

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 However, any future reapplication for an individual permit based on a hardship exception that has been denied or withdrawn shall be accompanied by a new application fee.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.

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 Below for Further Detail | Maximum Area of Vegetation Disturbance Based on the Width of the Riparian Zone | | | |
|--|--|--|------------------------|------------------------|------------------------|
| | | 50-foot Riparian Zone | 150-foot Riparian Zone | 300-foot Riparian Zone | |
| • Railroad or public roadway | | | | | |
| New | Crossing a water | (e) | 5,000 ft ² | 15,000 ft ² | 30,000 ft ² |
| | Not crossing a water | | 2,000 ft ² | 6,000 ft ² | 12,000 ft ² |
| Expanded or Improved | Crossing a water | (f) | 2,500 ft ² | 7,500 ft ² | 15,000 ft ² |
| | Not crossing a water | | 1,000 ft ² | 3,000 ft ² | 6,000 ft ² |
| • Private roadway that serves as a driveway to one private residence | | | | | |