

CHAPTER 13
FLOOD HAZARD AREA CONTROL

Authority

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

Source and Effective Date

R.2006 d.44, effective December 23, 2005.
See: 37 N.J.R. 2759(a), 38 N.J.R. 947(a).

Chapter Expiration Date

Chapter 13, Flood Hazard Area Control, expires on December 23, 2010.

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Chapter 13, Flood Hazard Area Control, was repealed and Chapter 13, Flood Hazard Area Control, was adopted as new rules by R.1995 d.149.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 by R.2006 d.44, effective December 23, 2005. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

7:13-1.1 Purpose and Scope

(a) The general purpose of this chapter is to control development in areas within the jurisdiction of this chapter in order to avoid or mitigate the detrimental effects of development upon the environment and the safety, health and general welfare of the people of the State.

(b) Areas subject to inundation by flood waters are called flood plains. For the purpose of this chapter flood plains are divided into two classes, delineated and non-delineated.

1. Delineated flood plains have been established and officially adopted ("delineated") by the State of New Jersey. Each flood plain has been divided into a floodway and a flood fringe area. The procedure for delineating flood plains is established by N.J.S.A. 58:16A-52.

2. Other flood plains, and the watercourses that create them, are referred to as non-delineated.

(c) The specific intent of this chapter is to minimize potential on and off site damage to public or private property caused by development which, at times of flood, subject structures to flooding and increase flood heights and/or velocities both upstream and downstream. These rules are also intended to safeguard the public from the dangers and damages caused by materials being swept onto nearby or downstream lands, to protect and enhance the public's health and welfare by minimizing the degradation of water quality from point and non point pollution sources and to protect wildlife and fisheries by preserving and enhancing water quality and the environment associated with the flood plain and the watercourses that create them.

(d) Without proper controls, development in the flood plain and the watercourses that create them may adversely affect the flood carrying capacity of these areas, subject new facilities to flooding, reduce natural flood storage that the flood plain provides, increase the volume of storm water runoff, degrade the water quality of the receiving water body, and result in increased sedimentation, erosion or other environmental damage. Any development in areas regulated by this chapter must conform to criteria which, as outlined in this chapter, depend upon the characteristics of the area and the type of activity involved.

(e) The rules in this chapter govern minimum standards for development within areas within the jurisdiction of this chapter. The Department shall administer permits pursuant to this chapter, except as provided in N.J.A.C. 7:13-5.3.

Case Notes

There was insufficient factual legal basis for judgment in view of owner's failure to pursue its administrative remedies. *Laurjo Const. Co. v. State*, 228 N.J.Super. 552, 550 A.2d 518 (A.D.1988).

Term "floodway" as used in engineering report was not intended to express anything other than technical meaning which was, by definition, portion of flood plain. *Turner v. Spyco, Inc.*, 226 N.J.Super. 532, 545 A.2d 192 (A.D.1988).

Township's zoning ordinance's adoption of most restrictive definition of 100-year flood plain, wherein no buildings or structures could be erected, did not permit site specific analysis. *Turner v. Spyco, Inc.*, 226 N.J.Super. 532, 545 A.2d 192 (A.D.1988).

Threat to safety resulting from construction within 100 year flood plain should weigh strongly against variances from municipality's flood-related ordinance. *Turner v. Spyco, Inc.*, 226 N.J.Super. 532, 545 A.2d 192 (A.D.1988).

Validity of regulations affirmed. *Society for Environmental Economic Development v. Dept. of Environmental Protection*, 208 N.J.Super. 1, 504 A.2d 1180 (App.Div.1985).

Proper exercise of police power. *Usdin v. D.E.P.*, 173 N.J.Super. 311, 414 A.2d 280 (Law Div.1980), Affirmed, 179 N.J.Super. 113, 430 A.2d 949 (App.Div.1981).

7:13-1.2 Definitions

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

"Acts" means the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 13:1D-1 et seq.

"Alteration" means any manmade changes to lands located within the jurisdiction of this chapter.

"Anadromous fish" means fish which travel from salt water to fresh water or up waterways to spawn.

"Applicant" means a person who submits an application for a permit or other decision from the Department under this chapter.

"Application" means the completed Land Use Regulation Program (LURP) permit application form, as defined at N.J.A.C. 7:7-1.3, along with the appropriate fee, plans supporting calculations and reports as required by this chapter.

"Bank" means the inclined sides of the channel.

"Bed" means the floor of the channel.

"Cascades" means sections of beds consisting primarily of bedrock, with little rubble, gravel, or other such material present. The current is usually more swift than in riffles.

"Category One waters" means those waters designated in the tables in N.J.A.C. 7:9B-4.15(c) through (h) for the purposes of implementing the Antidegradation Policies in N.J.A.C. 7:9B-4. These waters may include, but are not limited to:

1. Waters originating wholly within Federal, interstate, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated as FW1 in N.J.A.C. 7:9B-4;
2. Waters classified as FW2 Trout Production waters and their tributaries;
3. Surface waters classified as FW2 Trout Maintenance or FW2 nontrout that are upstream of waters classified as FW2 Trout Production;
4. Shellfish waters of exceptional resource value; or,
5. Other waters and their tributaries that flow through, or border, Federal, State, county or municipal parks, forests, fish and wildlife lands, and other special holdings.

"Central Passaic Basin" means the flood plain along:

1. Central Passaic River: Extending from Little Falls at Beatties Dam upstream to Route 202 in Bernards and Harding Townships;
2. Pompton River: Entire river;
3. Ramapo River: Extending from its confluence with the Pompton River upstream to Pompton Lakes Dam;
4. Pequannock and Wanaque Rivers: Extending from their confluence with the Pompton River upstream to Paterson-Hamburg Turnpike;
5. Dead River: Extending from its confluence with the Passaic River upstream to Liberty Corner Road in Bernards Township;
6. Harrison Brook: Extending from its confluence with the Dead River upstream to Lake Road in Bernards Township;
7. Rockaway River: Extending from its confluence with the Passaic River upstream to the Jersey City Reservoir (Boonton Reservoir);
8. Whippany River: Extending from its confluence with the Passaic River upstream to Route 10;
9. Black Brook: entire reach; and
10. Beaver Dam Brook: Including East and West Ditches from Pompton River to Jacksonville Road in Lincoln Park.

"Channel" means the well-defined bed and banks of a watercourse which confine and conduct flowing water continuously or intermittently.

"Channelization" means any artificial reconstruction of the bed and/or banks such as by straightening, lining, deepening or piping.

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

"Dam" means any artificial dike, levy or other barrier together with appurtenant works, which is constructed for the primary purpose of impounding water on a permanent or temporary basis, that raises the water level five feet or more above its usual mean low water height when measured from the downstream toe-of-dam to the emergency spillway crest or in the absence of an emergency spillway, to the top of dam. Low dams raise the water level less than five feet.

"Delegated agency" means a county agency to which the Department has delegated its power to approve or disapprove certain classes of applications under this chapter or enforce certain provisions of this chapter.

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

"Detention basin" means an impoundment area created by constructing an embankment, excavating a pit or both for the purpose of temporarily storing storm water.

"Development" means any construction activity or other manmade land disturbance.

"Encroachment Line" means a line, described by metes and bounds, which defines the boundary between the floodway and flood fringe area in a non-delineated flood plain and customarily marks the limit of fill to be placed in a delineated flood plain.

"Erosion" means detachment and movement of soil or rock fragments by water, wind, ice or gravity.

"Excavation" means removal or recovery, by any means whatsoever, of minerals, mineral substances or organic substance, other than vegetation, from the water, land surface or beneath the land surface, whether exposed or submerged.

"Fill" means any material placed or deposited within the flood plain or the watercourses that create them which will displace floodwaters.

"Fish habitat enhancement device" means a device consisting of deflectors, low-flow channel structures, mud sills, boulders, felled shoreline trees, tire structures, brush, rubble reefs, or spawning nursery structures as developed and approved by the Department.

"Flats" means sections of channel with current too slow to be classified as riffle and too shallow to be classified as a pool. The bottom usually consists of sand or finer materials.

"Flood carrying capacity" means the ability of a watercourse or flood plain to transport flood waters, as determined by its shape, cross-sectional area, bed slope, coefficient of hydraulic friction, and upstream and downstream channel configurations, as used in accepted engineering practices.

"Flood damage potential" means the susceptibility to damage by potential floods at that site, as well as a given site's potential to increase off-site flooding.

"Flood fringe" means that portion of the flood plain outside of the floodway or encroachment lines.

"Flood hazard area design flood" means the flood used in State Adopted Flood Studies. It is the flood resulting from the 100-year flood discharge increased by 25 percent.

"Flood hazard design elevation" means the elevation of the flood hazard area design flood.

"Flood plain" means the area inundated by the regulatory flood including the watercourse that creates it.

"Flood proofing" means any combination of structural and nonstructural design features, additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, structures and their contents.

"Floodway" means the channel and portions of the flood plain adjoining the channel which are reasonably required to carry and discharge the regulatory flood. For the purpose of this chapter the term floodway shall refer to both the delineated floodway on State Adopted Studies and the area between the encroachment lines located on both sides of a non-delineated watercourse.

"Fluvial flood" means a flood which is caused entirely by runoff from rainfall in the upstream drainage area and is not influenced by the tide or tidal surge.

"Freshwater wetland" or "wetland" means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; provided, however, that the Department, in designating a wetland, shall use the three-parameter approach (that is, hydrology, soils and vegetation) enumerated in The Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989), and any subsequent amendments thereto.

"FW" means the general surface water classification applied to fresh waters in the Department's Surface Water Quality Standards, N.J.A.C. 7:9B.

"FW1" means the waters designated as FW1 in the Department's Surface Water Quality Standards, N.J.A.C. 7:9B.

"FW2" means the general surface water classification applied in the Department's Surface Water Quality Standards, N.J.A.C. 7:9B, to those fresh waters that are not designated as FW1 or Pinelands waters.

"Hazardous materials" means those materials as defined by or pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:19-23.11 et seq., or pollutants as defined by the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Low water" means the water level characteristic of a channel during low flow conditions.

"Major project" means that class of project defined as major in the 90-Day Construction Permit Rules (N.J.A.C. 7:1C).

"Manual" means the latest version of the Technical Manual for this chapter published by the Department.

"Minor project" means that class of project defined as minor in 90-Day Construction Permit Rules (N.J.A.C. 7:1C).

"Mitigation" means activities carried out in order to compensate for loss or disturbance of the environment caused by regulated activities and may include restoration, creation, enhancement or donation of land of appropriate environmental characteristics.

"Net fill" means the volume of fill which will displace flood waters left after the total volume of cuts, which will provide additional flood storage, made on the project site has been subtracted from the total volume of fill which will displace flood waters placed on the project site.

"90-Day Construction Permit Rules" means the rules appearing in N.J.A.C. 7:1C.

"Non-regulated use" means any use not subject to the provisions of this chapter.

"Non-trout waters" means the non-trout waters identified in the Department's Surface Water Quality Standards (N.J.A.C. 7:9B).

"Obstruction" means, but is not limited to, any structure, fill or other material placed in the flood plain which may impede, retard, or change the direction of the flow of water either by itself or by catching or collecting debris carried by such water or that is placed where the flow of water might carry the same downstream and constitute a hazard to life or property.

"One hundred-year flood" means a flood that is estimated to have a one percent chance, or one chance in a hundred, of being equaled or exceeded in any one year.

"Perennial watercourse" means any watercourse mapped as perennial on either the 7½ inch topographic maps published by the U.S. Geological Survey or the detailed map sheets in County Soil Surveys published by the U.S. Department of Agriculture, Soil Conservation Service, unless site specific information to the contrary is presented to and accepted by the Department.

"Permit" means a permit issued by the Department to engage in activities regulated under this chapter.

"Person" means corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, the Federal government, the State, and all political subdivisions of the State or any agencies or instrumentality thereof.

"Pools" means sections of channel which are deeper and have appreciably slower current than areas immediately upstream or downstream. The bed is usually a mixture of silt and coarse sand; the water depth usually exceeds two feet.

"Prohibited use" means a use which fails to comply with the requirements of this chapter and which shall not be allowed except in the case of exceptional and undue hardship as defined in N.J.A.C. 7:13-2.2.

"Public hearing" means a public meeting convened to allow the public to comment on the project proposed in the application.

"Regulatory flood" means the 100-year flood along non-delineated watercourses or the flood hazard area design flood along delineated watercourses.

"Riffles" means sections of a channel containing gravel or rubble in which surface water is at least slightly turbulent and current is swift enough that the surface of the gravel and rubble is kept fairly free from sand and silt.

"Retention basin" means an impoundment area with a permanent pool made by constructing an embankment, or excavating a pit, or both for the purpose of temporarily storing storm water.

"Soil Conservation District" means a political subdivision of the State of New Jersey authorized under N.J.S.A. 4:24-1 et seq.

"Solid waste" means garbage, sludge, refuse, trash, rubbish, debris or other discarded materials.

"State Soil Conservation Committee" means the agency created pursuant to N.J.S.A. 4:24-1 et seq.

"Stream encroachment" means any manmade alteration, construction, development or other activity within the areas within the jurisdiction of this chapter.

"Stream Encroachment Permit" means a permit issued by the Department, or delegated agency under the provisions of the Acts.

"Structure" means any assembly of materials above or below the surface of land or water including, but not limited to, buildings, fences, dams, fills, levees, bulkheads, dikes, jetties, embankments, causeways, culverts, roads, railroads, bridges and the facilities of any utility or governmental agency. Trees and vegetation are not structures.

"Threatened or endangered species" means those species of animals listed pursuant to "The Endangered and Non-game Species Conservation Act," N.J.S.A. 23:2A-1 et seq., identified in N.J.A.C. 7:25-4.13, and 7:25-4.17, and those species of plants identified in the Endangered Plant Species List, N.J.A.C. 7:5C-5.1.

"Tidal flood" means a flood caused by the tide backing up a channel.

"Trout-associated watercourses" means watercourses that are:

1. Trout production waters;
2. Trout maintenance waters;
3. Non-trout waters upstream from trout production waters (with or without intervening trout maintenance waters);
4. Non-trout waters less than one mile upstream from trout maintenance waters that are not upstream from trout production waters; or
5. Tributaries flowing into trout production or trout maintenance waters which will take the classification of the waters they flow into.

"Trout maintenance waters" means the trout maintenance waters identified in the Department's Surface Water Quality Standards (N.J.A.C. 7:9B).

"Trout production waters" means the trout production waters identified in the Department's Surface Water Quality Standards (N.J.A.C. 7:9B).

"Trout stocked waters" means waters that are stocked with trout by the Department's Division of Fish, Game and Wildlife, as listed in N.J.A.C. 7:25-6 and amendments thereto as adopted by the New Jersey Fish and Game Council.

"Upstream/downstream" refers to direction with respect to a fixed point in a waterway.

"Watercourse" means a path which conveys surface water runoff. Flow paths with a total contributory drainage area

less than 50 acres must have definable bed and banks to be considered a watercourse.

Amended by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

Rewrote the definition of "Application".

Case Notes

Statute does not require the DEP to promulgate rules and regulations providing standards and procedures for delineating flood hazards. *American Cyanamid Co. v. State, Dept. of Environmental Protection*, 231 N.J.Super. 292, 555 A.2d 684 (A.D.1989), certification denied 117 N.J. 89, 563 A.2d 847.

It was permissible for the Department of Environmental Protection, in delineating flood hazard area along streams, to use the United States Geological Survey 500-year design flood line. *American Cyanamid Co. v. State, Dept. of Environmental Protection*, 231 N.J.Super. 292, 555 A.2d 684 (A.D.1989), certification denied 117 N.J. 89, 563 A.2d 847.

Determination of Department of Environmental Protection was reasonable, as it provided an appropriate safety buffer for unanticipated development. *American Cyanamid Co. v. State, Dept. of Environmental Protection*, 231 N.J.Super. 292, 555 A.2d 684 (A.D.1989), certification denied 117 N.J. 89, 563 A.2d 847.

7:13-1.3 Applicability

(a) All development within the larger of the following areas shall require a permit under this chapter unless specifically exempted as provided in this chapter:

1. The flood plain, as defined at N.J.A.C. 7:13-1.2;
2. Twenty-five feet back from the top of the channel bank; or
3. Fifty feet back from the top of the channel bank along waters
 - i. Containing deposits of acid-producing soils as defined in N.J.A.C. 7:13-5.10;
 - ii. Classified as Category One, FW-1 trout-associated, or, FW-2 trout-associated;
 - iii. Which are a critical part of the habitat supporting a threatened or endangered species of plant or a current population of any species of threatened or endangered animal on a permanent or temporary basis, for any purpose such as resting, breeding or feeding, during any portion of its life-cycle; or
 - iv. Located within documented, historic habitat for threatened or endangered species of animals, which habitat remains suitable for breeding, resting or feeding by those species of animal during any portion of its life-cycle.

(b) New Jersey's geography and location along the Atlantic coastline subjects the State to both tidal and fluvial flooding. The effects of development on flood elevations vary depending on the type of flooding and the area in which it occurs. For the purpose of this chapter, three areas of concern have been identified based on the type of flooding and the impact of development in that particular area. These areas are as follows:

1. Tidal: Tidal flooding is the result of higher than normal tides which in turn inundate low lying coastal areas. The 100-year tidal flood elevation will not be affected by development. Therefore, certain areas in which the regulatory flood is the 100-year tidal flood will not be regulated under this chapter. The elevation of the 100-year tidal flood, which varies along the coast, can be obtained from the Department.

i. Tidal water bodies not regulated under this chapter shall include, but not be limited to, the Atlantic Ocean and all water bodies named on the U.S. Geological Survey 7½ inch topographic maps as "bays," "canals," "coves," "guts," "harbors," "inlets," "sounds," "thorofares," and "channels," except for: the portion of the Delaware River near Camden called "Back Channel," all man-made lagoons and canals and all sections of the "Intracoastal Waterway."

ii. The lower reach of a watercourse that flows into a tidal water body will be subject to the same flooding characteristics as the tidal water body. Subparagraph (b)1ii(1) through (16) below identifies reaches along specific watercourses that will be considered tidal for the purposes of this chapter and, therefore, not regulated under this chapter. Along those watercourses not specifically identified in (b)1ii(1) through (16) below that flow into tidal waterbodies listed in (b)1 above, the reach between the mouth of the watercourse and the closer of either the first bridge or culvert upstream or the point upstream where the regulatory flood exceeds the 100-year tidal elevation will be considered a tidal water body for the purposes of this chapter and, therefore, not regulated under this chapter.

- (1) Arthur Kill (Middlesex Co./Union Co.): entire reach;
- (2) Comptons Creek (Monmouth Co.) Raritan Bay to Campbell Avenue;
- (3) Deal Lake (Monmouth Co.) Atlantic Ocean to Wickapecko Drive;
- (4) Hackensack River (Hudson Co.) Newark Bay to the Pulaski Skyway;
- (5) Hudson River (Bergen Co./Hudson Co.);
- (6) Manasquan River (Monmouth Co./Ocean Co.): Atlantic Ocean to Route 70;
- (7) Metedeconk River (Ocean Co.): Barnegat Bay to Route 70;
- (8) Navesink River (Monmouth Co.): Shrewsbury River to Coopers Bridge;
- (9) Passaic River (Essex Co./Hudson Co.) Newark Bay to the Pulaski Skyway;
- (10) Raritan River (Middlesex Co.): Raritan Bay to The New Jersey Turnpike;

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

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

(b) A permittee may publish notice of the Department's final decision in a newspaper of Statewide circulation and a newspaper of regional circulation which includes the municipality in which the project site is located. The permittee shall provide a copy of the Department's decision to any person who requested such notice by certified mail. The Department shall maintain a list of such newspapers and a list of all persons who have requested notice of the decision.

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

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

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

7:13-4.11 Permit application review by delegated agencies

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

SUBCHAPTER 5. IMPLEMENTATION

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

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

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

Case Notes

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

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

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

Case Notes

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

7:13-5.3 Delegation of power to counties

(a) Except as otherwise expressly provided in this chapter, the Department may delegate its authority to review and decide any application made to it pursuant to this chapter as well as its power to enforce any aspect of its legal obligations arising under the Acts to a county governing body which shall expressly agree to accept such designation, and follow the rules stated herein, and which, in the Department's judgment, retains those employees with professional training and education capable of properly administering the provisions of this chapter.

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

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

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

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

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

7:13-5.4 Penalties

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

Case Notes

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

Denial of stream crossing permit upheld when suitable alternative proposed and no hardship or compelling public interest supported award of permit. *Quartararo v. Department of Environmental Protection*, 96 N.J.A.R.2d (EPE) 1.

SUBCHAPTER 6. (RESERVED)**SUBCHAPTER 7. DELINEATED FLOODWAYS****Flood Plain Redelineations, 1994:**

Poplar Brook, Borough of Deal, Monmouth County.

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

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

Delaware River, Pohatcong Township, Warren County.

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

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

Overpeck Creek, City of Englewood, Bergen County.

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

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

Flood Plain Redelineations, 1995:

Pascack and Fieldstone Brooks, Montvale Borough, Bergen County.

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

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

Sparkill Brook.

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

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

East Branch Rahway River.

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

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

Flood Plain Redelineations, 1998:

Musquapsink Brook, Washington Township, Bergen County.

Amended by R.1998 d.131, effective March 2, 1998.

See: 29 N.J.R. 3407(a), 30 N.J.R. 827(a).

Peckman River, West Orange, Essex County.

Amended by R.1998 d.380, effective July 20, 1998.

See: 30 N.J.R. 761(a), 30 N.J.R. 2659(b).

Flood Plain Redelineations, 1999:

Passaic River, Hawthorne Borough, Passaic County.

Amended by R.1999 d.162, effective May 17, 1999.

See: 31 N.J.R. 93(b), 31 N.J.R. 1314(a).