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CHAPTER 7A

FRESHWATER WETLANDS PROTECTION ACT RULES

Authority

N.J.S.A. 13:9B-1 et seq. and 58:10A-1 et seq.

Source and Effective Date

R.2001 d.312, effective August 3, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Chapter Expiration Date

Chapter 7A, Freshwater Wetlands Protection Act Rules, expires on August 3, 2006.

Chapter Historical Note

Chapter 7A, Wetlands Management, was adopted as R.1972 d.68, effective April 13, 1972. See: 3 N.J.R. 255(a), 4 N.J.R. 96(d).

Chapter 7A, Wetlands Management, was repealed by R.1984 d.164, effective May 7, 1984 (operative June 1, 1984). See: 15 N.J.R. 2090(a), 16 N.J.R. 1073(a).

Chapter 7A, Freshwater Wetlands Protection Act Rules, was adopted as new rules by R.1988 d.267, effective June 6, 1988 (operative July 1, 1988). See: 19 N.J.R. 2330(a), 20 N.J.R. 1235(a).

Subchapter 16, Fees, and Subchapter 17, Civil Administrative Penalties and Requests for Adjudicatory Hearings, were adopted as R.1988 d.312, effective July 5, 1988. See: 20 N.J.R. 576(a), 20 N.J.R. 1553(a).

Subchapter 6, Transition Areas, and Subchapter 7, Transition Area Waivers, were adopted as new rules by R.1989 d.362, effective July 3, 1989. See: 21 N.J.R. 596(a), 21 N.J.R. 1858(a).

Petitions for Rulemaking. See: 21 N.J.R. 2675(b), 22 N.J.R. 253(a), 22 N.J.R. 1388(a).

Subchapter 4, General Standards for Granting an Open Water Fill Permit, was repealed by R.1992 d.117, effective March 16, 1992. See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from June 6, 1993 to March 16, 1997. See: 24 N.J.R. 912(a).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from March 16, 1997 to March 16, 1998. See: 29 N.J.R. 1308(b).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from March 16, 1998 to March 16, 1999. See: 30 N.J.R. 1319(a).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from March 16, 1999 to March 16, 2000. See: 31 N.J.R. 871(b).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from March 16, 2000 to December 31, 2000. See 32 N.J.R. 1252(a).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernato-

rial directive from December 31, 2000 to June 30, 2001. See 33 N.J.R. 553(a).

The expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from June 30, 2001 to August 7, 2001. See: 33 N.J.R. 2640(b).

Chapter 7A, Freshwater Wetlands Protection Act Rules, was re-adopted as R.2001 d.312, effective August 3, 2001. As a part of R.2001 d.312, effective September 4, 2001, N.J.A.C. 7:7A-2.2 was repealed, and N.J.A.C. 7:7A-2.3 was recodified as N.J.A.C. 7:7A-2.2; N.J.A.C. 7:7A-2.4 and 7:7A-2.5 were recodified as N.J.A.C. 7:7A-2.3 and 7:7A-2.4; Subchapter 3, General Standards for Granting Freshwater Wetlands and Open Water Fill Permits, was recodified as Subchapter 7, Individual Freshwater Wetlands and Open Water Fill Permits; Subchapter 3, Letters of Interpretation, was adopted as new rules; Subchapter 5, Emergency Permits, was recodified as Subchapter 8; Subchapter 6, Transition Areas, was recodified as N.J.A.C. 7:7A-2.5 through 7:7A-2.7 and existing N.J.A.C. 7:7A-2.7 through 7:7A-2.9 were recodified as N.J.A.C. 7:7A-2.8 through 7:7A-2.10; Subchapter 6, Transition Area Waivers, was adopted as new rules; Subchapter 7, Transition Area Waivers, was repealed; N.J.A.C. 7:7A-8.6 and 7:7A-8.7 were recodified as N.J.A.C. 7:7A-3.6; N.J.A.C. 7:7A-9.2 was recodified as Subchapter 5, Adopted General Permits; N.J.A.C. 7:7A-9.1, 7:7A-9.3 and 7:7A-9.4 were recodified as Subchapter 4, General Provisions for General Permits; N.J.A.C. 7:7A-9.23 was recodified as N.J.A.C. 7:7A-5.23; Subchapter 10, Pre-Application Conferences, was recodified as Subchapter 9; Subchapter 11, Application Procedure, was recodified as Subchapter 10, Application Contents and Procedure; N.J.A.C. 7:7A-11.3 and 7:7A-11.4 were recodified as N.J.A.C. 7:7A-10.10 and 7:7A-10.11; Subchapter 14, Mitigation, was repealed, and Subchapter 14, Changes to Issued Permits or Waivers, was adopted as new rules; Subchapter 15, Enforcement, was recodified as Subchapter 16; N.J.A.C. 7:7A-15.1 through 7:7A-15.5 were recodified as N.J.A.C. 7:7A-16.1 through 7:7A-16.5; N.J.A.C. 7:7A-15.6 and 7:7A-15.7 were recodified as N.J.A.C. 7:7A-16.13 and 7:7A-16.14; N.J.A.C. 7:7A-15.8 and N.J.A.C. 7:7A-15.9 were recodified as N.J.A.C. 7:7A-16.16 and 7:7A-16.17; N.J.A.C. 7:7A-15.10 was recodified as N.J.A.C. 7:7A-14.5; N.J.A.C. 7:7A-15.11 was recodified as N.J.A.C. 7:7A-16.18; Subchapter 15, Mitigation, was adopted as new rules; Subchapter 16, Fees, was recodified as Subchapter 11; N.J.A.C. 7:7A-16.1 was recodified as N.J.A.C. 7:7A-11.1; N.J.A.C. 7:7A-17.1 and 7:7A-17.3 were repealed; N.J.A.C. 7:7A-17.2 was recodified as N.J.A.C. 7:7A-16.8; N.J.A.C. 7:7A-17.4 through 7:7A-17.7 were recodified as N.J.A.C. 7:7A-16.9 through 7:7A-16.12; and N.J.A.C. 7:7A-17.8 and 7:7A-17.9 were recodified as N.J.A.C. 7:7A-16.6 and 7:7A-16.7. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

Freshwater Wetlands Protection: An Update. Lewis Goldshore, Marsha Wolf, 133 N.J.L.J. No. 14, S6 (1993).

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## SUBCHAPTER 1. GENERAL INFORMATION

## 7:7A-1.1 Scope and authority

This chapter constitutes the rules governing the implementation of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. Certain violations of the New Jersey Water Pollution Control Act are also subject to enforcement provisions at N.J.A.C. 7:14.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Rewrote the section.

## Case Notes

The Commissioner has no power under CAFRA to make an independent judgment as to the ability of a nuclear facility to protect against radiation hazards, as regulation in this regard is preempted by the federal government. Public Interest Research Group of New Jersey, Inc. v. State, 152 N.J.Super. 191, 377 A.2d 915 (App.Div.1977), certification denied 75 N.J. 538, 384 A.2d 517 (1977).

Only lots for which preliminary site plan or subdivision applications had received preliminary approvals were exempt from wetland permit requirements. Seemar v. Department of Environmental Protection, 95 N.J.A.R.2d (EPE) 225.

## 7:7A-1.2 Construction of this chapter

This chapter shall be liberally construed to allow the Department to implement fully its statutory functions pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Added reference to N.J.S.A. 58:10A-1 et seq.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Inserted "Freshwater Wetlands Protection" preceding the first "Act, N.J.S.A. 13:9B-1", and inserted "pursuant" preceding "to the Water Pollution".

## 7:7A-1.3 Forms and information; internet web site

(a) Forms or other information related to this chapter may be obtained from the Land Use Regulation Program as follows:

1. Through the Land Use Regulation Program website at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse); or
2. By contacting the Land Use Regulation Program at:

Land Use Regulation Program  
New Jersey Department of Environmental Protection  
PO Box 439  
Trenton, New Jersey 08625-0439  
(609) 292-0060  
Fax: (609) 292-8115

(b) Applications, fees, and correspondence shall be submitted to the address in (a) above, except that courier and hand deliveries shall be delivered to:

Land Use Regulation Program  
New Jersey Department of Environmental Protection  
5 Station Plaza  
501 East State Street  
Trenton, New Jersey 08609

(c) Applications or other materials sent or delivered to a Department address other than those in (a) and (b) shall not be deemed to have been received for the purposes of calculating application review deadlines or other time periods under this chapter.

(d) Other sources of information referred to in this chapter are available on the Land Use Regulation Program website at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse), or from the Office of Maps and Publications, located at 428 State Street, Trenton, New Jersey 08625, (609) 777-1038.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Added address for other sources of information.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Rewrote the section.

#### 7:7A-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional definitions specifically applicable to N.J.A.C. 7:7A-15, Mitigation, are set forth at N.J.A.C. 7:7A-15.1.

“Abandoned” means, with respect to an agricultural field, including a blueberry field or a cranberry bog, that the field was used for agriculture, but has not been used to produce a crop or product for five years or more. If an agricultural field has been abandoned for 40 or more years, it shall no longer be considered an abandoned agricultural field.

“ACOE” or “Corps” means the United States Army Corps of Engineers.

“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.

“Agency of the State” means each of the principal departments in the executive branch of the State Government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments.

“Applicant” means a person who submits an application for a permit, waiver, or any other Department decision pursuant to N.J.A.C. 7:7A.

“Aquatic ecosystem” means waters of the United States, including wetlands, that serve as habitat for interrelated and interacting communities and populations of plants and animals.

“Atlantic white-cedar wetlands” means a type of forested freshwater wetlands where Atlantic white-cedar tree is the dominant vegetation, as described in the Federal Manual.

“Best Management Practices” or “BMPs” means methods, measures, designs, performance standards, maintenance procedures, and other management practices which prevent or reduce adverse impacts upon or pollution of freshwater wetlands, State open waters, and adjacent aquatic habitats, which facilitate compliance with the Federal Section 404(b)(1) guidelines (40 C.F.R. Part 230), New Jersey Department of Environmental Protection Flood Hazard Area Control rules, N.J.A.C. 7:13; the Department’s Storm Water Management Regulations, N.J.A.C. 7:8; the Standards for Soil Erosion and Sediment Control in New Jersey, promulgated by the New Jersey State Soil Conservation Committee at N.J.A.C. 2:90; and effluent limitations or prohibitions under Section 307(a) of the Federal Act and the Department’s Surface Water Quality Standards, N.J.A.C. 7:9B. Examples include practices found at 33 C.F.R. 330.6, 40 C.F.R. 233.35(a)6, the Department’s Technical Manual for Stream Encroachment, and “A Manual of Freshwater Wetland Management Practices for Mosquito Control in New Jersey.” The manuals included in this definition are only a partial listing, and interested persons should contact the Department for the most up to date list.

“Category one waters” means waters designated as category one waters in the Department’s Surface Water Quality Standards at N.J.A.C. 7:9B. As of September 4, 2001, N.J.A.C. 7:9B-1.15 defines category one waters as those waters designated in the tables in N.J.A.C. 7:9B-1.15(c) through (h), for purposes of implementing the antidegradation policies set forth at N.J.A.C. 7:9B-1.5(d), for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s). 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 at N.J.A.C. 7:9B-1.15(h) Table 6;
2. Waters classified at N.J.A.C. 7:9B-1.15(c) through (g) as FW2 trout production waters and their tributaries;
3. Surface waters classified in this subchapter as FW2 trout maintenance or FW2 nontrout that are upstream of waters classified in this subchapter 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.

“Commissioner” means the Commissioner of the Department of Environmental Protection.

“Compelling public need” means that based on specific facts, the proposed regulated activity will serve an essential health or safety need of the municipality in which the proposed regulated activity is located, that the public health and safety benefit from the proposed use and that the proposed use is required to serve existing needs of the residents of the State, and that there is no other means available to meet the established public need.

“Conservation restriction” means a restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural, scenic or open or wooded conditions, or for conservation of soil or wildlife, or for outdoor recreation or park use, or as suitable habitat for fish or wildlife, to forbid or limit any or all:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;
2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs or other vegetation;
4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;
5. Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; and/or

7. Other acts or uses detrimental to the retention of land or water areas according to the purposes of this chapter.

“Contiguous” means adjacent properties, even if they are separated by human-made barriers or structures or legal boundaries. Contiguous properties shall include, but are not limited to: land areas which directly abut or are separated by a general access roadway or other right-of-way, including waterways; and properties which are part of a subdivision that was under common ownership on July 1, 1988.

“Critical habitat for fauna or flora” means:

1. For fauna, areas which serve an essential role in maintaining commercially and recreationally important wildlife, particularly for wintering, breeding, spawning and migrating activities;
2. For flora, areas supporting rare or unique plant species or uncommon vegetational communities in New Jersey.

“Cultivating” means physical methods of soil treatment, employed upon planted farm, ranch or forest crops to aid and improve the growth, quality or yield of the crops.

“Degraded wetland” means a wetland in which there is impaired surface water flow or groundwater hydrology, or excessive drainage; a wetland which has been partially filled or excavated, contaminated with hazardous substances, or which has an ecological value substantially less than that of undisturbed wetlands in the region.

“Delegable waters” means all waters of the United States, as defined in this section, within New Jersey, except waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement, as a means to transport interstate or foreign commerce, shoreward to their ordinary high water mark. This term includes all waters which are subject to the ebb and flow of the tide, shoreward to their mean high water mark, including wetlands that are partially or entirely located within 1000 feet of their ordinary high water mark or mean high tide. Waters that are not delegable waters include, but are not limited to:

1. The entire length of the Delaware River within the State of New Jersey;
2. Waters of the United States under the jurisdiction of the Hackensack Meadowlands Development Commission; and
3. Greenwood Lake.

“Department” means the Department of Environmental Protection.

“Detention basin” or “detention facility” means a human-made impoundment area made by constructing an embankment, or excavating a pit, or both, for the purpose of temporarily storing stormwater.

“Developable upland” means an upland area that could be developed under the laws that apply to the site.

“Discharge of dredged material” means any addition of dredged material into State open waters or freshwater wetlands. The term includes the addition of dredged material into State open waters or freshwater wetlands and the runoff or overflow from a contained land or water dredge material disposal area. Discharges of pollutants into State open waters resulting from the subsequent onshore processing of dredged material are not included within this term. Such discharges of pollutants may, however, be subject to the New Jersey Pollutant Discharge Elimination System (NJPDES) rules at N.J.A.C. 7:14A.

“Discharge of fill material” means the addition of fill into State open waters or freshwater wetlands. The term includes, but is not limited to, the following activities:

1. Placement of fill that is necessary for the construction of any structure;
2. The building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction;
3. Site-development fill for recreational, industrial, commercial, residential, and other uses;
4. Causeways or road fills;
5. Dams and dikes;
6. Artificial islands;
7. Property protection or reclamation devices, or both, such as riprap, groins, seawalls, breakwaters, and revetments;
8. Beach nourishment;
9. Levees;
10. Fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and underground utility lines; and
11. Artificial reefs.

“Ditch” means a linear topographic depression with bed and banks of human construction, which conveys water to or from a site, which is surrounded by uplands and which is not located within a wetland. This does not include channelized or redirected natural water courses.

“Documented habitat for threatened or endangered species” means areas 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 may 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” means active or passive methods for changing the hydrologic conditions of wetlands or State open water, such as lowering groundwater or surface water levels through pumping, ditching, or otherwise altering water flow patterns.

“Dredging” means removal of wetlands or State open water soils or sediments through use of mechanical, hydraulic, or pneumatic tools or other means.

“Dredged material” means material that is excavated or dredged from waters of the United States.

“Dumping” means the discharge, placement or abandonment of solid, semi-solid or liquid materials.

“Environmental commission” means a municipal advisory body created pursuant to N.J.S.A. 40:56A-1 et seq.

“EPA priority wetlands” means wetlands which are designated as priority wetlands by EPA, and are listed on the “Priority Wetlands List for the State of New Jersey,” which is available from the Department’s Office of Maps and Publications at the address listed at N.J.A.C. 7:7A-1.3.

“Established, ongoing farming, ranching or silviculture operation” means activities on areas subject to a farming, ranching, or silviculture use as of June 30, 1988, which use has been pursued continuously since June 30, 1988. Activities on areas lying fallow as part of a conventional rotational cycle that does not exceed five years are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle for so long that modifications to the hydrological regime are necessary to resume operations, or for more than five years, whichever is shorter.

“Excavation” means to dig or remove soil, rocks, etc., resulting in a change in site elevation.

“Farmed wetland” means a freshwater wetland, as defined in this section, which was both manipulated and cropped before December 23, 1985, and has been in active agricultural use continuously since then. This term also includes a wetland that was manipulated and used for pasture or hayland before December 23, 1985, which has been in active use for pasture or hayland continuously since then. An area that lies fallow as part of a conventional rotational cycle that does not exceed five years is considered to be in active agricultural use.

“Federal act” means the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., including any amendments and supplements, and implementing regulations. This statute is sometimes referred to as the Federal Clean Water Act.

“Federal 404 program” means the program regulating the discharge of dredged or fill materials pursuant to Section 404 of the Federal Act.

“Fill” means the deposition or placement of material such as soil, sand, earth, rock, concrete, pavement, or solid material of any kind, so as to change the ground elevation in relation to surface water or groundwater level. “Fill” also means the material deposited.

“Forested” means that tree species with an average height greater than 20 feet are the predominant vegetation present.

“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 waters” means waters designated as FW1 waters in the Department’s Surface Water Quality Standards, N.J.A.C. 7:9B. As of September 4, 2001, N.J.A.C. 7:9B-1.15 defines FW1 waters as those fresh waters wholly within Federal or State lands or special holdings, that are preserved for posterity, and are not subject to wastewater discharges of human origin.

“FW2 waters” means waters designated as FW2 waters in the Department’s Surface Water Quality Standards, N.J.A.C. 7:9B.

“Freshwater wetland” or “wetland” means an area that is inundated or saturated by surface water or groundwater 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 1989 Federal Manual as defined in this section. These include tidally influenced wetlands which have not been included on a promulgated map pursuant to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

“Freshwater wetlands permit” means a permit to engage in a regulated activity in a freshwater wetland issued pursuant to the Freshwater Wetlands Protection Act and this chapter.

“Gabion” means a shore or stream bank protection structure, that is made of wire mesh basket(s) or mattress(es) filled with rocks and usually used in multiples as a structural unit installed to withstand the forces of waves and currents.

“General permit” means a permit, adopted as a rule, under which the Department issues authorizations. A general permit may authorize regulated activities in freshwater wetlands, State open waters, and/or transition areas. An authorization issued under a general permit satisfies the requirement for a freshwater wetlands permit, open water fill permit, and/or transition area waiver, as applicable.

“Government agency” means any department, division, authority, board, commission, office, bureau, agency, committee or other instrumentality of the United States, or of the State or any political subdivision thereof.

“Harvesting” means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads or other engineering practices such as drainage which would alter the existing character of the farm, forest or ranch land.

“HUC 11” or “hydrologic unit code 11” means an area within which water drains to a particular receiving surface water body, which area is identified by an eleven digit hydrologic unit boundary designation, as shown on the map included in the United States Geological Survey, Water Resources Investigations Report 95-4134, 1995, entitled “Development of a 14-digit Hydrologic Coding Scheme and Boundary Data Set for New Jersey.” The HUC codes for New Jersey can be downloaded from [www.njgeodata.state.nj.us](http://www.njgeodata.state.nj.us). The HUC 11 data is entitled “subwatersheds.” Software designed for use with Geographic Information Systems (GIS) will be required to view the downloaded data.

“Hydric soil” means a soil that in its undrained condition is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation. These soils may be described in several places, including New Jersey’s Official List of Hydric Soils, developed by the Natural Resources Conservation Service; the National Wetlands Inventory, entitled “The Wetlands of New Jersey,” published in 1985 by the United States Fish and Wildlife Service; or in the 1989 Federal manual. Alluvial land, as mapped on soil surveys, or other soils exhibiting hydric characteristics identified through field investigation as described in Part III of the 1989 Federal Manual may also be considered a hydric soil for the purposes of wetland classification. Also, wet phases of somewhat poorly drained soils not on New Jersey’s Official List of Hydric Soils may be associated with a wetland and therefore for the purposes of this chapter shall be considered a hydric soil.

“Hydrophyte” means plant life adapted to growth and reproduction under periodically saturated root zone conditions during at least a portion of the growing season. A listing of these plants can be found in the “National List of Plant Species that Occur in Wetlands: 1988-New Jersey”

and amendments thereto, compiled by the USFWS, ACOE, EPA and the Natural Resources Conservation Service.

“Impervious surface” means any structure or surface which prevents absorption of stormwater into land. Examples of impervious surfaces are pavement, rooftops, sidewalks, driveways, tennis courts and swimming pools.

“Individual permit” means a freshwater wetlands permit or open water fill permit that is issued by the Department after an alternatives test and other site-specific and project-specific reviews required at N.J.A.C. 7:7A-7.

“Individual transition area waiver” means a transition area waiver issued by the Department under N.J.A.C. 7:7A-6, which is not granted as part of a general permit authorization. The following are the types of individual transition area waivers:

1. An averaging plan transition area waiver;
2. A special activity transition area waiver;
3. A matrix type width reduction transition area waiver;
4. A hardship transition area waiver; and
5. An access transition area waiver.

“Intermittent stream” means surface water drainage channels with definite bed and banks in which there is not a permanent flow of water. Most intermittent streams are shown on Soil Conservation Service county soil surveys.

“Isolated wetlands” means a freshwater wetland that is not “part of a surface water tributary system,” as defined in this section.

“Lake, pond, or reservoir” means any impoundment of water, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water.

“Letter of interpretation” or “LOI” means the document issued by the Department under N.J.A.C. 7:7A-3, indicating the presence or absence of wetlands, State open waters, or transition areas; verifying or delineating the boundaries of freshwater wetlands, State open waters, and/or transition areas; or assigning a wetland a resource value classification.

“Linear development” means land uses such as roads, drives, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, the basic function of which is to connect two points. Linear development shall not mean residential, commercial, office, or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

“Loss” means, with respect to freshwater wetlands or State open waters, an alteration of a wetland or water to the extent that the wetland or water, or portion thereof, no longer retains the functions and characteristics of a wetland or water.

“Major discharge” means a discharge or activity that the Department must transmit to EPA for review in accordance with the Department’s 1993 MOA with EPA regarding assumption of the Federal 404 program. Provisions regarding EPA review of major discharges are found at N.J.A.C. 7:7A-12.2. The following are major discharges:

1. A draft general permit;
2. A discharge with reasonable potential to affect Federally listed or proposed endangered or threatened species as determined by the U.S. Fish and Wildlife Service;
3. A discharge of dredged or fill material which has the potential for adverse impacts on the waters of a state other than New Jersey;
4. A discharge known or suspected to contain:
  - i. Toxic pollutants as identified by Section 307(a)(1) of the Federal act;
  - ii. Hazardous substances identified pursuant to Section 311 of the Federal act and Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.;
  - iii. Toxic substances as defined by Section 3 of the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; or
  - iv. Hazardous waste as defined by Section 1004(5) of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.;
5. A discharge located in the proximity of a public water supply intake;
6. A discharge within a critical area established under State or Federal law, including but not limited to a National or State park; fish or wildlife sanctuary or refuge; National or historical monument; wilderness area or preserve; a site identified or proposed under the National Historic Preservation Act; or a component of the National Wild and Scenic Rivers system;
7. The filling of five or more acres of freshwater wetlands and/or State open waters;
8. Any regulated activity that results in a significant reduction in the ecological, commercial, or recreational values of five or more acres of freshwater wetlands or State open waters;
9. A culvert enclosure longer than 100 feet; or
10. Channelization of more than 500 feet of a river or stream.

“Maximum extent practicable” means to the maximum extent after weighing, evaluating and interpreting alternatives to protect the ecological integrity of a wetland or State open water.

“Mitigation” means activities carried out pursuant to N.J.A.C. 7:7A-15 in order to compensate for freshwater wetlands or State open waters loss or disturbance caused by regulated activities.

“Natural Resources Conservation Service” or “NRCS” means the arm of the U.S. Department of Agriculture (USDA) that provides technical assistance with USDA conservation programs associated with soil, water, and other related natural resources. The Natural Resources Conservation Service was previously known as the Soil Conservation Service.

“1989 Federal Manual” means the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, published in 1989 by the EPA, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture’s Natural Resources Conservation Service (formerly the Soil Conservation Service), as amended and/or supplemented, which Manual is incorporated herein by reference.

“Non-delegable waters” mean waters that are not delegable waters.

“Normal rainfall year” means a 12 month period in which the precipitation at a location is within 10 percent of the average annual precipitation for that location, calculated using the standard averaging period for “normals,” established by the World Meteorological Organization, except that the Department may determine normal rainfall on a case-by-case basis in unusual situations, such as where the sampling period begins immediately following prolonged drought conditions. As of September 4, 2001, the World Meteorological Organization has defined the standard averaging period as 1961 through 1990. Information regarding the standard averaging period can be found in the USDA’s Natural Resources Conservation Service website at [www.nrcs.usda.gov/water/climate](http://www.nrcs.usda.gov/water/climate).

“Offsite” means the area not onsite.

“Onsite” means the area located within the site, as defined in this section.

“Open water fill permit” means the type of New Jersey Pollution Discharge Elimination System permit issued pursuant to this chapter and N.J.S.A. 58:10A-1 et seq., which governs the discharge of dredged or fill material into State open waters.

“Ordinary high water mark” means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed

on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

“Palustrine emergent” means a wetlands vegetation pattern in which persistent and non persistent grasses, rushes, sedges, forbs and other herbaceous or grass-like plants are the dominant vegetation.

“Part of a surface water tributary system” means connected to a surface water that discharges into a lake, pond, river, stream or other surface water feature. The connection may be through any surface water feature, whether regulated or not, including a stormwater or drainage pipe. The connection may be through a secondary flow channel or other feature. However, the connection may be through overland flow only if there is evidence of scouring, erosion, or concentrated flows. The connection may not be through groundwater alone. Wetlands adjacent to a surface water are connected to the surface water and are part of the surface water tributary system.

“Permit” means an approval to engage in a regulated activity in a freshwater wetland, State open water, or transition area, issued by the Department under this chapter. The Department issues the following permits under this chapter:

1. Freshwater wetlands permits including general permit authorizations;
2. Open water fill permits; and
3. Transition area waivers.

“Permittee” means a person to whom the Department has issued a permit or a waiver under this chapter.

“Person” means an individual, corporation, partnership, association, the Federal government, the State, municipality, commission or political subdivision of the State or any interstate body.

“Pilings” means timber, metal, concrete or other similar structures driven, dropped, poured, or placed to support a vertical load.

“Plowing” means all forms of primary tillage, including moldboard, chisel, or wide-blade, plowing, discing, harrowing, and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of dredged material, rock, sand, or other surface materials in a manner which changes any area of wetlands to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water

filtration capacities do not constitute plowing. Plowing will never involve a discharge of material.

“Practicable alternative” means other choices available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and may require an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

“Preliminary approval” means the conferral of certain rights pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-46, 48 and 49 prior to final approval after specific elements of a development plan have been agreed upon by the planning board and the applicant.

“Project” means the following:

1. For the purpose of a transition area exemption under N.J.A.C. 7:7A-2.8(f) based on the application for or the grant of a preliminary site plan approval:

i. All buildings, structures, pavements, and other improvements specifically depicted on the site plans referenced in the resolution approving the site plan; and

2. For the purpose of a transition area exemption under N.J.A.C. 7:7A-2.8(f) based on the application for or the grant of a preliminary subdivision approval:

i. Where subdivision approval is the last stage of municipal review before the owner/applicant may apply for a building permit to begin construction, the “project” is the development of the subdivision consistent with the lot coverage, use, and density restrictions of the zoning ordinance in effect at the time of the subdivision approval; or

ii. Where site plan approval is required prior to construction, “project” means the proposed economic development, whether commercial, industrial or residential, intended to be constructed on that portion of a tract of land that is the focus of the qualifying approval. Although “project” is not limited to specific structures shown on the subdivision plans, it is limited to development on those portions of a tract of land that were the focus of the qualifying subdivision application or approval. Development on other lands, such as development on the remainder of a larger tract or on a contiguous property in common ownership, are not included within a “project.”

In order to determine if an applicant qualifies for an exemption under this definition, the Department will determine the existence of a proposed economic development at the time of the subdivision application. Because the purpose of the exemption is to protect that degree of investment in planning and development that the preliminary site plan or subdivision application normally represents, where the subdivision is merely a division of land and no substantial investment was made in planning or development, there can be no exempted project. Therefore, an application for the subdivision of lands simply for future development, yet to be planned, or simply for resale shall not qualify for an exemption. To determine the existence of a proposed economic development and to determine which portion of a tract was the focus of subdivision approval or application, the Department will examine the resolution granting approval and any documentation submitted with the application, including, but not limited to, drainage, engineering, traffic, utility, landscaping, soil and environmental plans and reports as well as the subdivision plan. In cases where the above information is unclear, the Department may consider money spent or obligated on engineering and design in the preparation of the subdivision application to determine if a substantial investment has been made in an economic development. Money spent or obligated for the initial purchase, carrying costs, or legal services will not be considered in determining the existence of a proposed economic development.

iii. The following are examples of how the Department will determine the “project” exempted on the basis of the application for or grant of preliminary subdivision approval:

(1) Where a project was to be developed in three sections but a complete application for preliminary approval was submitted, accepted and subsequently approved for only one section, only the development planned for that section is exempt and the development envisioned for sections two and three is not exempt. This is not altered by the fact that some depiction of that future development on the remainder of the parcel might be required by a local planning board in concept or sketch form;

(2) Where an entire parcel is subdivided into five conforming residential lots, the residential development planned on all five lots is exempt. However, where the focus of the subdivision application and approval is on less than the entire tract of land, which lesser portion is divided into five single family house lots, and the remainder of the tract is left as a bulk parcel for further subdivision or other planning board approval, only development on the five lots is exempt. It is irrelevant that the configuration of the remainder lot has been changed by the subdivision or that the remainder lot has been renumbered;

(3) Where the land to be divided for a commercial industrial park straddles two townships and the developer received approval to subdivide the land in township A and sold the unsubdivided portion in township B to another developer, only the development on the land in township A could be considered the subject of township A's subdivision approval. Therefore, only the development on the land in township A is exempt. It is irrelevant that the original developer had, from the start, contemplated a commercial industrial park for the property in both townships or that the office building contemplated on the land in township B did not require further subdivision;

(4) Where land is divided for the sole purpose of bequeathing it sometime in the future to one's children to be developed as they wish, no economic development was contemplated when the application was made or approval granted. After the land passes to the children and one of them decides to build, that development is not exempt. The purpose of the exemption is to protect that degree of investment in planning and development that the preliminary site plan or subdivision application normally represents. Where the subdivision is merely a division of land and no investment was made in the planning or development, there can be no exempted project; and

(5) Where land is subdivided but requires further subdivision, other than de minimis changes for road right of ways or other infrastructure, before the applicant can proceed to the next step of municipal approval (either building permits or site plan approvals), there is no evidence of intended economic development at the time of initial subdivision application or approval, because the proposed economic development only comes into being with the subsequent, untimely subdivision. Therefore, there is no basis for exemption.

"Public hearing" means an administrative non-adversarial type hearing before a representative or representatives of the Department providing the opportunity for public comment, but does not include cross-examination.

"Redevelopment" means the construction of structures or improvements on or below impervious surfaces, as defined in this section, or other significantly disturbed area.

"Regulated activity" means any of the activities described at N.J.A.C. 7:7A-2.2 or at N.J.A.C. 7:7A-2.6.

"Residential development project" means the construction of a new structure for residential use and the area within 20 feet of the structure on all sides, measured outward from the outside edge of the foundation of the structure. An addition to an existing residence is a residential development project if the addition has a foundation. A residential development project may include construction of

one or more single family home(s) or multi-unit residential building(s).

"Seeding" means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

"Silviculture" means the art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis. The normal harvesting of forest products is a part of some silviculture operations.

"Site" means the area within the legal boundary of the property(ies) or right-of-way for which a letter of interpretation is requested, or upon which a regulated activity is proposed, is occurring, or has occurred, plus any contiguous land owned or controlled by the same person(s). This term also includes an area which is the subject of an application for a letter of interpretation or which is the location of a proposed mitigation bank. For the purposes of this definition, the legal boundary of a property or right-of-way shall be the boundary as it existed on July 1, 1988 except that if additional contiguous lots and/or blocks were acquired after July 1, 1988, or if lots were merged after July 1, 1988, these lots are included in the site, and the legal boundary of the property or right-of-way shall be the boundary of all contiguous land owned or controlled by the same person(s), as it exists on the date an application is submitted under this chapter. The legal boundary of a property is set forth in the deed(s) for the property or other legally binding document that sets forth a boundary. The legal boundary of a right-of-way is set forth in the document creating the right-of-way.

"Soil Conservation District" means a local subdivision of the New Jersey Department of Agriculture (NJDA), established pursuant to N.J.S.A. 4:24-1 et seq. Generally, each Soil Conservation District administers NJDA programs for a single county, although some administer programs for more than one county. The 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, N.J.A.C. 2:90.

"Special aquatic site" means a site described in subpart E of the 404(b)1 guidelines (40 C.F.R. 230 et seq.), except freshwater wetlands which, for the purposes of this chapter, shall not be considered special aquatic sites. In general, special aquatic sites are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted functions and values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region. As of September 4, 2001, the following special aquatic sites are described in subpart E of the 404(b)1 guidelines (40 C.F.R. 230 et seq.):

sanctuaries and refuges, wetlands (note: while freshwater wetlands are excluded from the definition of a special aquatic site for purposes of this chapter, other wetlands, such as most coastal wetlands, would be considered special aquatic sites), mud flats, vegetated shallows, coral reefs, and riffle and pool complexes.

“State Forester” means the chief forester employed by the Department.

“State open waters” means all waters of the State as defined in this section, including waters of the United States as defined in this section, but excluding ground water as defined at N.J.A.C. 7:14A, and excluding freshwater wetlands as defined in this section. The following waters will generally not be considered State open waters for the purposes of this chapter. However, the Department shall determine, on a case-by-case basis, if a particular watercourse or water body listed below is a State open water:

1. Non-tidal drainage and irrigation ditches excavated on dry land;
2. Artificially irrigated areas which would revert to upland if the irrigation ceased;
3. Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;
4. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons;
5. Water-filled depressions created in dry land incidental to construction or remediation activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of “waters of the United States”;
6. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Federal act (other than cooling ponds);
7. Erosional channels less than two feet wide and six inches deep in upland areas resulting from poor soil management practices; and
8. Stormwater management facilities created in uplands.

“Stormwater management facility” means a facility which receives, stores, conveys or discharges stormwater runoff and is designed in accordance with applicable local, county and State regulations. These facilities may include retention basins, detention basins, infiltration structures, grassed swales, rip-rap channels and/or stormwater outfalls.

“Swale” means a linear topographic depression, either naturally occurring or of human construction, which meets all of the following criteria:

1. It is surrounded by uplands except where runoff flows out of it. A depression is not a swale if it is located within a larger wetland or if it is merely an undulation in a wetland boundary;
2. It has formed or was constructed in uplands to convey surface water runoff from the surrounding upland areas;
3. It drains less than 50 acres;
4. It is not a seep or spring;
5. It is not an intermittent stream;
6. It has no definite bed and banks; and
7. At its widest point, it is generally 50 feet wide or narrower.

“Temporary disturbance” means a disturbance caused by permitted regulated activities that are permanently discontinued within six months after they are begun.

“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., or those identified pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq., and subsequent amendments thereto.

“Tidal waters” means fresh or saline waters under tidal influence, up to the head of the tide.

“Transition area” means an area of upland adjacent to a freshwater wetland which minimizes adverse impacts on the wetland or serves as an integral component of the wetlands ecosystem.

“Transition area waiver” or “waiver” means a waiver issued by the Department under this chapter, authorizing any of the regulated activities enumerated at N.J.A.C. 7:7A-2.6 in a transition area.

“Tree” means a woody plant which is five inches or greater in diameter at a height of four and one half feet above the ground.

“Trout production waters” means waters designated in the Department’s Surface Water Quality Standards, N.J.A.C. 7:9B, for use by trout for spawning or nursery purposes during their first summer.

“USEPA” or “EPA” means the United States Environmental Protection Agency.

“USFWS” means the United States Department of the Interior, Fish and Wildlife Service.

“USGS” means the United States Geological Survey.

“USGS quad map” means a topographic quadrangle map issued by the USGS, 7.5 minute series, drawn at a scale of 1:24,000, available from the Department’s Maps and Publications Office at the address listed in N.J.A.C. 7:7A-1.3.

“Utility line” means a pipe, cable, line, conduit, or wire for the transport or transmission of gases, liquids, electrical energy or communications. This term includes a tower or pole required to support a utility line, but does not include a tower or pole that only transmits waves through the air, such as for radio, television, or telephone transmission. The term “utility line” does not include a stormwater pipe, or a pipe that drains a wetland or State open water, such as a drainage tile.

“Vernal habitat” means a wetland or water that meets all of the criteria at 1 through 4 below. Evidence of breeding by an obligate species under 2i below creates a rebuttable presumption that the criteria at 3 and 4 below are met:

1. Occurs in a confined basin depression without a permanent flowing outlet;
2. Features evidence of breeding by one or more species of fauna adapted to reproduce in ephemeral aquatic conditions, identified in N.J.A.C. 7:7A, Appendix 1, incorporated herein by reference. The following shall constitute evidence of breeding by such a species:
  - i. One or more obligate species listed in Appendix 1, or evidence of such a species, is found in the area of ponded water; or
  - ii. Two or more facultative species listed in Appendix 1, or evidence of the presence of such a species, are found in the area of ponded water;
3. Maintains ponded water for at least two continuous months between March and September of a normal rainfall year; and
4. Is free of fish throughout the year, or dries up at some time during a normal rainfall year.

“Water-dependent activity” means an activity that cannot physically function without direct access to the body of water along which it is proposed. An activity that can function on a site not adjacent to the water is not considered water dependent regardless of the economic advantages that may be gained from a waterfront location.

“Water Pollution Control Act” means the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

“Waters of the State” means the ocean and its estuaries, all springs, streams, wetlands, and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

“Waters of the United States” means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), wetlands, mudflats, sandflats, sloughs, wet meadows, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - i. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;
  - iii. Which are used or could be used for industrial purposes by industries in interstate commerce;
  - iv. Which are or would be used as habitat by birds protected by Migratory Bird Treaties;
  - v. Which are or would be used as habitat by other migratory birds which cross state lines;
  - vi. Which are or would be used as habitat for endangered and threatened species; or
  - vii. Which are used to irrigate crops sold in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs 1 through 4 of this definition;
6. The territorial seas; and
7. Wetlands adjacent to waters identified in paragraphs 1 through 6 of this definition other than those that are themselves wetlands.

The following waters are generally not considered “waters of the United States.” However, the right is reserved to determine on a case by case basis, if particular watercourses or waterbodies are “waters of the United States”:

1. Non-tidal drainage and irrigation ditches excavated on dry land;
2. Artificially irrigated areas which would revert to upland if the irrigation ceased;
3. Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;
4. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating

and/or diking dry land to retain water for primarily aesthetic reasons;

5. Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the above definition of "waters of the United States";

6. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds); and

7. Erosional channels less than two feet wide and six inches deep in upland areas resulting from poor soil management practices.

"Water quality certificate" means a Department determination issued for a proposed activity which requires a Federal license or permit, pursuant to 33 U.S.C. § 1341 of the Federal Act and N.J.S.A. 58:10A-1 et seq.

"Working day" means a day upon which the offices of the New Jersey Department of Environmental Protection are open for business.

Amended by R.1989 d.362, effective July 3, 1989.

See: 21 N.J.R. 596(a), 21 N.J.R. 1858(a).

Deleted old definition and added new for "Documented habitat for threatened or endangered species." Added new definition for "Transition area waiver."

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Changes initiated to create a program that is as stringent as that of the U.S. Army Corps of Engineers under the Clean Water Act (33 U.S.C. 1251 et seq.) in order to secure the assumption of the permit jurisdiction.

Amended by R.1993 d.159, effective April 19, 1993.

See: 24 N.J.R. 912(b), 25 N.J.R. 1755(b).

Added definitions for "advanced stages of construction."

Amended by R.1993 d.646, effective December 20, 1993.

See: 25 N.J.R. 1642(a), 25 N.J.R. 5954(a).

Amended by R.1999 d.352, effective October 4, 1999.

See: 31 N.J.R. 1562(a), 31 N.J.R. 2964(a).

Inserted definitions of "Abandoned", "Atlantic white-cedar wetlands", "Federal Manual", "Forested", "Loss", and "Tree".

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Rewrote the section.

#### Case Notes

Township's land use ordinance reducing permissible development area and requiring documentation was not preempted by Freshwater Wetlands Protection Act. *Crow-New Jersey 32 Ltd. Partnership v. Township of Clinton*, D.N.J.1989, 718 F.Supp. 378.

Regulation was not invalid on the theory that it permitted regulation outside freshwater wetlands. *New Jersey Chapter of Nat. Ass'n of Indus. and Office Parks v. New Jersey Dept. of Environmental Protection*, 241 N.J.Super. 145, 574 A.2d 514 (A.D.1990) certification denied 122 N.J. 374, 585 A.2d 379, certification denied 122 N.J. 374, 585 A.2d 380.

Projects that received preliminary approval prior to July 1, 1989 were exempt from compliance with transition-area provisions of Freshwater Wetlands Protection Act. Appeal of Adoption of N.J.A.C. 7:7A-1.4 (Definition of "Documented Habitats for Threatened and Endangered Species" and "Swale"), 7:7A-2.5(b)(2), and 7:7A-2.7(f), 118 N.J. 552, 573 A.2d 143 (1990).

#### 7:7A-1.5 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which the judgment was rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Substituted "the" for "such" following "the controversy in which", and "was" for "shall have been" preceding "rendered".

#### 7:7A-1.6 Other statutes and regulations

(a) The powers, duties and functions vested in the Department under this chapter shall not limit in any manner the powers, duties and functions vested therein under any other law except as specifically set forth in this chapter.

(b) The Freshwater Wetlands Protection Act, on and subsequent to July 1, 1988, shall supersede any law or ordinance enacted by any municipality, county, or political subdivision thereof, regulating freshwater wetlands or freshwater wetlands transition areas except that the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction. No municipality, county, or political subdivision thereof shall enact any law, ordinance, or rule or regulation requiring a transition area adjacent to a freshwater wetland, except that the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction.

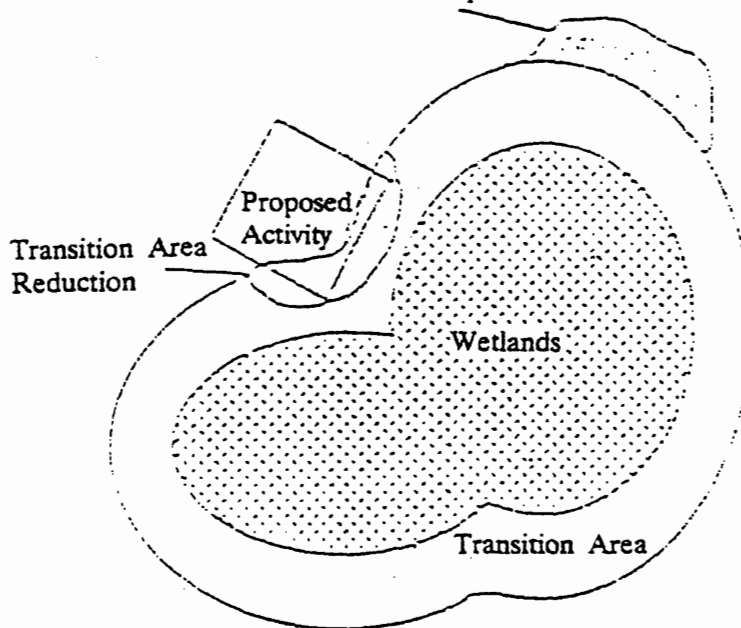
(c) This section shall not, however, preclude municipal advice to the Department concerning letters of interpretation or other matters.

(d) This chapter shall not preempt State regulatory programs which affect regulated activities in freshwater wetlands, including but not limited to Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and State approved municipal water quality management plans. These programs will continue to regulate based on the concerns covered by their respective enabling statutes and rules, and may, through such regulation, have some impact on projects in freshwater wetlands. However, those programs will not use freshwater wetlands concerns as a basis for regulation, and any regulation by these programs of projects in freshwater wetlands will be limited to that based on other (for example, flood danger) concerns.

## Appendix A

Example of a transition area averaging plan.

Transition Area Compensation



The square footage in the compensation area is equal to that of the reduction area.

#### SUBCHAPTER 7. INDIVIDUAL FRESHWATER WETLANDS AND OPEN WATER FILL PERMITS

##### 7:7A-7.1 General provisions for individual permits

(a) To be authorized under an individual permit, an activity shall meet the following requirements:

1. All activities that require an individual permit shall meet all of the requirements at N.J.A.C. 7:7A-7.2;

2. In addition to the requirements at N.J.A.C. 7:7A-7.2, a non water-dependent activity, as defined at N.J.A.C. 7:7A-1.4, shall meet the requirements at N.J.A.C. 7:7A-7.3, except if the activity disturbs only State open waters that are not special aquatic sites as defined at N.J.A.C. 7:7A-1.4; and

3. In addition to the requirements at N.J.A.C. 7:7A-7.2 and N.J.A.C. 7:7A-7.3, a non water-dependent activity in an exceptional resource value wetland or trout production water shall meet the requirements at N.J.A.C. 7:7A-7.4.

(b) The Department shall not consider a mitigation proposal in determining whether an individual permit will be issued for a project.

(c) Each individual permit applies to the entire site upon which permitted activities occur. An applicant shall not segment a project or its impacts by applying for general permit authorization for one portion of the project and applying for an individual permit for another portion of the project. Similarly, an applicant shall not segment a project

or its impacts by separately applying for individual permits for different portions of the same project.

(d) In some cases, a regulated activity that requires an individual permit and is located in an area under the jurisdiction of the Pinelands Commission also requires approval by the Pinelands Commission, in accordance with the Pinelands Comprehensive Management Plan (CMP). For information on freshwater wetlands in the Pinelands, contact the Pinelands Commission at (609) 894-7300 or through its website at [www.state.nj.us/pinelands](http://www.state.nj.us/pinelands).

New Rule, R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

#### 7:7A-7.2 Standard requirements for all individual permits

(a) This section sets forth requirements that apply to all activities to be covered by an individual permit, including both water-dependent activities, as defined at N.J.A.C. 7:7A-1.4, and non water-dependent activities. Additional individual permit requirements that apply only to non water-dependent activities are found in N.J.A.C. 7:7A-7.3 and 7.4.

(b) The Department shall issue an individual freshwater wetlands or open water fill permit only if the regulated activity:

1. Has no practicable alternative which would meet the requirements at (b)1i and ii below:
  - i. The alternative would have a less adverse impact on the aquatic ecosystem or would not involve a freshwater wetland or State open water; and
  - ii. The alternative would not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal;
2. Will result in the minimum feasible alteration or impairment of the aquatic ecosystem including existing contour, vegetation, fish and wildlife resources, and aquatic circulation of the freshwater wetland and hydrologic patterns of the HUC 11 in which the activity is located;
3. Will not destroy, jeopardize or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the continued existence of a local population of a threatened or endangered species, as defined at N.J.A.C. 7:7A-1.4;
4. Will not be likely to result in the destruction or adverse modification of a habitat which is determined by the Secretary of the United States Department of the Interior or the Secretary of the U.S. Department of Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq.;
5. Will not cause or contribute to a violation of any applicable State water quality standard;

6. Will not cause or contribute to a violation of any applicable toxic effluent standard or prohibition imposed pursuant to the Water Pollution Control Act;

7. Will not violate any requirement imposed by the United States government to protect any marine sanctuary designated pursuant to the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. §§ 1401 et seq.;

8. Will not cause or contribute to a significant degradation, as defined at 40 C.F.R. 230.10(c), of ground or surface waters;

9. Will not adversely affect a property which is listed or is eligible for listing on the National Register of Historic Places. If the permittee, before or during authorized work, encounters a probable historic property that has not been listed or determined eligible for listing on the National Register, but which may be eligible for listing in the National Register, the permittee shall immediately notify the Department and proceed as directed by the Department;

10. Will not violate the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., or implementing rules at N.J.A.C. 7:13;

11. Is otherwise lawful;

12. Is in the public interest, as determined by the Department in consideration of the following:

- i. The public interest in preservation of natural resources and the interest of the property owners in reasonable economic development. In determining whether a proposed activity is in the public interest, the Department shall consider, as one source of guidance, the goals, strategies, policy objectives and policies of the New Jersey State Development and Redevelopment Plan, adopted and/or readopted by the State Planning Commission pursuant to the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., and the State Planning Act rules, N.J.A.C. 17:32;
- ii. The relative extent of the public and private need for the proposed regulated activity;
- iii. Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods, to accomplish the purpose of the proposed regulated activity;
- iv. The extent and permanence of the beneficial or detrimental effects which the proposed regulated activity may have on the public and private uses for which the property is suited;
- v. The quality and resource value classification pursuant to N.J.A.C. 7:7A-2.5 of the wetland which may be affected and the amount of freshwater wetlands to be disturbed;

vi. The economic value, both public and private, of the proposed regulated activity to the general area;

vii. The functions and values provided by the freshwater wetlands and probable individual and cumulative impacts of the regulated activity on public health and fish and wildlife; and

viii. The Department's evaluation of whether denial of the permit could result in a taking in accordance with N.J.A.C. 7:7A-7.3.

13. Will not involve a discharge of dredged material or a discharge of fill material, unless the material is clean, suitable material free from toxic pollutants in toxic amounts, which meets Department rules for use of dredged or fill material; and

14. Is consistent with the applicable approved Water Quality Management Plan (208 Plan) adopted under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., unless the activities are not subject to the Department's Water Quality Management Planning rules at N.J.A.C. 7:15.

(c) The following shall apply to the Department's consideration of whether an alternative is practicable under (b)1 above, or under N.J.A.C. 7:7A 7:7A-7.3(b):

1. An alternative shall be practicable if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes; and

2. An alternative shall not be excluded from consideration under this provision merely because it includes or requires an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

Amended by R.1992 d.117, effective March 16, 1992.  
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Recodified from 3.1; added references to State open water.  
Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Recodified from 3.4; recodified 7:7A-3.5(a)1-7 as (a)11, i-vii.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

#### Case Notes

Property owner violated Freshwater Wetlands Protection Act by filling in and clearing away protected wetlands areas without obtaining permit to do so. Department of Environmental Protection v. Janovic Construction Company, 96 N.J.A.R.2d (EPE) 211.

Developer not entitled to freshwater wetlands permit in order to construct 47 homes. Goodwin v. Department of Environmental Protection, 93 N.J.A.R.2d (EPE) 83.

Property owner was properly denied individual freshwater wetland permit sought for construction of individual residence. Stone v. Division of Coastal Resources, 92 N.J.A.R.2d (EPE) 148.

#### 7:7A-7.3 Taking without compensation

(a) In determining whether a project is in the public interest pursuant to N.J.S.A. 13:9B-11 and N.J.A.C. 7:7A-7.2(b)12, the Department may, upon request of an applicant, evaluate whether denial of a permit could result in a taking of property without compensation.

(b) An application for an individual permit shall meet all applicable application requirements at N.J.A.C. 7:7A-10, including the requirement at N.J.A.C. 7:7A-10.6 for an alternative analysis that meets the requirements at N.J.A.C. 7:7A-7.2. While an applicant may choose to also include in the application a takings assertion and information to support that assertion, the Department shall not accept the application as administratively complete if it includes only the takings information and does not include all other required application information, including the alternatives analysis.

(c) An applicant who asserts that the denial of a permit could result in a taking of property without compensation, and who wishes the Department to evaluate this assertion in making the determination in (a) above shall demonstrate that:

1. Denial of the permit would prevent the property owner from realizing a minimum beneficial use of the property as a whole, in accordance with constitutional standards; and

2. The inability to realize a minimum beneficial use under (c)1 above does not result from any action or inaction of the property owner or an entity controlled by the property owner.

(d) For the purposes of this section, the property as a whole that was assembled as one investment or to further one development plan, and may include more than one municipal tax lot. The property as a whole may also include lots that were previously sold or developed, if those lots were part of one investment or development plan.

(e) To obtain an evaluation of whether the denial of a permit could constitute a taking of property without compensation as part of a determination of whether a project is in the public interest under (a) above, the applicant shall submit, at a minimum, the following information, in addition to the application requirements at N.J.A.C. 7:7A-10:

1. Documentation showing when the property as a whole was acquired by the current property owner and for what consideration;

2. Documentation showing the amount, nature, date and reasonableness of any expenditures made to maintain and/or develop the property as a whole;

3. Documentation that the property has been offered for sale, through a letter whose form is provided by the Department, to all owners of property within 200 feet and to the land conservancies, environmental organizations,

and government agencies on a list supplied by the Department. The applicant shall submit to the Department any response it receives to the offer for sale within 15 days of the applicant's receipt of the response;

4. The written offer of sale required under (e)3 above shall be sent by certified mail and shall:

i. Indicate that the offer is open for a period of at least 180 calendar days;

ii. Include a copy of a fair market value appraisal, performed by a State licensed appraiser, that assumes that a minimum beneficial use of the property will be allowed;

iii. Include full disclosure of the location on the property of any freshwater wetlands, transition areas, and/or State open waters; and

iv. Indicate that the property owner has applied for an individual freshwater wetlands permit and has asserted that the denial of that application will result in a taking of the property without compensation;

5. A mitigation proposal that complies with N.J.A.C. 7:7A-15, to offset the impacts of the project on freshwater wetlands, transition areas, and/or State open waters;

6. Documentation that the proposed project will cause the least environmental impact possible, while still providing a minimum beneficial use of the property consistent with constitutional standards; and

7. Documentation that the proposed project meets the standards at N.J.S.A. 13:9B-9(b)(3) through (9) and at N.J.A.C. 7:7A-7.2(b)2 through 12.

New Rule, R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

**7:7A-7.4 Additional requirements for a non water-dependent activity in a wetland or special aquatic site**

(a) In addition to meeting the requirements of N.J.A.C. 7:7A-7.2, a non water-dependent activity in a freshwater wetland or special aquatic site, as defined in N.J.A.C. 7:7A-1.4, shall meet the requirements of this section. If an activity is water-dependent, as defined at N.J.A.C. 7:7A-1.4, or if it disturbs only a State open water that is not a special aquatic site, this section does not apply to the activity.

(b) There shall be a rebuttable presumption that there is a practicable alternative to a non water-dependent activity in a freshwater wetland or in a special aquatic site, which alternative does not involve a freshwater wetland or special aquatic site, and that such an alternative would have less of an impact on the aquatic ecosystem.

(c) In order to rebut the presumption established in (b) above, an applicant must demonstrate all of the following:

1. That the basic project purpose cannot reasonably be accomplished using one or more other sites in the general region that would avoid or reduce the adverse impact on an aquatic ecosystem;

2. That the basic project purpose cannot reasonably be accomplished if there is a reduction in the size, scope, configuration, or density of the project as proposed;

3. That the basic project purpose cannot reasonably be accomplished by an alternative design that would avoid or reduce the adverse impact on an aquatic ecosystem;

4. That in cases where the applicant has rejected alternatives to the project as proposed due to constraints such as inadequate zoning, infrastructure, or parcel size, the applicant has made reasonable attempts to remove or accommodate such constraints; and

5. If any portion of the proposed activity will take place in an exceptional resource value wetland or in trout production waters, that the requirements of N.J.A.C. 7:7A-7.4 are met.

Amended by R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

**Case Notes**

Individual permit to fill freshwater wetlands denied where practical alternatives to construction existed. *Lacki v. New Jersey Department of Environmental Protection*, 96 N.J.A.R.2d (EPE) 220.

No permit required for modification or widening of access road. *Griffith v. DEPE*, 94 N.J.A.R.2d (EPE) 220.

**7:7A-7.5 Additional requirements for a non-water dependent activity in exceptional resource value wetlands or trout production waters**

(a) If an applicant proposes a non water-dependent activity in wetlands of exceptional resource value or in trout production waters, the applicant, in addition to complying with all other requirements in this subchapter, shall also demonstrate either:

1. That there is a compelling public need for the proposed activity greater than the need to protect the freshwater wetland or trout production water, and that the need cannot be met by essentially similar projects in the region which are under construction or expansion, or which have received the necessary governmental permits and approvals; or

2. That denial of the permit would impose an extraordinary hardship on the applicant brought about by circumstances peculiar to the subject property.

Amended by R.1992 d.117, effective March 16, 1992.  
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Recodified from 3.3; added references to trout production waters.  
Amended by R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

3. The appropriate fee, set forth at N.J.A.C. 7:7A-11;

4. Visual materials, including, but not limited to, maps, plans, surveys, diagrams, or photographs as necessary to accurately portray the site, existing conditions on the site, and any activities proposed on the site;

5. Written narrative information and/or reports as necessary to accurately describe the site, its location (including State plane coordinates), site conditions, and any planned activities, including schedules for performing regulated activities, if appropriate;

6. Documentation that the applicable requirements at N.J.A.C. 7:7A-10.9, Public notice requirements for applications, have been met;

7. Information and/or certifications regarding the presence or absence of endangered or threatened species habitat, historic or archaeological resources, or other features on the site that are relevant to determining compliance with the requirements of this chapter. Failure to provide all such information of which the applicant, its consultants, or agents is aware may result in denial or termination of the permit under N.J.A.C. 7:7A-14.5, and may subject the applicant to penalties for submittal of false information under N.J.A.C. 7:7A-16.9;

8. The names and addresses of all consultants, engineers, and other persons providing technical assistance in preparing the application; and

9. Any other information not listed in this subsection, if necessary to ensure compliance with the Federal rules governing the Department's assumption of the Federal 404 program at 40 CFR § 233.30.

(c) In addition to the information required at (b) above, the Department may require any information necessary to clarify information previously submitted, to ensure compliance with State and/or Federal law, or to determine whether an application meets State and/or Federal standards.

(d) Whenever the Department requires a construction plan or other visual depiction of proposed activities, the Department may require that certain information pertinent to the construction work be placed directly on the plan in order to provide notice of Department construction requirements to the workers who will carry out the permitted activities.

New Rule, by R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

#### **7:7A-10.3 Additional application requirements for an LOI**

(a) In addition to the basic information required for all applications under N.J.A.C. 7:7A-10.2, an application checklist for an LOI shall require the information specified in this section.

(b) The application checklist for a presence/absence LOI for a portion of a site under N.J.A.C. 7:7A-3.2 shall require

information identifying the portion(s) of the site which is the subject of the application.

(c) No additional information is required for an application for a line delineation LOI issued under N.J.A.C. 7:7A-3.3.

(d) The application checklist for a line verification LOI issued under N.J.A.C. 7:7A-3.4 shall require the following:

1. A proposed delineation of all freshwater wetlands, transition areas, and State open waters on the site, or portion thereof, which is the subject of the application. The delineation shall be clearly marked in the field as required by the application checklist;

2. Soil borings and/or other physical indicators of the presence or absence of freshwater wetlands, transition areas, and/or State open waters;

3. Data sheets or other materials that explain and support the delineation; and

4. If the LOI is for a portion of a site, documentation that the site and portion meet the requirements at N.J.A.C. 7:7A-3.4(b)2i through iii, and information identifying the subject portion of the site in accordance with N.J.A.C. 7:7A-3.4(b)2iv.

New Rule, R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

#### **7:7A-10.4 Additional application requirements for a general permit authorization**

(a) In addition to the basic information required for all applications under N.J.A.C. 7:7A-10.2, the application checklist for a general permit authorization shall require:

1. Any information specified as an application requirement in the general permit itself at N.J.A.C. 7:7A-5, if not included in N.J.A.C. 7:7A-10.2;

2. A line delineation LOI issued under N.J.A.C. 7:7A-3.3, or a line verification LOI issued under N.J.A.C. 7:7A-3.4, if an LOI of either type has been issued. A presence/absence LOI issued under N.J.A.C. 7:7A-3.2 is not sufficient. If no LOI has been issued, or if only a presence/absence LOI has been issued, the application checklist shall require all information required for an application for a line delineation LOI or line verification LOI, covering the portion of the site that will be affected by the general permit activities;

3. Information regarding whether other approvals are required for the activities by Federal, interstate, State and local agencies for the activity; information regarding whether any such approvals or denials have been received; and information regarding whether the proposed activities are consistent with the rules, plans, or policies of other Federal, interstate, State and local agencies; and

4. If a site is known or suspected to be contaminated with toxic substances, and if the Department requests it, a laboratory analysis of representative samples of the soil or sediment on the site.

New Rule, R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

**7:7A-10.5 Additional application requirements for an individual transition area waiver**

(a) In addition to the basic information required for all applications under N.J.A.C. 7:7A-10.2, an application checklist for an individual transition area waiver, as defined at N.J.A.C. 7:7A-1.4, shall require the following:

1. A line delineation LOI issued under N.J.A.C. 7:7A-3.3, or a line verification LOI issued under N.J.A.C. 7:7A-3.4, if an LOI of either type has been issued. A presence/absence LOI issued under N.J.A.C. 7:7A-3.2 is not sufficient. If no LOI has been issued for the site, or if only a presence/absence LOI has been issued, the application checklist shall require all information required for an application for a line delineation LOI or line verification LOI;

2. Information regarding whether other approvals are required for the activities by Federal, interstate, State and local agencies for the activity; information regarding whether any such approvals or denials have been received; and information regarding whether the proposed activities are consistent with the rules, plans, or policies of other Federal, interstate, State and local agencies; and

3. If a site is known or suspected to be contaminated with toxic substances, and if the Department requests it, a laboratory analysis of representative samples of the soil or sediment on the site.

New Rule, R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

**7:7A-10.6 Additional application requirements for an individual freshwater wetlands or open water fill permit**

(a) In addition to the basic information required for all applications in N.J.A.C. 7:7A-10.2, the application checklist for an individual freshwater wetlands or open water fill permit shall require the following information:

1. The basic project purpose of the proposed activity, including whether it is water-dependent, as defined at N.J.A.C. 7:7A-1.4;

2. A line delineation LOI issued under N.J.A.C. 7:7A-3.3, or a line verification LOI issued under N.J.A.C. 7:7A-3.4, if an LOI of either type has been issued. A presence/absence LOI issued under N.J.A.C. 7:7A-3.2 is not sufficient. If no LOI has been issued for the site, or if only a presence/absence LOI has been issued, the application checklist shall require all information required for an application for a line delineation LOI or line verification LOI;

3. Information regarding whether other approvals are required for the activities by Federal, interstate, State and local agencies for the activity; information regarding whether any such approvals or denials have been received; and information regarding whether the proposed activities are consistent with the rules, plans, or policies of other Federal, interstate, State and local agencies; and

4. If a site is known or suspected to be contaminated with toxic substances, and if the Department requests it, a laboratory analysis of representative samples of the sediment on the site.

5. A copy of the deed and/or other legal documents pertaining to the site;

6. Information regarding special aquatic sites, public lands, critical habitat, and other relevant environmental features of the site; and

7. An alternatives analysis that allows the Department to evaluate whether the requirements of N.J.A.C. 7:7A-7.2 are met, including:

i. A description of all other alternatives considered and the reasons for rejecting them; and

ii. A description of onsite alternatives considered in order to minimize impacts on the site.

New Rule, R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

**7:7A-10.7 Additional application requirements for a combined flood hazard area permit and general permit authorization**

(a) In addition to the basic information required for all applications under N.J.A.C. 7:7A-10.2, the application checklist for a combined freshwater wetlands general permit 2 authorization and flood hazard area permit authorizing an underground utility line shall require both of the following:

1. All information required under N.J.A.C. 7:7A-10.4 for an application for authorization under general permit 2; and

2. Any additional information necessary to demonstrate compliance with N.J.A.C. 7:7A-5.2A.

(b) In addition to the basic information required for all applications under N.J.A.C. 7:7A-10.2, the application checklist for a combined freshwater wetlands general permit 10A authorization and flood hazard area permit authorizing a very minor road crossing shall require both of the following:

1. All information required under N.J.A.C. 7:7A-10.4 for an application for authorization under general permit 10A; and

2. Any additional information required under N.J.A.C. 7:13 to demonstrate compliance with the Department's Flood Hazard Area Control Act rules.

3. The Department has required the violator to create or restore freshwater wetlands or State open waters at another location;

4. An opportunity has been afforded for public hearing and comment; and

5. The reasons for the issuance of the "after the fact" permit are published in the DEP Bulletin and in a newspaper of general circulation in the geographic area of the violation.

(b) The issuance of an "after the fact" permit or waiver under this section shall not limit the Department's ability to pursue any other enforcement action for the violation that is the subject of the "after the fact" permit or waiver.

(c) Any person violating an "after the fact" permit issued under this section shall be subject to enforcement under this chapter.

Amended by R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

**7:7A-16.18 Public participation**

(a) To provide for public participation in the Department's enforcement process, the Department shall:

1. Investigate and provide responses to all citizen complaints submitted under Department procedures;

2. Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

3. Publish notice of any proposed settlement of a Department enforcement action in the DEP Bulletin and provide at least 30 days for public comment on the settlement.

Amended by R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

**APPENDIX 1**

**OBLIGATE AND FACULTATIVE FAUNA SPECIES FOUND IN VERNAL HABITATS**

<u>Obligate Species</u>	<u>Facultative Species</u>
Marbled Salamander	Snapping Turtle
Blue-spotted Salamander*	Eastern Mud Turtle
Jefferson Salamander	Spotted Turtle
Eastern Tiger Salamander*	Eastern Painted Turtle
Wood Frog	Red-spotted Newt
Spotted Salamander	American Toad
Eastern Spadefoot Toad	Fowler's Toad
Jefferson x Blue-spotted Salamander*	Pine Barrens Treefrog*
	Northern Gray Treefrog*
	Southern Gray Treefrog*
	Upland Chorus Frog
	Northern Cricket Frog
	New Jersey Chorus Frog
	Green Frog
	Southern Leopard Frog
	Four-toed Salamander
	Northern Spring Peeper
	Long-tailed Salamander**
	Wood Turtle**

\*Listed as a New Jersey State endangered species  
\*\*Listed as a New Jersey State threatened species

New Rule, R.2001 d.312, effective September 4, 2001  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).  
Amended by R.2002 d.320, effective October 7, 2002.  
See: 33 N.J.R. 2937(a), 33 N.J.R. 3631(a), 34 N.J.R. 3518(a).  
In the Facultative Species category, deleted "Eastern Spadefoot Toad".