

- 7:7A-10.9 Signatories to permit applications and reports
- 7:7A-10.10 Confidentiality
- 7:7A-10.11 (Reserved)

**SUBCHAPTER 11. FEES**

- 7:7A-11.1 General fee provisions
- 7:7A-11.2 through 7:7A-11.4 (Reserved)

**SUBCHAPTER 12. DEPARTMENT REVIEW OF APPLICATIONS**

- 7:7A-12.1 Completeness review
- 7:7A-12.2 USEPA review
- 7:7A-12.3 Public comment on an application
- 7:7A-12.4 Hearings on an application for an individual permit or transition area waiver
- 7:7A-12.5 Final decisions
- 7:7A-12.6 Cancellation, withdrawal, resubmission and amendment of applications
- 7:7A-12.7 Resubmittal of a denied application

**SUBCHAPTER 13. CONTENTS OF PERMITS AND WAIVERS**

- 7:7A-13.1 Standard conditions that apply to all permits
- 7:7A-13.2 Establishing permit conditions
- 7:7A-13.3 Duration of permits
- 7:7A-13.4 Effect of a permit
- 7:7A-13.5 through 7:7A-13.9 (Reserved)

**SUBCHAPTER 14. CHANGES TO ISSUED PERMITS OR WAIVERS**

- 7:7A-14.1 General provisions for changing an issued permit
- 7:7A-14.2 Transfer of a permit
- 7:7A-14.3 Modification of a permit
- 7:7A-14.4 Suspension of a permit, waiver, or general permit authorization
- 7:7A-14.5 Termination of a permit
- 7:7A-14.6 Permit extensions

**SUBCHAPTER 15. MITIGATION**

- 7:7A-15.1 Mitigation definitions
- 7:7A-15.2 General mitigation requirements
- 7:7A-15.3 Timing of mitigation
- 7:7A-15.4 Property suitable for mitigation and the criteria for addressing contaminated sites
- 7:7A-15.5 Mitigation for a smaller disturbance
- 7:7A-15.6 Mitigation for a larger disturbance
- 7:7A-15.7 Mitigation for a temporary disturbance
- 7:7A-15.8 Amount of mitigation required
- 7:7A-15.9 Requirements for upland preservation
- 7:7A-15.10 Conceptual review of a mitigation area
- 7:7A-15.11 Basic requirements for all mitigation proposals
- 7:7A-15.12 Contents of a mitigation proposal
- 7:7A-15.13 Financial assurance for a proposal to restore, create, or enhance wetlands
- 7:7A-15.14 Protecting a mitigation area from future development
- 7:7A-15.15 Department review of a mitigation proposal
- 7:7A-15.16 Requirements that apply after the Department approves restoration, creation, or enhancement
- 7:7A-15.17 Requirements that apply after the Department approves credit purchase or uplands preservation
- 7:7A-15.18 Requirements that apply after the Department approves mitigation through a monetary contribution
- 7:7A-15.19 Requirements that apply after the Department approves mitigation through a land donation
- 7:7A-15.20 Wetlands Mitigation Council
- 7:7A-15.21 Council review of a proposed monetary contribution
- 7:7A-15.22 Council review of a proposed land donation
- 7:7A-15.23 Mitigation banks
- 7:7A-15.24 Application for Wetlands Mitigation Council approval of a monetary contribution or land donation
- 7:7A-15.25 Application for approval of a mitigation bank

- 7:7A-15.26 Mitigation for transition area impacts in accordance with N.J.A.C. 7:7A-6.3(g) (special activity transition area waivers based upon individual permit criteria)

**SUBCHAPTER 16. ENFORCEMENT**

- 7:7A-16.1 General provisions
- 7:7A-16.2 USEPA review
- 7:7A-16.3 Administrative order
- 7:7A-16.4 Civil action
- 7:7A-16.5 Civil administrative penalty
- 7:7A-16.6 Assessment, settlement and payment of a civil administrative penalty
- 7:7A-16.7 Appeal of an administrative order and/or notice of civil administrative penalty assessment
- 7:7A-16.8 Civil administrative penalty amount
- 7:7A-16.9 Civil administrative penalty amount for submitting inaccurate or false information
- 7:7A-16.10 Civil administrative penalty amount for failure to allow entry and inspection
- 7:7A-16.11 Civil administrative penalty for failure to pay a civil administrative penalty
- 7:7A-16.12 Economic benefit factor
- 7:7A-16.13 Civil penalty
- 7:7A-16.14 Criminal action
- 7:7A-16.15 Forfeiture of conveyances
- 7:7A-16.16 Notice of violation recorded on deed to property
- 7:7A-16.17 "After the fact" permit
- 7:7A-16.18 Public participation
- 7:7A-16.19 Grace period applicability; procedures

**SUBCHAPTER 17. RECONSIDERATION BY DEPARTMENT OF ITS ACTION OR INACTION CONCERNING A PERMIT**

- 7:7A-17.1 Reconsideration by Department of its action or inaction concerning a permit

**APPENDIX 1. OBLIGATE AND FACULTATIVE FAUNA SPECIES FOUND IN VERNAL HABITATS**

**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 Division of Land Use Regulation as follows:

1. Through the Division of Land Use Regulation web-site at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse); or
2. By contacting the Division of Land Use Regulation at:

Division of Land Use Regulation  
New Jersey Department of Environmental  
Protection  
P.O. 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:

Division of Land Use Regulation  
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 Division of Land Use Regulation 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.

Amended by R.2008 d.291, effective October 6, 2008.

See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

Section was "Forms and information, internet web site". Substituted "Division of Land Use Regulation" for "Land Use Regulation Program" throughout.

**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.

"Architectural survey" means an intensive-level historic architectural survey completed by an architectural historian whose qualifications meet the Secretary of the Interior's Professional Qualifications Standards and related guidance as part of the larger Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as referenced in 36 CFR 61, as amended and supplemented, incorporated herein by reference.

"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.

each. For example, alternative sites, grading plans, or hydrologic manipulations;

xiii. Financial assurances meeting the requirements of N.J.A.C. 7:7A-15.13;

xiv. Proposed compensation ratios, that is, the number of credits the bank operator proposes to generate and sell, based on the type and amount of mitigation performed at the bank; and

xv. Provisions for long-term management and maintenance of the mitigation bank site;

5. Site plans, cost estimates and schedules for construction, completion, and transfer of the mitigation bank;

6. Draft legal instruments necessary to meet the requirements of this chapter, including a conservation restriction or easement, financial assurance, property transfer, or agreement with a charitable conservancy to maintain the site; and

7. Identification of the persons who will construct, operate (debit and credit) and maintain the mitigation bank and mitigation bank site.

(c) An application for approval of a mitigation bank shall be submitted to Department staff at the address in N.J.A.C. 7:7A-15.2(f). Department staff shall notify the applicant of any additional information required to make the application complete. The applicant shall then submit five copies of the complete application to the Department staff.

(d) Each Department approval shall incorporate conditions as necessary to ensure that the requirements of this chapter are met.

Amended by R.2008 d.291, effective October 6, 2008.  
See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

Section was "Application for Wetlands Mitigation Council approval of a mitigation bank". Substituted "Department" for "Council" throughout; in the introductory paragraph of (a), substituted "A" for "The Department recommends that a", inserted the first occurrence of "shall" and inserted the fifth and sixth sentences; in the introductory paragraph of (a)2, inserted "; identified in accordance with 7:7A-12.2"; added (a)2i and (a)2ii; in (a)7, deleted "Council and" preceding "Department"; in (b)2, deleted "and/or the Council" following "Department"; in (b)4v, added the last sentence; added (b)4v(1) through (b)4v(3); in (b)6, inserted "or easement"; and in (c), substituted "five" for "10" and deleted the final sentence.

**7:7A-15.26 Mitigation for transition area impacts in accordance with N.J.A.C. 7:7A-6.3(g) (special activity transition area waivers based upon individual permit criteria)**

(a) This section governs the mitigation alternative required and the location of mitigation in relation to the disturbance for a transition area impact in accordance with N.J.A.C. 7:7A-6.3(g) (special activity transition area waivers based upon individual permit criteria). Mitigation for a transition area disturbance shall be performed through restoration or

enhancement of transition areas carried out on the site of the disturbance to the maximum extent feasible.

(b) If onsite transition area restoration or enhancement is not feasible, mitigation shall be performed through any of the following, at the applicant's option:

1. The purchase of credits from a mitigation bank located in the same HUC 11 as the disturbance or in an adjacent HUC 11 within the same watershed management area;

2. The purchase of credits from a mitigation bank approved by the Wetlands Mitigation Council prior to January 1, 1999, which includes the disturbance site in its bank service area; or

3. Offsite restoration or enhancement in the same HUC 11 or in an adjacent HUC 11 within the same watershed management area as the disturbance.

(c) If transition area mitigation under (b) above is not feasible, transition area mitigation shall be performed through either of the following, at the applicant's option:

1. The purchase of credits from a mitigation bank in the same watershed management area as the disturbance; or

2. Restoration, enhancement, or upland preservation in the same watershed management area as the disturbance.

(d) If transition area mitigation is not feasible under (b) or (c) above, mitigation shall be performed through:

1. The purchase of credits from a mitigation bank which includes the disturbance site in its bank service area; or

2. Restoration or enhancement in the same drainage basin.

(e) If transition area mitigation is not feasible under (b), (c) or (d) above, mitigation shall be performed through:

1. A monetary contribution in accordance with N.J.A.C. 7:7A-15.21;

2. Upland preservation, in accordance with N.J.A.C. 7:7A-15.9; or

3. A land donation approved by the Wetland Mitigation Council in accordance with N.J.A.C. 7:7A-15.22.

New Rule, R.2008 d.291, effective October 6, 2008.  
See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

SUBCHAPTER 16. ENFORCEMENT

**7:7A-16.1 General provisions**

(a) For the purposes of this subchapter (N.J.A.C. 7:7A-16), the term "applicable law and/or condition" means one or more applicable provisions or conditions of the Freshwater

Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; and/or any permit, waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto.

(b) The burden of proof and degrees of knowledge or intent required to establish a violation of the Freshwater Wetlands Protection Act or of any permit, order, rule or regulation promulgated pursuant thereto shall be no greater than the burden of proof or degree of knowledge or intent which USEPA must meet in establishing a violation of the Federal Act or implementing regulations.

(c) If the Department finds that a person is or has been violating any applicable law and/or condition, the Department may take one or more of the following actions:

1. Issue an administrative order under N.J.A.C. 7:7A-16.3;
2. Bring a civil action under N.J.A.C. 7:7A-16.4;
3. Assess a civil administrative penalty under N.J.A.C. 7:7A-16.5 through 7:7A-16.12, and in accordance with the grace period requirements set forth at N.J.A.C. 7:7A-16.19;
4. Bring an action for a civil penalty under N.J.A.C. 7:7A-16.13; and/or
5. Bring a criminal action under N.J.A.C. 7:7A-16.14.

(d) For all violations under this subchapter, each day during which each violation continues shall constitute an additional, separate, and distinct violation for which a separate penalty may be assessed.

(e) Each violation of any applicable law and/or condition shall constitute an additional, separate, and distinct violation for which a separate penalty may be assessed.

(f) The Department's pursuit of any of the remedies available under this subchapter shall not preclude the Department's pursuit of any of the other remedies for the same or another violation. Compliance with any Department enforcement order, including payment of a penalty, shall not preclude the Department from pursuing any of the other remedies available under this subchapter in connection with the violation for which the order was issued.

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

Stylistic changes only.  
Amended by R.2001 d.312, effective September 4, 2001.  
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).  
Amended by R.2007 d.243, effective August 20, 2007.  
See: 38 N.J.R. 2913(a), 39 N.J.R. 3524(a).

In (c)3, inserted “, and in accordance with the grace period requirements set forth at N.J.A.C. 7:7A-16.19”.

Amended by R.2008 d.291, effective October 6, 2008.  
See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

In (a), updated the second N.J.S.A. reference.

#### Case Notes

Dredging private property on lagoons in violation of prescribed setback for bulkheads rendered dredger strictly liable for penalty. *Hoeh v. Department of Environmental Protection*, 95 N.J.A.R.2d (EPE) 210.

#### 7:7A-16.2 USEPA review

The Department shall make available without restriction any information obtained or used in the implementation of the Freshwater Wetlands Protection Act, the Water Pollution Control Act, and/or this chapter, to USEPA upon request.

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

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

Former N.J.A.C. 7:7A-16.2, Fees for review of requests for letters of interpretation, was repealed.

#### 7:7A-16.3 Administrative order

(a) Whenever, on the basis of available information, the Department finds a person in violation of any applicable law and/or condition, the Department may issue an order:

1. Specifying each provision of the applicable law and/or condition which has been, or is being violated;
2. Citing the action which constituted the violation;
3. Requiring immediate compliance with the provision or provisions violated;
4. Requiring the restoration or rehabilitation of the freshwater wetlands, State open waters or transition area which is the site of the violation; and
5. Providing notice of the right to a hearing on the matters contained in the order.

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

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

Former N.J.A.C. 7:7A-16.3, Fees for review of individual freshwater wetlands and open water fill permits, was repealed.

#### 7:7A-16.4 Civil action

(a) Whenever, on the basis of available information, the Department finds a person in violation of any applicable law and/or condition, the Department may institute a civil action in Superior Court for appropriate relief. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;
2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this section;

3. Assessment of the violator for any costs incurred by the State in removing, correcting, or terminating the adverse effects upon the freshwater wetlands, State open waters or transition areas resulting from any unauthorized regulated activity for which legal action under this section may have been brought;

4. Assessment against the violator for compensatory damages for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by an unauthorized regulated activity. Assessments under this section shall be paid to the State Treasurer except that compensatory damages shall be paid by specific order of the court to any persons who have been aggrieved by the unauthorized regulated activity; and/or

5. A requirement that the violator restore or rehabilitate the site of the violation to the maximum extent practicable, as defined in N.J.A.C. 7:7A-1.4. If the violator does not do so, the Department may take corrective action, and will assess the violator pursuant to this chapter.

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

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

Reference made to "transition areas" in (a)3.

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

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

Former N.J.A.C. 7:7A-16.4, Fees for review of Statewide general permit authorization applications, was repealed.

#### 7:7A-16.5 Civil administrative penalty

(a) Whenever, on the basis of available information, the Department finds a person in violation of any provision of the Freshwater Wetlands Protection Act, or of any permit, waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto, the Department may assess a civil administrative penalty of no more than \$10,000 for each violation. The amount of the civil administrative penalty for a violation of the Freshwater Wetlands Protection Act shall be determined under N.J.A.C. 7:7A-16.8 through 16.12.

(b) Whenever, on the basis of available information, the Department finds a person in violation of any provision of the Water Pollution Control Act, or of any permit, approval, waiver, order, exemption, or rule promulgated or approved pursuant thereto, the Department may assess a civil administrative penalty of no more than \$50,000 for each violation. The amount of the civil administrative penalty for a violation of the Water Pollution Control Act shall be determined under the Department's rules implementing the enforcement provisions of that law at N.J.A.C. 7:14-8.

(c) The Department may, in its discretion, settle a civil administrative penalty assessed under this subchapter, in accordance with N.J.A.C. 7:7A-16.6(c). However, if the Department settles a penalty for a violation of the Water Pollution Control Act, the settlement is subject to N.J.A.C. 7:14-8.

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

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

"Commissioner" changed to "Department" throughout.

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

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

Former N.J.A.C. 7:7A-16.5, Fees for review and processing of transition area waiver applications, was repealed.

#### Case Notes

Placement of fill on property with freshwater wetland status warranted civil administrative penalty assessment. Division of Coastal Resources v. Angel of the Sea Development, 95 N.J.A.R.2d (EPE) 167.

Mowing of vegetation, though a regulated activity requiring permit, did not warrant monetary penalty when unintentional. Department of Environmental Protection and Energy v. Juliano, 95 N.J.A.R.2d (EPE) 147.

Filling protected wetland without permit; penalty assessed. Bala v. New Jersey Department of Environmental Protection. 93 N.J.A.R.2d (EPE) 164.

#### 7:7A-16.6 Assessment, settlement and payment of a civil administrative penalty

(a) To assess a civil administrative penalty, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This notice of civil administrative penalty assessment shall:

1. Identify each section of the applicable law and/or condition violated;
2. Concisely state the facts alleged to constitute the violation;
3. Specify the amount of the civil administrative penalty; and
4. Advise the violator of the right to request an adjudicatory hearing under N.J.A.C. 7:7A-16.7.

(b) The violator shall pay a civil administrative penalty immediately upon receipt of the Department's final order in a contested case, or as soon as a notice of civil administrative penalty assessment becomes a final order as follows:

1. If no hearing is requested under N.J.A.C. 7:7A-16.7, a notice of civil administrative penalty assessment becomes a final order on the 21st day after the violator receives the notice of civil administrative penalty assessment;
2. If the Department denies a hearing request under N.J.A.C. 7:7A-16.7(c) or (d), a notice of civil administrative penalty assessment becomes a final order upon the violator's receipt of the denial; or
3. If the Department grants a hearing, a notice of civil administrative penalty assessment becomes a final order upon the violator's receipt of a final order in the contested case.

(c) The Department may, in its discretion, settle any civil administrative penalty assessed under this subchapter, based on an evaluation of the factors at (c)1 through 4 below. As provided at N.J.A.C. 7:7A-16.5(c), this subsection does not

apply to penalties assessed for violations of the Water Pollution Control Act:

1. Mitigating or extenuating circumstances not previously considered in the assessment of penalties;
2. The violator's timely implementation of measures leading to compliance, which measures were not previously considered in the assessment of penalties, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;
3. The violator's full payment of a specified part of a civil administrative penalty, if payment is made within a time period established by the Department in an administrative order, and if the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or
4. Any other terms or conditions acceptable to the Department.

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

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

Deleted "waiver" at (a)1.

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

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

Former N.J.A.C. 7:7A-16.6, Fees for the review and processing of requests for exemption letters, was repealed.

#### **7:7A-16.7 Appeal of an administrative order and/or notice of civil administrative penalty assessment**

(a) A violator may request an adjudicatory hearing to contest an administrative order, and/or a notice of civil administrative penalty assessment issued under this chapter. To request an adjudicatory hearing, the violator shall submit the following information in writing to the Department at the address in (b) below:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the findings of fact in the administrative order and/or notice of civil administrative penalty assessment, stated in short and plain terms;
3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall state this and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location accessible to physically disabled persons.

(b) A request for an adjudicatory hearing under this subchapter shall be addressed to:

Office of Legal Affairs  
ATTENTION: Adjudicatory Hearing Requests  
Department of Environmental Protection  
PO Box 402  
Trenton, New Jersey 08625-0402

(c) If the Department does not receive the hearing request within 20 days after the violator receives the notice of civil administrative penalty assessment and/or the administrative order which is being contested, the Department shall deny the hearing request.

(d) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(e) Any adjudicatory hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Administrative change to (a).

See: 23 N.J.R. 3325(b).

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

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

Former N.J.A.C. 7:7A-16.7, Fees for the review and processing of requests for permit modifications, was repealed.

Amended by R.2008 d.291, effective October 6, 2008.

See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

In (b), substituted "08625-0402" for "08625-402" in the address.

#### **7:7A-16.8 Civil administrative penalty amount**

(a) When the Department assesses a civil administrative penalty, the Department shall use the procedures in this section to determine the amount of the penalty if the violation pertains to wetlands and transition areas, except if the violation is listed at N.J.A.C. 7:7A-16.9, 16.10, or 16.11, in which case the penalty amount shall be determined under whichever of those sections applies.

(b) If a violation of this chapter pertains to State open waters, the Department shall not determine the amount of the civil administrative penalty under this subchapter, but shall determine the penalty under the Department's rules implementing the enforcement provisions of the Water Pollution Control Act at N.J.A.C. 7:14-8.

(c) The Department shall use the three factors described below to determine the amount of a civil administrative penalty under this section. Using the standards below, the De-

partment assigns each violation a point value for each factor. The total number of points is used in Table D at (d) below to determine the penalty amount per day for each violation. The factors, and the point values assigned to them, are as follows:

1. The conduct factor of the violation shall be classified as major, moderate or minor and assigned points as follows:
  - i. Major conduct shall include an intentional, deliberate, purposeful, knowing or willful act or omission by the violator and is assigned three points;
  - ii. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator and is assigned two points; and
  - iii. Minor conduct shall include any conduct not identified in (c)1i or ii above and is assigned one point.
2. The acreage of wetlands impacted factor shall be assigned points as follows:
  - i. A violation impacting more than three acres of wetlands is assigned three points;
  - ii. A violation impacting one to three acres of wetlands is assigned two points; and
  - iii. A violation impacting less than one acre of wetlands is assigned one point; and
3. The resource value classification factor shall be assigned points as follows:
  - i. A violation impacting exceptional resource classification wetlands is assigned three points;
  - ii. A violation impacting intermediate resource classification wetlands is assigned two points; and
  - iii. A violation impacting ordinary resource classification wetlands is assigned one point.

(d) The Department shall sum the total points assigned according to the three factors in (c) above, and shall determine the penalty amount per day using the following table:

Table D  
Penalty points table

Total Points	Penalty Amount
	Per Day
9	\$10,000
8	9,000
7	7,500
6	6,000
5	4,500
4	3,000
3	1,500

Amended by R.1992 d.117, effective March 16, 1992.  
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).  
Repealed use of "major" and "minor" seriousness and added factors to be used in determining penalties.  
Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).  
Former N.J.A.C. 7:7A-16.8, Fee refunds, was repealed.

**Case Notes**

Initial Decision (2006 N.J. AGEN LEXIS 176) adopted, which concluded that where respondent knowingly engaged in the unauthorized ditching and disruption of wetlands, a penalty of \$6,000 was warranted since the wetlands were of intermediate resource value (two points), the total disturbance was under an acre (one point), and the violation was intentional (three points). N.J. Dep't of Env'tl. Prot. v. Wagner, OAL Dkt. No. ESA 04815-04, 2006 N.J. AGEN LEXIS 579, Final Decision (April 21, 2006).

Placement of fill material on wetlands without freshwater permit and transition waiver warranted civil penalty when not part of farming activity. Department of Environmental Protection v. Rapisardi, 95 N.J.A.R.2d (EPE) 248.

Engaging in regulated activity in a freshwater wetland without a permit warranted civil penalty and restoration order. Department of Environmental Protection and Energy v. Toufayan, 95 N.J.A.R.2d (EPE) 71.

Assessment of \$9,000 penalty against homeowner for improperly placing fill within 100-year floodplain and for placing asphalt paving in wetlands transition zone was proper. Department of Environmental Protection v. Ruelan. 93 N.J.A.R.2d (EPE) 239.

Evidence established that diverting stream and filling stream bed violated statutes; penalty assessed. Department of Environmental Protection v. DiFlorio. 93 N.J.A.R.2d (EPE) 187.

**7:7A-16.9 Civil administrative penalty amount for submitting inaccurate or false information**

(a) When the Department assesses a civil administrative penalty for submittal of inaccurate information or submittal of a false statement, representation, or certification in an application, record, or other document required to be submitted or maintained under the Freshwater Wetlands Protection Act or under a permit, waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto, the Department shall use the procedures in this section to determine the amount of the civil administrative penalty.

(b) If a violation described in this section pertains to State open waters, the Department shall not determine the amount of the civil administrative penalty under this section, but shall determine the penalty under the Department's rules implementing the enforcement provisions of the Water Pollution Control Act at N.J.A.C. 7:14-8.

(c) Each day, from the day that a violator submits inaccurate or false information to the Department, to the day the Department receives a written correction from the violator, shall be an additional, separate, and distinct violation.

(d) The daily civil administrative penalty for each intentional, deliberate, purposeful, knowing, or willful act or omission under this section shall be assessed at the midpoint between \$10,000 and \$8,000 unless adjusted under (f) below.

(e) The daily civil administrative penalty for each violation under this section that is not listed in (d) above shall be

assessed at the midpoint between \$1,000 and \$0 unless adjusted under (f) below.

(f) For a violation under this section, the Department may adjust the civil administrative penalty amount from the midpoint within the range listed in (d) or (e) above, based on the following factors:

1. The violator's compliance history;
2. The nature, timing and effectiveness of measures the violator takes to mitigate the effects of the violation;
3. The nature, timing and effectiveness of measures the violator takes to prevent future similar violations;
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
5. Other specific circumstances of the violator or violation.

(g) A violation under this section is non-minor and, therefore, not subject to a grace period.

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

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

Changes made in (b).

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

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

Amended by R.2007 d.243, effective August 20, 2007.

See: 38 N.J.R. 2913(a), 39 N.J.R. 3524(a).

Added (g).

#### **7:7A-16.10 Civil administrative penalty amount for failure to allow entry and inspection**

(a) When the Department assesses a civil administrative penalty under the FWPA against a person who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative, the Department shall use the procedures in this section to determine the amount of the civil administrative penalty. The amount of a civil administrative penalty for refusal of entry and inspection under the WPCA shall be determined under N.J.A.C. 7:14-8.7.

(b) Each day that a person refuses, inhibits or prohibits immediate lawful entry and inspection shall be an additional, separate, and distinct violation.

(c) The daily civil administrative penalty for a violation under this section shall be assessed at the midpoint of the following ranges, except as adjusted under (d) below:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which the Department has issued an administrative order, freshwater wetlands permit, transition area waiver, approved mitigation proposal or general permit authorization, the civil administrative penalty shall be no more than \$10,000 nor less than \$7,000; and

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be no more than \$7,000 nor less than \$1,500.

(d) The Department may adjust the daily civil administrative penalty amount, within the applicable range at (c) above, based on the following factors:

1. The violator's compliance history;
2. The nature, timing and effectiveness of measures the violator takes to remedy the effects of the violation;
3. The nature, timing and effectiveness of measures the violator takes to prevent future similar violations;
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
5. Other specific circumstances of the violator or violation.

(e) A violation under this section is non-minor and, therefore, not subject to a grace period.

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

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

Language changes in (b).

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

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

Amended by R.2007 d.243, effective August 20, 2007.

See: 38 N.J.R. 2913(a), 39 N.J.R. 3524(a).

Added (e).

#### **7:7A-16.11 Civil administrative penalty for failure to pay a civil administrative penalty**

(a) The Department may assess a civil administrative penalty under this section against each violator who fails to pay a civil administrative penalty when due under this chapter.

(b) The daily civil administrative penalty amount assessed under this section shall be equal to the unpaid civil administrative penalty, but shall not exceed the maximum allowed at N.J.A.C. 7:7A-16.5(a) and (b).

(c) Each day that a civil administrative penalty assessed under this subchapter is not paid after it is due shall constitute an additional, separate and distinct violation.

(d) A violation under this section is non-minor and, therefore, not subject to a grace period.

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

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

Amended by R.2007 d.243, effective August 20, 2007.

See: 38 N.J.R. 2913(a), 39 N.J.R. 3524(a).

Added (d).

#### **7:7A-16.12 Economic benefit factor**

(a) The Department may add to a civil administrative penalty assessed under this subchapter the amount of economic

benefit in dollars that the violator has realized as the result of not complying, or by delaying compliance with, an applicable law and/or condition.

(b) The Department may use the economic benefit factor to increase a civil administrative penalty to an amount no greater than the maximum allowed at N.J.A.C. 7:7A-16.5(a) and (b).

(c) If the total economic benefit was derived from more than one violation, the Department may apportion the total economic benefit amount among the violations from which it was derived, so as to increase each civil administrative penalty to an amount no greater than the maximum allowed at N.J.A.C. 7:7A-16.5(a) and (b).

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-16.13 Civil penalty

(a) Each person who does any of the following shall be subject, upon the order of a court, to a civil penalty:

1. Violates the Freshwater Wetlands Protection Act, the Water Pollution Control Act, or this chapter;
2. Violates an administrative order or a court order issued pursuant to the Freshwater Wetlands Protection Act, the Water Pollution Control Act, or this chapter; or
3. Fails to pay in full a civil administrative penalty assessed under this chapter.

(b) A civil penalty imposed under this section shall not exceed the maximum allowed at N.J.A.C. 7:7A-16.5(a) and (b).

(c) A civil penalty imposed under this section may be collected, with costs, in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the penalty enforcement law in conjunction with the Freshwater Wetlands Protection Act, the Water Pollution Control Act, and this chapter.

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

Editorial changes only.

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

Construction occurred within the transition area; violation of the Freshwater Wetlands Protection Act; penalty. *DEPE v. Manroe Builders, Inc.*, 94 N.J.A.R.2d (EPE) 100.

Construction of bulkhead and filling in of wetlands violated permit allowing construction of bulkhead; penalty assessed. *Deschaine v. Division of Coastal Resources*, 92 N.J.A.R.2d (EPE) 9.

### 7:7A-16.14 Criminal action

(a) The Department, upon petition to the Attorney General, may bring a criminal action in court for certain violations of the Freshwater Wetlands Protection Act, or of a permit, waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto.

(b) If a violation described in this section pertains to State open waters, the criminal penalty shall not be governed by this section, but shall be governed by the Water Pollution Control Act at N.J.S.A. 58:10A-10(f).

(c) A person who willfully or negligently violates the Freshwater Wetlands Protection Act, or any permit, approval, waiver, order, exemption, or rule promulgated or approved pursuant thereto, shall be guilty, upon conviction, of a crime of the fourth degree and shall be subject to a fine of no less than \$2,500 nor more than \$25,000 per day of violation.

(d) A second offense under this section shall subject the violator to a fine of no less than \$5,000 nor more than \$50,000 per day of violation.

(e) A person shall, upon conviction, be subject to a fine of no more than \$10,000 if the person:

1. Knowingly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the Freshwater Wetlands Protection Act, or under a permit, waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto; or
2. Falsifies, tampers with or knowingly renders inaccurate, any monitoring device or method required to be maintained under the Freshwater Wetlands Protection Act, or a permit, waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto.

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-16.15 Forfeiture of conveyances

All conveyances used or intended for use in the purposeful or knowing discharge into State open waters of any pollutant or toxic pollutant, in violation of the Water Pollution Control Act, are subject to forfeiture to the State under N.J.S.A. 58:10A-10(g) and N.J.S.A. 13:1K-1 et seq. A hearing shall be held prior to any forfeiture under this section. For the purposes of this section, the term "conveyance" means an aircraft, vessel, vehicle, or other equipment or container.

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-16.16 Notice of violation recorded on deed to property

(a) On order of the Commissioner:

1. The clerk or register of deeds and mortgages of the county containing the property upon which the violation occurred shall record a notice of violation of the Freshwater Wetlands Protection Act on the deed of the property; and/or

2. The clerk of the Superior Court shall record a notice of violation of the Freshwater Wetlands Protection Act.

(b) The notice of violation shall remain attached to the property deed and shall remain recorded at the Superior Court until the violation has been remedied and the Commissioner has ordered the clerk to remove the notice of violation.

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-16.17 "After the fact" permit

(a) The Department may issue an "after the fact" permit for a regulated or prohibited activity that has already occurred and that does not meet the standards for approval in this chapter only if all of the following are true:

1. The Department has determined that the restoration of the site to its pre-violation condition would increase the harm to a freshwater wetland, transition area, and/or State open water, or its ecology;

2. The Department has assessed and collected the costs or damages enumerated in N.J.A.C. 7:7A-16.4 from the violator;

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).

#### 7:7A-16.19 Grace period applicability; procedures

(a) Each violation identified in Table E at (f) below by an "M" in the Type of Violation column, for which the conditions of (d)1 through 6 below are satisfied, and each violation determined under (c) below as minor for which the conditions of (d)1 through 9 below are satisfied, is a minor violation and is subject to a 30-day grace period as described at (e) below.

(b) Each violation identified in Table E at (f) below by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) If a violation is not listed in Table E at (f) below, the designation of the violation as minor or non-minor is determined as follows:

1. If the violation is not listed in Table E at (f) below but is comparable to a violation designated as "M" in Table E and the violation meets all of the criteria of (d)1 through 6 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 days as described at (e) below.

2. If the violation is not listed in Table E at (f) below and is not comparable to a violation listed in Table E but the violation meets all of the criteria of (d)1 through 9 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 days as described at (e) below.

3. If the violation is not listed in Table E at (f) below but is comparable to a violation designated as "NM" in Table E, then the violation is a non-minor violation and is not subject to a grace period.

4. If the violation is not listed in Table E at (f) below and is not comparable to a violation listed in Table E, and the violation does not meet all of the criteria at (d)1 through 9 below, the violation is non-minor and is not subject to the grace period.

5. Comparability of a violation to a violation in Table E at (f) below is based on the nature of the violation(s) (for example, recordkeeping, accuracy of information provided to the Department, amount and type of impacts to the protected resources). A violation shall not be considered comparable to any violation designated as "M" in Table E unless the violation also meets the criteria at (d)7 through 9 below.

(d) The Department shall provide a grace period of 30 days for any violation identified as minor provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency;

3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;

4. In the case of a violation that does not involve a permit or waiver, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period;

5. In the case of a violation of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., or any rule or regulation promulgated thereunder, or permit or waiver issued pursuant thereto, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same site or any other site within the preceding 12-month period;

6. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible;

7. The violation poses minimal risk to the public health, safety and natural resources;

8. The violation does not materially and substantially undermine or impair the goals of the regulatory program; and

9. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

(e) For a violation determined to be minor under (a) or (c) above, the following provisions apply:

1. The Department shall issue a notice of violation to the person responsible for the minor violation that:

i. Identifies the condition or activity that constitutes the violation and the specific regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period of 30 days.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (e)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation.

3. In response to a notice of violation, the person responsible for the minor violation shall submit to the Department, before the end of the specified grace period, written information, signed and certified to be true by the responsible person or his or her designee, detailing the corrective action taken or how compliance was achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period in writing no later than one week before the expiration of the specified grace period. The request shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The request shall be signed and certified to be true by the responsible party or their designee. The Department may, in its discretion, approve in writing an extension which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;

ii. Whether the delay has been caused by circumstances beyond the control of the violator;

iii. Whether the delay will pose a risk to the public health, safety and natural resources; and

iv. Whether the delay will materially and substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, or within any approved extension, the Department may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date on which the notice of violation under (e)1 above was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

(f) The designations of violations of the Freshwater Wetlands Protection Act Rules as minor (M) or non-minor (NM) are set forth in Table E below. The violation descriptions are

provided for informational purposes only. In the event that there is a conflict between a violation description in Table E and the rule to which the violation description corresponds, the rule shall govern.

Table E

<u>Rule Citation</u>	<u>Violation Description</u>	<u>Type of Violation</u>
N.J.A.C. 7:7A-2.1(a), 2.2(a) and (b), 2.5(f), 2.6(a)	Conducting regulated or prohibited activities in a freshwater wetland, transition area and/or State open water without prior Department approval	NM
N.J.A.C. 7:7A-4.3	Failure to comply with conditions of a Department permit or authorization not related to submission of documentation to the Department.	NM
N.J.A.C. 7:7A-4.3	Failure to submit to the Department documentation as required by a permit condition.	M
N.J.A.C. 7:7A-6.1(h)	Failure to execute and record the required conservation restriction prior to the beginning of activities authorized under a transition area waiver, or transfer of the site.	NM
N.J.A.C. 7:7A-10.1(f)	Failure to provide in the application all information required in this chapter of which the applicant, its consultants, engineers, surveyors, or agents is or should be aware	NM
N.J.A.C. 7:7A-10.9	Failure to provide appropriate public notice during the permit application process	NM
N.J.A.C. 7:7A-13.1	Failure to comply with conditions of a Department permit or authorization not related to submission of documentation to the Department.	NM
N.J.A.C. 7:7A-13.1	Failure to submit to the Department documentation as required by a permit condition.	M
N.J.A.C. 7:7A-14.4(a)	Failure to comply with a permit suspension order	NM
N.J.A.C. 7:7A-14.5(b)	Failure to comply with a permit termination order	NM
N.J.A.C. 7:7A-15.2(b)	Failure to conduct mitigation as required by a Department approval or administrative order	NM
N.J.A.C. 7:7A-15.3(a)	Failure to conduct mitigation as required by a Department approval or administrative order	NM
N.J.A.C. 7:7A-15.11(a)	Failure to submit a mitigation proposal to the Department as required by a Department approval or order	NM
N.J.A.C. 7:7A-15.16(a)	Failure to execute and record the conservation restriction that meets the requirements of N.J.A.C. 7:7A-15.14 prior to the start of mitigation activities	NM
N.J.A.C. 7:7A-15.16(b)	Failure to submit a construction completion report within the required timeframe of completion of construction and planting of a restoration, creation or enhancement project	M
N.J.A.C. 7:7A-15.16(c)	Failure to submit an annual post-planting report at the required intervals following the completion of the construction and planting associated with mitigation	M
N.J.A.C. 7:7A-15.16(d)	Failure to demonstrate to the Department at the end of the post-planting monitoring period that the mitigation project is successful	M
N.J.A.C. 7:7A-15.17(c)1	Failure to transfer the mitigation area in fee simple to a government agency or charitable conservancy within 60 days after the Department declares mitigation through upland preservation successful	NM
N.J.A.C. 7:7A-15.17(c)2	Failure to provide the government agency or charitable conservancy with a maintenance fund for the mitigation area transferred to the government agency or charitable conservancy	NM
N.J.A.C. 7:7A-15.18(a)	Failure to apply to the Wetlands Mitigation Council for approval of the amount of monetary contribution following the Department's determination that monetary contribution is an appropriate mitigation alternative	NM
N.J.A.C. 7:7A-15.19(a)	Failure to apply to the Wetlands Mitigation Council for approval of the particular parcel of land to be donated following the Department's determination that land donation is appropriate mitigation alternative	NM

New Rule, R.2007 d.243, effective August 20, 2007.  
See: 38 N.J.R. 2913(a), 39 N.J.R. 3524(a).