

FLOOD HAZARD AREA CONTROL ACT RULES

- 7:13-7.47 Permit-by-rule 47—construction of a gauge, weir, or similar device
- 7:13-7.48 Permit-by-rule 48—temporary storage of unsecured construction material outside a floodway
- 7:13-7.49 Permit-by-rule 49—storage of unsecured material associated with a single-family home or duplex
- 7:13-7.50 Permit-by-rule 50—storage of unsecured material associated with a habitable building or facility, other than a single family home or duplex
- 7:13-7.51 Permit-by-rule 51—storage of unsecured material associated with a facility that stores and distributes material
- 7:13-7.52 Permit-by-rule 52—placement, storage, or processing of hazardous substances
- 7:13-7.53 Permit-by-rule 53—placement, storage, or processing solid waste or recyclable materials at a lawfully existing facility
- 7:13-7.54 Permit-by-rule 54—continuation of lawfully existing agricultural activities
- 7:13-7.55 Permit-by-rule 55—commencement of new agricultural activities
- 7:13-7.56 Permit-by-rule 56—continuation or commencement of natural resource conservation practices associated with agricultural activities
- 7:13-7.57 Permit-by-rule 57—construction of a non-habitable building for agricultural purposes
- 7:13-7.58 Permit-by-rule 58—filling or modification of a manmade regulated water for freshwater wetlands restoration
- 7:13-7.59 Permit-by-rule 59—creation of a ford across a regulated water to manage livestock
- 7:13-7.60 Permit-by-rule 60—construction of a fence along and/or across a regulated water to manage livestock
- 7:13-7.61 Permit-by-rule 61—construction of a pump and/or water intake structure in or along a regulated water for livestock
- 7:13-7.62 Permit-by-rule 62—construction of a manure management structure for livestock or horses

SUBCHAPTER 8. GENERAL PERMITS-BY-CERTIFICATION

- 7:13-8.1 General permit-by-certification 1—removal of accumulated sediment and debris from a regulated water for agricultural purposes
- 7:13-8.2 General permit-by-certification 2—construction of an agricultural roadway crossing
- 7:13-8.3 General permit-by-certification 3—agricultural bank stabilization and/or bank restoration activities
- 7:13-8.4 General permit-by-certification 4—enhancement of a riparian zone through the planting of native, non-invasive plant species
- 7:13-8.5 General permit-by-certification 5—reconstruction, relocation, expansion, and/or elevation of a building outside a floodway
- 7:13-8.6 General permit-by-certification 6—construction of one single-family home or duplex in a tidal flood hazard area
- 7:13-8.7 General permit-by-certification 7—removal of accumulated sediment and debris from an engineered channel
- 7:13-8.8 General permit-by-certification 8—construction of an addition to a lawfully existing building
- 7:13-8.9 General permit-by-certification 9—sediment and debris removal within and/or adjacent to a bridge, culvert, or outfall by a public entity
- 7:13-8.10 General permit-by-certification 10—in-kind replacement of a culvert
- 7:13-8.11 General permit-by-certification 11—maintenance of existing manmade stormwater management structures and conveyances
- 7:13-8.12 General permit-by-certification 12—surveying and geotechnical and archeological investigation activities
- 7:13-8.13 General permit-by-certification 13—placement of solar panels

- 7:13-8.14 General permit-by-certification 14—placement of water monitoring devices
- 7:13-8.15 General permit-by-certification 15—in-kind replacement of public infrastructure

SUBCHAPTER 9. GENERAL PERMITS

- 7:13-9.1 General permit 1—channel cleaning under the Stream Cleaning Act
- 7:13-9.2 General permit 2—mosquito control water management activities
- 7:13-9.3 General permit 3—scour protection activities at bridges and culverts
- 7:13-9.4 General permit 4—creation, restoration, and enhancement of habitat and water quality values and functions
- 7:13-9.5 General permit 5—reconstruction and/or elevation of a building in a floodway
- 7:13-9.6 General permit 6—construction of one single-family home or duplex, and one associated driveway that does not cross a regulated water, in a fluvial flood hazard area
- 7:13-9.7 General permit 7—relocation of manmade roadside ditches to facilitate public roadway improvements
- 7:13-9.8 General permit 8—placement of storage tanks
- 7:13-9.9 General permit 9—construction or reconstruction of a bridge or culvert across a regulated water with a drainage area of less than 50 acres
- 7:13-9.10 General permit 10—reconstruction of a bridge or culvert across a regulated water with a drainage area of 50 acres or more
- 7:13-9.11 General permit 11 for a stormwater outfall along a regulated water with a drainage area of less than 50 acres
- 7:13-9.12 General permit 12—construction of footbridges
- 7:13-9.13 General permit 13—construction of trails and boardwalks

SUBCHAPTER 10. INDIVIDUAL PERMITS

- 7:13-10.1 Requirement to obtain an individual permit
- 7:13-10.2 Duration of an individual permit
- 7:13-10.3 Conditions applicable to an individual permit
- 7:13-10.4 through 7:13-10.7 (Reserved)

SUBCHAPTER 11. AREA-SPECIFIC REQUIREMENTS FOR INDIVIDUAL PERMITS

- 7:13-11.1 Requirements for a regulated activity in a channel
- 7:13-11.2 Requirements for a regulated activity in a riparian zone
- 7:13-11.3 Requirements for a regulated activity in a floodway
- 7:13-11.4 Requirements for a regulated activity in a flood fringe
- 7:13-11.5 Requirements for a regulated activity in or along a regulated water with fishery resources
- 7:13-11.6 Requirements for a regulated activity in or affecting a present or documented habitat for threatened or endangered species
- 7:13-11.7 through 7:13-11.19 (Reserved)

SUBCHAPTER 12. ACTIVITY-SPECIFIC REQUIREMENTS FOR INDIVIDUAL PERMITS

- 7:13-12.1 Requirements that apply to all regulated activities
- 7:13-12.2 Requirements for stormwater management
- 7:13-12.3 Requirements for excavation, fill and grading activities
- 7:13-12.4 Requirements for a structure
- 7:13-12.5 Requirements for a building
- 7:13-12.6 Requirements for a railroad, roadway, and parking area
- 7:13-12.7 Requirements for a bridge or culvert
- 7:13-12.8 Requirements for a utility line
- 7:13-12.9 Requirements for a stormwater outfall structure
- 7:13-12.10 Requirements for a low dam
- 7:13-12.11 Requirements for a dam
- 7:13-12.12 Requirements for a flood control project
- 7:13-12.13 Requirements for a retaining wall or bulkhead

- 7:13-12.14 Requirements for bank stabilization and channel restoration
- 7:13-12.15 Requirements for sediment and debris removal from a regulated water
- 7:13-12.16 Requirements for the storage of unsecured material
- 7:13-12.17 Requirements for the investigation, cleanup, or removal of hazardous substances
- 7:13-12.18 Requirements for the placement, storage, or processing of hazardous substances
- 7:13-12.19 Requirements for solid waste landfill closure
- 7:13-12.20 Requirements for the placement, storage, or processing of solid waste or recyclable materials
- 7:13-12.21 Requirements for the removal of existing fill or an existing structure

SUBCHAPTER 13. RIPARIAN ZONE MITIGATION

- 7:13-13.1 Definitions
- 7:13-13.2 General mitigation requirements
- 7:13-13.3 Timing of mitigation
- 7:13-13.4 Property suitable for mitigation
- 7:13-13.5 Conceptual review of a mitigation area
- 7:13-13.6 Basic requirements for mitigation proposals
- 7:13-13.7 Department review and approval of a mitigation proposal
- 7:13-13.8 Riparian zone mitigation options and mitigation location
- 7:13-13.9 Riparian zone creation
- 7:13-13.10 Riparian zone restoration and enhancement
- 7:13-13.11 Monitoring and reporting for riparian zone creation, restoration, and enhancement
- 7:13-13.12 Riparian zone preservation
- 7:13-13.13 Requirements for credit purchase from an approved mitigation bank
- 7:13-13.14 Financial assurance for mitigation projects; general provisions
- 7:13-13.15 Financial assurance; fully funded trust fund requirements
- 7:13-13.16 Financial assurance; line of credit requirements
- 7:13-13.17 Financial assurance; letter of credit requirements
- 7:13-13.18 Financial assurance; surety bond requirements
- 7:13-13.19 Mitigation banks
- 7:13-13.20 Application for a mitigation bank

SUBCHAPTER 14. CONSERVATION RESTRICTIONS

- 7:13-14.1 Conservation restriction form and recording requirements
- 7:13-14.2 Reservation of rights

SUBCHAPTER 15. APPLICATION REQUIREMENTS

- 7:13-15.1 Hardship exception for an individual permit

SUBCHAPTER 16. EMERGENCY AUTHORIZATIONS

- 7:13-16.1 Standard for issuance of an emergency authorization
- 7:13-16.2 Procedure to request an emergency authorization
- 7:13-16.3 Issuance of emergency authorization; conditions

SUBCHAPTER 17. PRE-APPLICATION CONFERENCES

- 7:13-17.1 Purpose and scope
- 7:13-17.2 Request for a pre-application conference; scheduling; information required

SUBCHAPTER 18. APPLICATION REQUIREMENTS

- 7:13-18.1 Purpose and scope
- 7:13-18.2 General application requirements
- 7:13-18.3 Additional application requirements for an authorization under a general permit-by-certification
- 7:13-18.4 Additional application requirements for a verification, for an authorization under a general permit, or for an individual permit

- 7:13-18.5 Engineering report requirement for an application for a verification based on Methods 4, 5, or 6 or for an individual permit
- 7:13-18.6 Environmental report requirement for an application for an individual permit

SUBCHAPTER 19. REQUIREMENTS FOR AN APPLICANT TO PROVIDE PUBLIC NOTICE OF AN APPLICATION

- 7:13-19.1 Purpose and scope
- 7:13-19.2 Timing of public notice of an application
- 7:13-19.3 Contents and recipients of public notice of an application
- 7:13-19.4 Content and format of newspaper notice
- 7:13-19.5 Documenting public notice of an application

SUBCHAPTER 20. APPLICATION FEES

- 7:13-20.1 Application fees
- 7:13-20.2 Annual adjustment of fees

SUBCHAPTER 21. APPLICATION REVIEW

- 7:13-21.1 General application review provisions
- 7:13-21.2 Completeness review
- 7:13-21.3 Department decision on an application that is complete for review
- 7:13-21.4 Department review and decision on an application for an authorization under general permit 1 for channel cleaning under the Stream Cleaning Act
- 7:13-21.5 Cancellation of an application
- 7:13-21.6 Withdrawal of an application
- 7:13-21.7 Re-submittal of an application after denial, cancellation, or withdrawal
- 7:13-21.8 Fee refund or credit when an application is returned, withdrawn or cancelled

SUBCHAPTER 22. PERMIT CONDITIONS; EXTENSION, MODIFICATION, TRANSFER, SUSPENSION, AND TERMINATION OF VERIFICATIONS, AUTHORIZATIONS, AND PERMITS

- 7:13-22.1 Purpose and scope
- 7:13-22.2 Conditions that apply to all permits
- 7:13-22.3 Extension of a verification, an authorization under a general permit, and an individual permit
- 7:13-22.4 Transfer of an emergency authorization, verification, authorization under a general permit, or an individual permit
- 7:13-22.5 Modification of a verification, an authorization under a general permit, or an individual permit
- 7:13-22.6 Application for a modification
- 7:13-22.7 Suspension of a verification, an authorization under a general permit, an individual permit, or an emergency authorization
- 7:13-22.8 Termination of a verification, an authorization under a general permit, an individual permit, or an emergency authorization

SUBCHAPTER 23. REQUESTS FOR ADJUDICATORY HEARINGS

- 7:13-23.1 Procedure to request an adjudicatory hearing; decision on the request
- 7:13-23.2 Procedure to request dispute resolution
- 7:13-23.3 Effect of request for hearing on operation of permit or authorization
- 7:13-23.4 Notice of settlement agreement

SUBCHAPTER 24. ENFORCEMENT

- 7:13-24.1 General provisions
- 7:13-24.2 Issuance of an administrative order
- 7:13-24.3 Assessment, settlement, and payment of a civil administrative penalty

applicant demonstrates that disturbance to a longer segment of channel cannot feasibly be avoided.

(d) The Department shall authorize the use of construction equipment to perform regulated activities in a channel (whether situated in a channel, reaching into a channel, or driven across a channel) only if, in addition to meeting the requirements of (b) above, the following requirements are satisfied:

1. There is no feasible alternative that will result in less environmental damage;
2. The bed is firm, the approaches are stable and the proposed construction activities will not cause or exacerbate bank erosion;
3. Contact with flowing water is minimized to the maximum extent practicable through the use of temporary bridges, culverts, coffer dams, and/or sediment control devices, which are removed from the channel as soon as possible after completion of the disturbance;
4. Fording the channel is avoided to the maximum extent practicable;
5. Where unavoidable, fording is made as nearly perpendicular to the channel as possible; and
6. Adequate precautions are taken to prevent sediment, petroleum products and other pollutants from entering the channel.

(e) A person shall not drive or operate a vehicle within a channel except in the following cases:

1. It is necessary to operate construction equipment in or across a channel as described in (d) above as part of a temporary construction activity;
2. An emergency vehicle must access a site that has no other feasible means of entry. This does not include repeated visits to the same site by delivery trucks; or
3. The vehicle is driven across a lawfully existing and stable ford that was either constructed prior to October 2, 2006, or which is constructed on agricultural lands and authorized under this chapter.

(f) No person shall dump or discard into a channel any material that could be carried away during a storm and/or obstruct the normal flow of water, such as trash, debris, construction material, leaf piles, lawn clippings, and landscaping material.

Recodified from N.J.A.C. 7:13-10.1 and amended by R.2016 d.055, effective June 20, 2016.

See: 47 N.J.R. 1041(a), 48 N.J.R. 1067(a).

Rewrote (b) through (e); and added (f). Former N.J.A.C. 7:13-11.1, Requirements that apply to all regulated activities, recodified to N.J.A.C. 7:13-12.1.

7:13-11.2 Requirements for a regulated activity in a riparian zone

(a) This section sets forth the design and construction standards under which the Department will issue an individual permit for any regulated activity proposed in a riparian zone.

(b) The Department shall issue an individual permit for any regulated activity or project that results in clearing, cutting, and/or removal of vegetation in a riparian zone only if:

1. The basic purpose of the regulated activity or project cannot be accomplished onsite without clearing, cutting, and/or removal of vegetation in the riparian zone;
2. Clearing, cutting, and/or removal of riparian zone vegetation is minimized through methods including:
 - i. Situating the regulated activity or project as far from any regulated water as feasible; and
 - ii. Limiting construction to actively disturbed areas and/or areas within the benefits and functions of a riparian zone are considerably deteriorated and impaired as a result of previous development, such as:
 - (1) Areas devoid of vegetation, including areas covered with structures or other impervious surface;
 - (2) Abandoned pavement that has partially revegetated;
 - (3) Areas of dirt and gravel that are primarily devoid of vegetation;
 - (4) Eroded embankments; and
 - (5) Landscape islands within a paved parking area;
3. The requirements for each specific regulated activity described in (g) through (y) below are satisfied, including mitigation in accordance with N.J.A.C. 7:13-13, as applicable;

4. All areas from which riparian zone vegetation is temporarily cleared, cut, or removed are replanted in accordance with (z) below; and

5. All additional requirements for each specific regulated activity described elsewhere in this chapter are satisfied.

(c) The Department shall issue an individual permit for a regulated activity that results in clearing, cutting, and/or removal of vegetation within 25 feet of any top of bank only in the following circumstances:

1. The regulated activity lies within an actively disturbed area adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

2. Clearing, cutting, and/or removal of riparian zone vegetation within 25 feet of a top of bank is necessary to undertake riparian zone, freshwater wetlands, and/or habitat restoration and enhancement activities;

3. Clearing, cutting, and/or removal of riparian zone vegetation within 25 feet of a top of bank is necessary to undertake sediment removal activities in accordance with N.J.A.C. 7:13-12.15; or

4. Clearing, cutting, and/or removal of riparian zone vegetation within 25 feet of a top of bank is necessary to construct, reconstruct, or improve a structure that crosses a regulated water or requires proximity to a regulated water.

i. For the purposes of this paragraph, examples of structures that cross a regulated water include new and reconstructed infrastructure projects such as roadways, railroads, utility lines, and footbridges.

ii. For the purposes of this paragraph, examples of structures that require proximity to a regulated water include stormwater discharges, bank stabilization projects, public trails and boardwalks, and improvements to existing infrastructure that are necessary to maintain public safety and which cannot feasibly be improved at a location greater than 25 feet from any top of bank.

iii. The construction of buildings, parking areas, stormwater management facilities, and all other non-water dependent activities, as well as clearing, cutting, and/or removal of vegetation to store vehicles and equipment, does not satisfy this paragraph, except for the reconstruction of a lawfully existing structure currently situated within 25 feet of the top of bank, which cannot feasibly be relocated further from the top of bank.

(d) The Department shall issue an individual permit for a regulated activity within a riparian zone only if all existing onsite impervious surfaces located within 25 feet of the top of bank are removed and the riparian zone is replanted with vegetation in accordance with (z) below, except in the following cases:

1. The regulated activity lies within an actively disturbed area adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water;

2. The applicant demonstrates that removing and/or preventing the replacement of the existing impervious surface would likely exacerbate flooding or erosion, expose hazardous substances or solid waste, or otherwise threaten public health, safety, welfare, and/or the environment. In such a case, all other portions of the riparian zone within 25 feet of the top of bank shall, to the extent feasible and protective of public health, safety, and welfare, and the environment, be replanted with vegetation in accordance with (z) below; or

3. The applicant demonstrates that removing and/or preventing the replacement of the existing impervious surface under this subsection would prevent reasonable use or access to the site and/or cause an unreasonable burden upon the applicant. For example, lawfully existing pavement around a building, which is located within 25 feet of a top of bank, may provide essential access to and around the building and the removal of such impervious surface would result in noncompliance with local building or fire codes and/or disrupt normal access to and throughout the facility. In such cases, all other portions of the riparian zone within 25 feet of the top of bank shall, to the extent feasible, be replanted with vegetation in accordance with (z) below.

(e) Table 11.2 below establishes the maximum allowable area of riparian zone vegetation that can be temporarily or permanently cleared, cut, and/or removed associated with the regulated activities identified at (g) through (y) below without Department approval based upon additional justification as set forth in (g)1, (h)1, (i)2, (j)1, (k)1, (q)1, (t), (u)1, (v), or (w)1 below or Department approval of a hardship exception. Where the area of riparian zone vegetation being cleared, cut, and/or removed exceeds a limit in Table 11.2, or where vegetation is cleared, cut, and/or removed pursuant to (g)3, (h)3, (j)4, (r)2, (s)3, and/or (y) below, mitigation, in accordance with N.J.A.C. 7:13-13, is required. Activities within riparian zones that are not subject to the limits set forth in Table 11.2 are identified in (f) below.

1. Except as provided in (f) below, the total area of riparian zone vegetation cleared, cut, and/or removed for a given regulated activity is calculated by adding the following:

i. The area of any vegetation within the project's limit of disturbance shown on the site plans submitted by the applicant;

ii. The area under the canopy of any trees to be cleared, cut, or removed; and

iii. All other areas not included under (e)1i or ii above, from which vegetation is to be temporarily or permanently cleared, cut, and/or removed to conduct the regulated activity. Areas containing vegetation for a portion of the year, such as agricultural areas that are periodically plowed and cultivated, are considered vegetated for the purposes of this chapter;

2. A person may undertake more than one regulated activity subject to the individual permit requirements identified in Table 11.2 on a single site, provided the requirements in this section for each separate regulated activity are met.

3. Except for the construction of an addition to an existing single-family home or duplex or the construction of an accessory structure under (n) below, the limits listed in Table 11.2 apply to each individual occurrence of a proposed regulated activity on a site or as part of a project.

In (b), substituted "(b)6" for "(b)5" in 1 through 4, added a new 5, and recodified former 5 as 6 and substituted "5" for "4" preceding "above"; in (g), added the third sentence in 3.

Public Notice: Amendments to county and regional water quality management plans.

See: 36 N.J.R. 1611(b), 1611(c), 2085(a), 2940(a), 2940(b), 3436(a), 3436(b), 3437(a), 3591(a), 3591(b), 4178(a), 4542(b), 4846(a), 4846(b), 4848(b), 5165(a), 5168(a), 5170(a), 5171(a), 5458(b), 5458(c).

Public Notice: Amendment to county and regional water quality management plans.

See: 37 N.J.R. 141(b), 907(b), 1235(a), 1888(a), 1888(b), 2704(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 38 N.J.R. 3324(a), 3324(b), 3672(b), 3672(c), 3673(a), 4252(a), 4509(a), 4756(a), 4756(b), 4757(a), 5414(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 39 N.J.R. 109(b), 260(a), 699(a), 699(b), 799(a), 1318(a), 1318(b), 1524(a), 1813(b), 2280(a), 2280(b), 2371(a), 3412(b), 3560(b), 3561(a), 3787(b), 3998(a), 4959(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 40 N.J.R. 215(a), 757(b), 812(a), 2138(a), 2139(a), 2574(b), 3754(a), 4237(b), 4237(c), 4835(b), 5072(a), 5288(a), 5848(a), 5849(a), 6232(c), 6233(a), 6486(b).

Amended by R.2008 d.163, effective July 7, 2008.

See: 39 N.J.R. 1870(a), 39 N.J.R. 2583(b), 40 N.J.R. 4000(a).

Rewrote (b)4; in the introductory paragraph of (c), deleted "and (j)" following "(i)" and substituted "plan" for "Plan" following the fourth occurrence of "WQM"; in (d)3, substituted "BPU-regulated" for "BRC-regulated" twice; rewrote (e); in (f), substituted "DWM" for "ORP" and inserted "or her"; in the introductory paragraph of (g), substituted "The" for "Except as provided in (h) below the"; in (g)1, substituted "Applications" for "Requests", "Division of Watershed Management" for "Office of Regulatory Policy" and "418, 401 East State Street, 7th Floor" for "029", and deleted "in writing" following "submitted"; rewrote the introductory paragraph of (g)2; in (g)2i through (g)3, substituted "application" for "request" throughout; in (g)3, inserted "the Department of Transportation,"; in (g)4i, substituted "BPU-regulated" for "BRC-regulated"; in (g)4iii, (g)6 and (g)7, substituted "DWM" for "ORP" throughout; in (g)7, substituted "one newspaper" for "two newspapers" twice; rewrote the introductory paragraph of (g)9; in (g)10, inserted "or her"; repealed (h); in (i), deleted "in accordance with N.J.A.C. 7:15-3.1" following "established" and updated the first N.J.A.C. reference; rewrote (j); in (k), deleted "present and future" preceding "201", deleted "that are" following the first occurrence of "Plans" and substituted "Watershed Management" for "Water Resources"; and rewrote (l).

Public Notice: Amendments to county and regional water quality management plans.

See: 41 N.J.R. 315(a), 671(a), 677(a), 677(b), 679(a), 815(b), 896(a), 1107(b), 1108(a), 1271(a), 1898(b), 2345(b), 3967(a), 4321(b), 4833(c).

Public Notice: Amendments to county and regional water quality management plans.

See: 42 N.J.R. 598(a), 639(a), 640(a), 1087(b), 1252(c), 1630(a), 1633(a), 2276(c), 2498(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 43 N.J.R. 207(a), 1210(a), 1212(a), 1378(a), 1457(a), 1604(a), 2674(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 44 N.J.R. 939(a), 1163(a), 1163(b), 1662(a), 1663(a), 1730(a), 2064(c), 2133(a), 2135(a), 2909(a), 2909(b), 3084(a).

Public Notice: Public Notice Regarding Site Specific Water Quality Management Plan Amendments.

See: 44 N.J.R. 1568(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 45 N.J.R. 57(b), 374(a), 474(b), 761(a), 764(a), 765(a), 1187(a), 1251(b), 1252(a), 1253(a), 1259(a), 1415(a), 1421(a), 1422(a), 1423(a), 1662(a), 1666(a), 1668(a), 1848(b), 1856(a), 1968(a), 2047(b), 2268(b), 2403(a), 2435(b), 2488(a), 2499(a), 2614(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 46 N.J.R. 240(a), 400(b), 459(a), 643(c).

Public Notice: Amendments to county and regional water quality management plans.

See: 47 N.J.R. 733(b), 2005(a), 2397(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 48 N.J.R. 231(a), 446(a), 448(a), 454(a), 508(a), 1320(a), 1321(a).

Public Notice: Amendments to county and regional water quality management plans.

See: 48 N.J.R. 231(a), 446(a), 448(a), 454(a), 508(a), 1320(a), 1321(a), 1389(b).

Case Notes

Where Department of Environmental Protection failed to act within 60 days upon county's petition to amend water quality management plan, builder had continuing right to seek legal recourse so long as Department failed to act. *Toll Bros., Inc. v. State, Dept. of Environmental Protection*, 242 N.J.Super. 519, 577 A.2d 845 (A.D.1990).

Failure to timely act on application to amend does not require automatic approval. *Toll Bros., Inc. v. State, Dept. of Environmental Protection*, 242 N.J.Super. 519, 577 A.2d 845 (A.D.1990).

Interested party may bring action to compel Department of Environmental Protection to act. *Toll Bros., Inc. v. State, Dept. of Environmental Protection*, 242 N.J.Super. 519, 577 A.2d 845 (A.D.1990).

7:15-3.5 Water quality management plan review, revision, and certification

(a) The Department and the designated planning agencies shall periodically review Statewide and areawide WQM Plans in order to propose appropriate amendments under N.J.A.C. 7:15-3.4, and to prepare appropriate revisions under this section.

(b) An application for a revision shall be submitted in writing to the Department in accordance with (d) below. The Department and the designated planning agencies shall prepare revisions to Statewide and areawide WQM Plans under this section whenever such revisions are necessary to:

1. Correct, clarify, or update erroneous, unclear, or outdated statements in Statewide and areawide WQM Plans regarding:

- i. Development and wastewater treatment facilities existing at the time of the most recently adopted areawide WQM plan or amendment affecting the site; or

- ii. Proposed projects, provided that all other Department approvals were received, in full compliance with applicable regulations, at the time of the most recently adopted areawide WQM plan or amendment affecting the site;

2. Transfer or assign wastewater management plan responsibility under N.J.A.C. 7:15-5.13;

3. Revise schedules for submission of wastewater management plans under N.J.A.C. 7:15-5.23(f);

4. Provide for the following substantive changes in Statewide and areawide WQM Plans where the Department determines, based on its assessment that the project for which the revision is proposed complies with the environmental standards established at N.J.A.C. 7:15-5.24 and

5.25, as applicable, that no significant individual or cumulative impacts will occur to environmentally sensitive areas or other natural resources (such as water supplies) due to the proposed revision (individually or in combination with past revisions in the area), that the changes are consistent with N.J.A.C. 7:15-3.6, 3.7, and 3.10 and that certain directly affected municipal and county agencies and other interests as identified by the Department have been provided an opportunity to review and comment on the proposed revision:

i. Any increase in flow (including both increased loadings and no increased loadings) from industrial treatment works where no change in wastewater service area or discharge type (for example, discharge to surface water or ground water) is proposed, the discharge is not to an impaired waterbody segment for which a TMDL has been proposed or adopted under N.J.A.C. 7:15-6.3 and where the applicant demonstrates there is adequate water supply in accordance with the most recent New Jersey State Water Supply Plan for the proposed additional flow. If the discharge is to an impaired waterbody and the discharge contains any of the parameters that are the basis for the impaired listing, the expansion may be allowed if the expansion is consistent with the WLAs set forth in an adopted TMDL developed for the affected waterbody for the listed parameters in the discharge. The Department may process such revisions prior to or simultaneously with a NJPDES permit for the same change in flow;

ii. The transfer of sewer service area from one domestic treatment works to another, provided that all affected wastewater management plans are current in accordance with the schedule at N.J.A.C. 7:15-5.23, the approved sewer service areas in the areawide WQM plan are currently contiguous in the area to be transferred, neither domestic treatment works is subject to a sewer connection ban, the proposed revision includes only areas currently designated for sewer service, both the sending and receiving wastewater management planning agencies concur with the proposed revision, and no new or expanded treatment works other than sewer line extensions is proposed as part of the revision;

iii. Any increase of 8,000 gpd or less in planning flow to an on-site discharge to ground water for an existing public school or public institution, using the same general type of treatment works (for example, direct discharge to ground water, spray irrigation);

iv. Any change in the estimated planning flow (see N.J.A.C. 7:15-5.16(b)8) or permitted flow (see N.J.A.C. 7:15-5.16(b)9) of less than 8,000 gallons per day to an existing NJPDES-regulated discharge to ground water, provided (b)4v below is satisfied unless the sewer service area is not changing and the same general type of treatment works is proposed;

v. Expansion of a future sewer service area to contiguous lots, where the expansion involves less than 100

acres, contributes less than 8,000 gallons per day of additional wastewater flow, and does not create a significantly new pattern of sewered development such that a significant potential or incentive is created for additional revisions or amendments to open new areas to sewered development. A revision under this subparagraph shall be processed only if the applicant demonstrates that the receiving domestic treatment works has sufficient capacity under the projected build-out to serve the proposed development in addition to its existing approved sewer service area, and any affected wastewater management plan is current in accordance with the schedule at N.J.A.C. 7:15-5.23;

vi. The utilization of individual subsurface sewage disposal systems where the project for which the revision is requested involves less than 100 acres and generates less than 8,000 gallons per day of wastewater flow (or a total of fewer than 23 residential dwelling units), only where the WMP is not in compliance with the schedule at N.J.A.C. 7:15-5.23 and the applicant demonstrates that the project for which the revision is proposed meets the nitrate planning standard at N.J.A.C. 7:15-5.25(h)2;

vii. The utilization of a RWBR project to reduce either existing or proposed wastewater discharges to surface waters below the head of tide or ground water discharges located within HUC 14 drainage areas which are wholly below the head of tide;

viii. The utilization of a RWBR project to reduce existing wastewater discharges to surface waters above the head of tide or ground water discharges located within HUC 14 drainage areas any part of which is above the head of tide, provided the following are met:

(1) The utilization of RWBR will not increase or create an exceedance of the water availability in any HUC 11 in accordance with the assessment of water availability identified in the New Jersey State Water Supply Plan; and

(2) The utilization of RWBR does not cause an adverse effect on any downstream designated use, including without limitation, water supply, sewage treatment plant discharges, or aquatic life support;

ix. Connection of an existing structure with a malfunctioning subsurface sewage disposal system that is not currently within an approved sewer service area to an identified sewage treatment plant, provided the applicant demonstrates that it is not feasible to repair or replace the malfunctioning subsurface sewage disposal system under N.J.A.C. 7:9A-3.4 and the property where the existing structure is located is contiguous to the existing sewer line; or

x. The utilization of individual subsurface sewage disposal systems or a NJPDES-regulated discharge to ground water for a clustered residential development,