet upstream of Dutch Neck Road    |
|                       | Big Bear Brook                         | Downstream of State Highway 33                                          |
|                       | Millstone River                        | Entire reach                                                            |
|                       | Rocky Brook                            | Entire reach                                                            |
| Ewing Township        | Delaware River                         | Entire reach                                                            |



|                    |                             |                                                                                       |
|--------------------|-----------------------------|---------------------------------------------------------------------------------------|
|                    | Ewing Creek                 | Downstream of Scotch Road                                                             |
|                    | Jacobs Creek                | Entire reach                                                                          |
|                    | Shabakunk Creek             | Entire reach                                                                          |
|                    | West Branch Shabakunk Creek | Downstream of a point located 2,000 feet upstream of Carlton Avenue                   |
| Hamilton Township  | Assunpink Creek             | Entire reach                                                                          |
|                    | Miry Run                    | Entire reach                                                                          |
|                    | North Branch Pond Run       | Downstream of a point located 100 feet upstream of County Route 533                   |
|                    | Pond Run                    | Downstream of a point located 1,150 feet upstream of White Horse-Hamilton Square Road |
| Hightstown Borough | Rocky Brook                 | Entire reach                                                                          |
| Hopewell Borough   | Bedens Brook                | Downstream of a point located 200 feet downstream of County Route 518                 |
| Hopewell Township  | Bedens Brook                | Entire reach                                                                          |
|                    | Delaware River              | Entire reach                                                                          |
|                    | Ewing Creek                 | Downstream of Scotch Road                                                             |
|                    | Jacobs Creek                | Downstream of confluence with Ewing Creek                                             |
|                    | Stony Brook                 | Entire reach                                                                          |
| Lawrence Township  | Assunpink Creek             | Entire reach                                                                          |
|                    | Little Shabakunk Creek      | Downstream of a point located 200 feet upstream of driveway within Rider University   |
|                    | Sand Run                    | Downstream of a point located 6,000 feet upstream of Interstate Highway 295           |
|                    | Shabakunk Creek             | Entire reach                                                                          |
|                    | Shipetaukin Creek           | Downstream of Cold Soil Road                                                          |
|                    | Stony Brook                 | Entire reach                                                                          |
|                    | West Branch Shabakunk Creek | Entire reach                                                                          |
| Pennington Borough | Stony Brook                 | Entire reach                                                                          |
| Princeton Borough  | None                        |                                                                                       |
| Princeton Township | Cherry Run                  | Downstream of Cherry Hill Road                                                        |
|                    | Harrys Brook                | Downstream of a point located 50 feet upstream of Snowden Lane                        |
|                    | Harrys Brook Branch 1       | Downstream of a point located 100 feet upstream of Bertrand Drive                     |
|                    | Harrys Brook Branch 2       | Downstream of Harrison Street                                                         |
|                    | Harrys Brook Branch 2-1     | Downstream of Van Dyke Road                                                           |
|                    | Harrys Brook Branch 2-2     | Downstream of a point located 850 feet upstream of Grover Avenue                      |
|                    | Millstone River             | Entire reach                                                                          |
|                    | Mountain Brook              | Downstream of a point located 1,000 feet upstream of Stuart Road                      |
|                    | Mountain Brook Branch 2     | Downstream of a point located 80 feet downstream of Red Hill Road                     |

|                        |                                        |                                                                           |
|------------------------|----------------------------------------|---------------------------------------------------------------------------|
| Westfield Town         | Elizabeth River                        | Entire reach                                                              |
|                        | Rahway River                           | Entire reach                                                              |
|                        | Nomahegan Brook                        | Entire reach                                                              |
|                        | Rahway River Tributary                 | Downstream of a point located 720 feet upstream of Gallows Hill Road      |
|                        | Robinsons Branch 15                    | Downstream of a point located 180 feet downstream of Shackamaxon Drive    |
|                        | Robinsons Branch 15-1                  | Downstream of a point located 130 feet downstream of Rahway Avenue        |
| Winfield Township      | Robinsons Branch 15-2                  | Downstream of a point located 500 feet downstream of Grove Street         |
|                        | Rahway River                           | Entire reach                                                              |
| Warren County          |                                        |                                                                           |
| <u>Municipality</u>    | <u>Name of Studied Water</u>           | <u>Section Studied</u>                                                    |
| Allamuchy Township     | Musconetcong River                     | Entire reach                                                              |
| Alpha Borough          | Pequest River                          | Entire reach                                                              |
| Belvidere Town         | None                                   | N/A                                                                       |
| Blairstown Township    | Delaware River*                        | Entire reach                                                              |
|                        | Pequest River                          | Entire reach                                                              |
| Franklin Township      | Paulins Kill                           | Entire reach                                                              |
| Frelinghuysen Township | Mill Brook                             | Downstream of a point located 2,050 feet upstream of State Highway 57     |
|                        | Montana Brook                          | Downstream of a point located 100 feet upstream of State Highway 57       |
|                        | Musconetcong River                     | Entire reach                                                              |
|                        | Musconetcong River Tributary A         | Downstream of a point located 1,400 feet upstream of Asbury Road          |
|                        | Pohatcong Creek                        | Entire reach                                                              |
|                        | Sigler Brook                           | Downstream of Bloomsbury Road                                             |
| Greenwich Township     | None                                   | N/A                                                                       |
| Hackettstown Town      | Lopatcong Creek                        | Entire reach                                                              |
|                        | Merrill Creek (Including Left Channel) | Entire reach                                                              |
|                        | Musconetcong River                     | Entire reach                                                              |
|                        | Pohatcong Creek                        | Entire reach                                                              |
| Hardwick Township      | Hackettstown Brook                     | Downstream of a private road located 400 feet upstream of Franklin Street |
|                        | Musconetcong River                     | Entire reach                                                              |
| Harmony Township       | Trout Brook                            | Entire reach                                                              |
|                        | Delaware River*                        | Entire reach                                                              |
|                        | Buckhorn Creek                         | Entire reach                                                              |
|                        | Buckhorn Creek Tributary 1             | Downstream of a point located 1,700 feet upstream of County Route 519     |
|                        | Delaware River*                        | Entire reach                                                              |

|                       |                                |                                                                     |
|-----------------------|--------------------------------|---------------------------------------------------------------------|
|                       | Lopatcong Creek                | Downstream of a point located 250 feet upstream of Allen Mills Road |
| Hope Township         | Beaver Brook                   | Downstream of Interstate Highway 80                                 |
|                       | Honey Run                      | Downstream of a point located Swayze Mill Road                      |
| Independence Township | Pequest River                  | Upstream of a point located 100 feet downstream of U.S. Highway 46  |
| Knowlton Township     | Delaware River*                | Entire reach                                                        |
| Liberty Township      | None                           | N/A                                                                 |
| Lopatcong Township    | Delaware River*                | Entire reach                                                        |
|                       | Dry Run                        | Downstream of a point located 650 feet upstream of Powder Horn Road |
| Mansfield Township    | Lopatcong Creek                | Entire reach                                                        |
|                       | Hances Brook                   | Downstream of Highland Avenue                                       |
|                       | Musconetcong River             | Entire reach                                                        |
|                       | Pohatcong Creek                | Downstream of Janes Chapel Road                                     |
|                       | Trout Brook                    | Entire reach                                                        |
| Oxford Township       | None                           | N/A                                                                 |
| Pahaquarry Township   | None                           | N/A                                                                 |
| Phillipsburg Town     | Delaware River*                | Entire reach                                                        |
|                       | Lopatcong Creek                | Entire reach                                                        |
| Pohatcong Township    | Delaware River*                | Entire reach                                                        |
|                       | Lopatcong Creek                | Entire reach                                                        |
|                       | Musconetcong River             | Entire reach                                                        |
|                       | Pohatcong Creek                | Entire reach                                                        |
|                       | Pohatcong Creek Tributary 1    | Downstream of a point located 800 feet upstream of Conrail Railroad |
| Washington Borough    | Shabbecong Creek               | Entire reach                                                        |
| Washington Township   | Musconetcong River             | Entire reach                                                        |
|                       | Musconetcong River Tributary B | Downstream of State Highway 57                                      |
|                       | Pohatcong Creek                | Entire reach                                                        |
|                       | Shabbecong Creek               | Downstream of Washington Borough, Warren County                     |
| White Township        | Beaver Brook                   | Entire reach                                                        |
|                       | Delaware River*                | Entire reach                                                        |
|                       | Pequest River                  | Entire reach                                                        |

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In the introductory paragraph, substituted "promulgated" for "adopted", and inserted the last sentence; and rewrote the table.

Concurrent adopted amendment, R.2013 d.070, effective March 25, 2013.

See: 45 N.J.R. 360(a), 45 N.J.R. 1104(a).

Provisions of R.2013 d.041 adopted without change.