

"Solid waste facility" means a facility that is licensed by the State to receive, store and/or process solid waste.

"Stormwater" means water resulting from precipitation (including rain and snow) that runs off the land's surface, is transmitted to the subsurface or is captured by separate storm sewers or other sewage or drainage facilities.

"Stormwater management basin" means an impoundment created by constructing an embankment, excavating a pit and/or erecting or placing a structure, for the purpose of managing stormwater runoff. A stormwater management basin can be designed to be normally dry (as in a detention or infiltration basin), retain a permanent pool of water (as in a retention basin or wet pond), and/or be planted mainly with vegetation suitable for freshwater wetlands (as in most constructed stormwater wetlands).

"Stormwater runoff" means water flow on the surface of the ground or in storm sewers, resulting from precipitation.

"Structure" means any assemblage of material by humans, including, but not limited to, a berm, bridge, bulkhead, building, cable, causeway, culvert, dam, dike, embankment, fence, jetty, levee, pavement, piling, pipe, post, railroad, retaining wall, roadway, stormwater management basin, tower, utility pole or wire. Vegetation is not a structure. Soil bioengineering material that includes vegetation as well as other material is a structure.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its condition before damage would equal or exceed 50 percent of the market value of the structure before the damage occurred. Restoration of a substantially damaged structure shall constitute a substantial improvement as defined in this section.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure as determined before the start of construction of the improvement. This term includes structures that have sustained substantial damage regardless of the actual repair work performed. Substantial improvement does not include:

1. Any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of a building designated by the State as an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

"Suitably anchored" means secured to resist flotation, collapse and displacement due to floodwaters. A structure

shall be considered to be suitably anchored if the structure is erected in accordance with the requirements for flood-resistant construction in the International Building Code, incorporated herein by reference. Copies of the International Building Code can be obtained at the following address:

International Code Council, Inc.
4051 West Flossmoor Road
Country Club Hills, Illinois 60477
Telephone: (888) 422-7233

"Temporary" means a regulated activity that occupies, persists and/or occurs on a site for no more than six months. For example, a fill or structure is temporary if, within six months of its placement, the fill or structure is removed from the site, all disturbed regulated areas are restored to their original topography and all necessary measures are implemented to ensure that the original vegetative cover onsite is restored to its previous (or an improved) condition.

"Threatened or endangered species" means a species identified pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Endangered Species Act of 1973, 16 U.S.C. §§1531 et seq. or the Endangered Plant Species List, N.J.A.C. 7:5C-5.1, and any subsequent amendments thereto.

"Tree" means a woody plant which is five inches or greater in diameter at a height of 4.5 feet above the ground.

"Trout maintenance water" means a section of water designated as trout maintenance in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B.

"Trout production water" means a section of water identified as trout production in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B.

"Trout stocked water" means a section of water stocked with trout by the Department's Division of Fish and Wildlife and listed in N.J.A.C. 7:25-6.

"Unsecured material" means the following:

1. A structure that is not suitably anchored; and
2. Material placed on the surface of the ground, which would likely become buoyant, mobile or lifted by water during a flood, or otherwise be transported offsite by floodwaters. Examples include building material, construction equipment, landscaping material, patio furniture, piles of soil, stone or wood, trash, vegetation in planters or root balls, and vehicles.

"USDA" means the United States Department of Agriculture.

"USGS quad map" means a topographic quadrangle map issued by the United States Geologic Survey (USGS), 7.5 minute series, drawn at a scale of 1:24,000, available from the Department at the address listed in N.J.A.C. 7:13-1.1(g).

"Utility line" means a pipe, cable, line or wire for the transport or transmission of gases, liquids, electrical energy or communications. This term includes a pole or tower required to support a utility line, but does not include a tower that only transmits or receives electromagnetic waves through the air, such as for radio, television or telephone transmission.

"Verification" means a document issued by the Department under N.J.A.C. 7:13-6, which establishes the flood hazard area design flood elevation, flood hazard area limit, floodway limit, and/or riparian zone limit on a site.

"Water" means a collection of water on the surface of the ground, including, but not limited to, a bay, brook, creek, ditch, lake, pond, reservoir, river or stream. A water also includes the path or depression through which the water flows or is confined. A water that is piped, relocated or otherwise modified remains a water. A storm sewer is not a water unless it was constructed to replace or divert a previously existing water.

"Water control structure" means a structure within or adjacent to a water, which intentionally or coincidentally alters the hydraulic capacity, design flood elevation, flood hazard area limit and/or floodway limit of the water. Examples of a water control structure include a bridge, culvert, dam, embankment, ford (if above grade), retaining wall and weir.

"Water surface elevation" means the elevation of the surface of a water, measured in feet NGVD, and determined either by special calculation or gauge. For the purposes of determining compliance with a requirement of this chapter, a water surface elevation is rounded to the nearest 0.1 feet.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

Deleted definitions "Crawl space", "Dry flood-proofing" and "FEMA flow rate"; in definition "FEMA flood insurance study", inserted the first occurrence of "flood insurance" and the third sentence, and deleted "or flood profiles," following "studies"; added definitions "FEMA 100-year flood elevation", "Flood-proofing", "Multi-residence building", "100-year flow rate", "Substantial damage" and "Substantial improvement"; rewrote definitions "Lowest floor", "Reconstruct" and "Repair"; and in definition "Public building", deleted former paragraph 8, recodified former paragraphs 9 and 10 as paragraphs 8 and 9 and in paragraph 9, substituted "8" for "9".

7:13-1.3 Types of permits and approvals

(a) This chapter establishes procedures and requirements for the following permits and approvals:

1. An applicability determination, in accordance with N.J.A.C. 7:13-5;
2. A verification, in accordance with N.J.A.C. 7:13-6;
3. A permit-by-rule, in accordance with N.J.A.C. 7:13-7;
4. A general permit, in accordance with N.J.A.C. 7:13-8;

5. An individual permit, in accordance with N.J.A.C. 7:13-9, 10 and 11;

6. An emergency permit, in accordance with N.J.A.C. 7:13-12;

7. A revision of an verification, general permit authorization, individual permit or Department delineation, in accordance with N.J.A.C. 7:13-13; and

8. A transfer of an approval to another person, in accordance with N.J.A.C. 7:13-14.1.

(b) Only the following persons or entities may qualify to obtain or operate under the permits and approvals listed at (a) above:

1. The owner(s) of the site on which the regulated activity is proposed or conducted. If the regulated activity is proposed or conducted within a right-of-way or easement, the Department shall be provided written consent for the regulated activity from the owner(s) of the right-of-way or easement;

2. An agent that has been designated by the owner(s) of the site on which the regulated activity is proposed or conducted to obtain or operate under a permit or approval on behalf of the owner(s); or

3. A public entity that is proposing work within an existing or proposed right-of-way or easement, which is owned or controlled by that entity or which will be appropriated by that entity under the power of eminent domain.

(c) The Department shall review an application for a permit or approval listed in (a) above according to this chapter in effect on the day that a complete application is received by the Department. Any amendments to this chapter that are promulgated after the receipt of a complete application (as described by the application requirements for each type of permit or approval under this chapter) shall not affect the Department's review of that application, unless otherwise agreed to in writing by both the Department and the applicant.

(d) A person submitting an application under this chapter shall, to the extent that the person is aware, notify the Department of all facts relevant to the review of the application including, but not limited to, the presence of regulated areas and of threatened or endangered species onsite, history of flooding and previous flood damages onsite and the location of easements and other encumbrance on the property. Failure to provide all necessary information of which the applicant, its consultants, engineers, surveyors or agents is aware may result in the denial of an application or the suspension or termination of an approval, and may subject the applicant, its consultants, engineers, surveyors or agents to enforcement action pursuant to N.J.A.C. 7:13-19 for submittal of false information.

7:13-2.4 Regulated activities

(a) Any action that includes or results in one or more of the following constitutes a regulated activity under this chapter if undertaken in a regulated area, as described at N.J.A.C. 7:13-2.3:

1. The alteration of topography through excavation, grading and/or placement of fill;
2. The clearing, cutting and/or removal of vegetation in a riparian zone;
3. The creation of impervious surface;
4. The storage of unsecured material;
5. The construction, reconstruction and/or enlargement of a structure; and
6. The conversion of a building into a private residence or a public building.

SUBCHAPTER 3. DETERMINING THE FLOOD HAZARD AREA AND FLOODWAY

7:13-3.1 General provisions for determining the flood hazard area and floodway along a regulated water

(a) This subchapter provides six methods for determining the flood hazard area and floodway along a regulated water as follows:

1. Method 1 (Department delineation method) as described at N.J.A.C. 7:13-3.3;
2. Method 2 (FEMA tidal method) as described at N.J.A.C. 7:13-3.4(d);
3. Method 3 (FEMA fluvial method) as described at N.J.A.C. 7:13-3.4(e);
4. Method 4 (FEMA hydraulic method) as described at N.J.A.C. 7:13-3.4(f);
5. Method 5 (approximation method) as described at N.J.A.C. 7:13-3.5; and
6. Method 6 (calculation method) as described at N.J.A.C. 7:13-3.6.

(b) The flood hazard area is the land, and the space above that land, which lies below the flood hazard area design flood elevation, as defined at N.J.A.C. 7:13-1.2. The six methods described in (a) above provide the flood hazard area design flood elevation, from which the flood hazard area limit on a site is determined. In some cases, the limits of the floodway can also be determined using these methods.

(c) In most cases, the Department shall issue an individual permit under this chapter only if the applicant has determined

the flood hazard area and floodway limits on the site, and has received a verification for these limits from the Department pursuant to N.J.A.C. 7:13-6.1. However, under certain conditions as set forth at N.J.A.C. 7:13-9.6, the flood hazard area and/or floodway limits need not be verified in order for the Department to be able to determine whether a regulated activity complies with this chapter. Furthermore, a verification is not required prior to obtaining a general permit authorization under this chapter, except for certain cases as noted under general permits 5, 6 and 7 at N.J.A.C. 7:13-8.7, 8.8 and 8.9, respectively.

(d) The flood hazard area and floodway described in this subchapter may differ from areas identified as a "flood hazard area," "flood zone," "floodplain" or "floodway" by another public entity such as FEMA or a local government. The methods listed at (a) above are specifically designed and intended for determining compliance with the construction standards and requirements of this chapter.

7:13-3.2 Selecting a method for determining the flood hazard area and floodway along a regulated water

(a) There are a number of factors that influence the selection of a method for determining the flood hazard area and floodway on a given site, as set forth in (b) through (e) below. These factors include the existence of a Department delineation or FEMA flood insurance study, whether the applicant prefers to calculate the flood hazard area and/or floodway limits and what type of project is proposed. Furthermore, each method has certain limitations on its usefulness and availability as described in this subchapter. Applicants are encouraged to carefully review the entire subchapter before selecting a method.

(b) Where a Department delineation for a regulated water has been promulgated on or after January 24, 2013, an applicant shall determine the flood hazard area and floodway limits using this delineation in accordance with Method 1, as set forth at N.J.A.C. 7:13-3.3.

(c) Where a Department delineation for a regulated water has been promulgated prior to January 24, 2013, an applicant may:

1. Determine the flood hazard area and/or floodway in accordance with (c)i or ii below, whichever results in a higher flood hazard area design flood elevation and wider floodway limit:

- i. The Department delineation described in (c) above, in accordance with Method 1, as set forth at N.J.A.C. 7:13-3.3; or

- ii. FEMA mapping, in accordance with Method 2 in a tidal flood hazard area or Method 3 in a fluvial flood hazard area, as set forth at N.J.A.C. 7:13-3.4(d) and (e), respectively; or

2. Determine the flood hazard area and/or floodway by calculation, in accordance with Methods 4 or 6, as set forth at N.J.A.C. 7:13-3.4(f) and 3.6, respectively.

(d) Where no Department delineation exists for a regulated water, an applicant may:

1. Determine the flood hazard area and/or floodway using FEMA mapping, provided such mapping exists for the section of regulated water in question, in accordance with Methods 2, 3, or 4, as set forth at N.J.A.C. 7:13-3.4(d), (e), and (f), respectively;

2. Determine the approximate limit of the flood hazard area in accordance with Method 5, as set forth at N.J.A.C. 7:13-3.5, provided no FEMA mapping exists for the section of regulated water in question; or

3. Determine the flood hazard area and/or floodway by calculation, in accordance with Method 6, as set forth at N.J.A.C. 7:13-3.6.

(e) The flood hazard area and floodway shall be determined using only one method for each regulated water on a site, except in the following cases:

1. If a Department delineation or FEMA flood insurance study terminates within a site, the flood hazard area on the remainder of the site may be delineated using another applicable method described in this subchapter; and

2. If Method 3 is used to delineate the flood hazard area but no FEMA floodway map exists for the section of regulated water in question, and determining the floodway is necessary to demonstrate compliance with the requirements of this chapter, the applicant shall use Method 4 to calculate the floodway.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

Rewrote the section.

7:13-3.3 Flood hazard area and floodway based on a Department delineation (Method 1)

(a) This section sets forth the procedure for determining a flood hazard area design flood elevation and floodway limit from a Department delineation. Appendix 2 of this chapter lists the Department delineated waters of New Jersey. Requests for copies of a Department delineation, including flood profiles and maps, as well as any questions regarding the use, derivation or modification of these delineations, should be directed to the Department's Office of Floodplain Management at the following address:

State of New Jersey
Department of Environmental Protection
Bureau of Dam Safety and Flood Control
P.O. Box 419
Trenton, New Jersey 08625-0419
Telephone: (609) 984-0859

(b) Under Method 1:

1. The flood hazard area design flood elevation is that which is shown on the flood profile adopted as part of the Department delineation; and

2. The floodway limit is that which is shown on the flood maps adopted as part of the Department delineation.

(c) The flood hazard design elevation and floodway limits for a regulated water depicted on a FEMA map that includes the Department's flood hazard area design flood elevation and that reflects FEMA's final determination of the 100-year flood elevation (base flood elevation) effective pursuant to 44 CFR 67.10 are incorporated into this chapter as the Department delineation of the regulated water.

1. The Department shall publish notice in the New Jersey Register of any flood hazard area design flood elevation and floodway limits so incorporated. The notice shall include any necessary administrative change to the list of delineated waters in Appendix 2.

(d) An applicant seeking to modify a Department delineation shall submit an application for a revision as provided at N.J.A.C. 7:13-13.4.

(e) If an applicant proposes construction in a Department delineated floodway, and must prepare hydraulic calculations to demonstrate that the construction meets the requirements of this chapter, the applicant shall base the calculations on the the flow rates and other hydraulic data that were used to determine the flood hazard area and floodway limits in the Department delineation. Such data is available from the Department at the address listed in (a) above.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

Rewrote the introductory paragraph of (b); added new (c); recodified former (c) and (d) as (d) and (e); and rewrote (e).

7:13-3.4 Flood hazard area and floodway based on a FEMA flood insurance study (Methods 2 through 4)

(a) This section sets forth the procedure for determining a flood hazard area design flood elevation and floodway limit from a FEMA flood insurance study FEMA flood maps can be viewed at <https://msc.fema.gov>. Requests for copies of the available FEMA flood insurance studies as well as any questions regarding their use, derivation or modification, should be directed to FEMA at (800) 358-9616.

(b) The methods set forth in this section for determining the flood hazard area and floodway along a regulated water may be used only if the following requirements are satisfied:

1. A FEMA flood insurance study exists for the section of regulated water in question, which is dated January 31, 1980, or later, and includes the information needed for the Method that is being used. For example, Methods 2 and 3

below require that the FEMA flood insurance study includes the regulated water's 100-year flood elevation, and Method 4 below requires that the FEMA study includes the regulated water's 100-year flow rate; and

2. The floodway limits and 100-year flow rate being used are the most recently released by FEMA for the municipality in which the site is located, including any advisory, proposed, or effective mapping.

(c) There are three methods by which a FEMA flood insurance study may be used to determine the flood hazard area and floodway limit along a regulated water as follows:

1. Method 2 (FEMA tidal method), set forth at (d) below, which applies to a tidal flood hazard area for which a FEMA flood profile exists for the section of regulated water in question. If the FEMA flood insurance study does not provide a 100-year flood elevation, it is not possible to use this method;

2. Method 3 (FEMA fluvial method), set forth at (e) below, which applies to a fluvial flood hazard area for which a FEMA flood profile exists for the section of regulated water in question. If the FEMA flood insurance study does not provide a 100-year flood elevation, it is not possible to use this method; and

3. Method 4 (FEMA hydraulic method), set forth at (f) below. This method may be used only if the following requirements are satisfied:

i. The FEMA flood insurance study provides a 100-year flow rate for the regulated water. In most tidal flood hazard areas a large area is inundated due to flooding from the Atlantic Ocean, and therefore FEMA does not provide a 100-year flow rate for the regulated water itself. In such a case, it is not possible to use this method; and

ii. The applicant proposes a regulated activity in the flood hazard area and applies for an individual permit under this chapter, for which the Department requires hydraulic calculations comparing pre-construction and post-construction water surface elevations within the regulated water, in order to demonstrate that the regulated activity complies with this chapter. Examples of activities that require such an analysis are detailed at N.J.A.C. 7:13-11.1(f), 11.1(g), 11.7(c) and 11.7(d).

(d) Under Method 2 (FEMA tidal method):

1. The flood hazard area design flood elevation shall be equal to the FEMA 100-year flood elevation; and

2. The floodway limit shall be determined as follows:

i. If a FEMA floodway map exists for the section of regulated water in question, the floodway limit shall be equal to the floodway limit shown on the FEMA floodway map; or

ii. If no FEMA floodway map exists for the section of regulated water in question, the floodway limit shall

be equal to the limits of the channel. The Atlantic Ocean and other non-linear tidal waters such as bays and inlets do not have a floodway.

(e) Under Method 3 (FEMA fluvial method):

1. The flood hazard area design flood elevation shall be equal to one foot above the FEMA 100-year flood elevation; and

2. The floodway limit shall be determined as follows:

i. If a FEMA floodway map exists for the section of regulated water in question, the floodway limit shall be equal to the floodway limit shown on the FEMA floodway map; or

ii. If no FEMA floodway map exists for the section of regulated water in question, the floodway limit cannot be determined using this method. The applicant shall instead calculate the floodway limit using Method 4 as described in (f) below. In such a case, applicants are encouraged to first contact the Department to discuss whether it is necessary to determine the floodway limit on a site for a given project.

(f) Under Method 4 (FEMA hydraulic method):

1. The flood hazard area design flood elevation and floodway limit shall be based on a standard step backwater analysis and determined as follows:

i. For a tidal flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using the 100-year flow rate reported by FEMA for the regulated water (see (c)3i above);

ii. For a fluvial flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using 125 percent of the 100-year flow rate reported by FEMA for the regulated water; and

iii. A hydraulic analysis shall be performed to determine the floodway limit using the 100-year flow rate reported by FEMA for the regulated water, assuming a maximum rise of 0.2 feet in the 100-year flood elevation. The floodway limits shall be calculated assuming equal conveyance reduction, unless the applicant demonstrates (prior to the submission of an application for a verification to the Department) that due to the topography of the area, the proximity of structures to the channel and/or other physical characteristics of the watershed or flood hazard area, use of another method will more optimally calculate the floodway limits at a given location.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (a), deleted "where no Department delineation exists" following "study" and "or flood profiles" following "studies", and inserted the second sentence; deleted former (b)1; recodified former (b)2 as (b)1; rewrote (b)1; and added new (b)2.

7:13-3.5 Flood hazard area determined by approximation (Method 5)

(a) This section sets forth the procedure for approximating a flood hazard area design flood elevation using the method described in chapter Appendix 1. This method does not provide a floodway limit. Therefore, the Department shall issue an individual permit for a regulated activity within an approximated flood hazard area only if the project meets the requirements at N.J.A.C. 7:13-9.7.

(b) The flood hazard area design flood elevation for a regulated water can be approximated under Method 5, provided the following requirements are satisfied:

1. Method 1 (Department delineation method) set forth at N.J.A.C. 7:13-3.3 cannot be used because no Department delineation exists for the section of regulated water in question;

2. Methods 2 through 4 (FEMA fluvial, FEMA tidal and FEMA hydraulic methods) set forth at N.J.A.C. 7:13-3.4 cannot be used because no qualifying FEMA flood insurance study exists for the section of regulated water in question; and

3. The drainage area of the water at the project site does not exceed 30 square miles.

(c) An applicant may elect to establish the approximate flood hazard area limit at an elevation higher than that which is provided by Method 5 in order to match an existing topographic feature onsite, such as the top of an embankment, or to run concurrent with a verified freshwater wetland or transition area line.

(d) Method 5 is intended to be conservative and may in some cases overestimate the actual limits of flooding onsite to ensure that public health, safety and welfare is adequately protected in absence of a Department delineation or FEMA flood insurance study.

(e) If the Department determines that using Method 5 to approximate a flood hazard area will significantly underestimate the depth of flooding on a particular site due to an unusual hydrologic or hydraulic condition within the drainage area, or due to a unique feature on or near the site, the Department shall not approve a general permit authorization or an individual permit for any regulated activity in the approximated flood hazard area if such approval is determined to constitute a threat to public safety. Should the applicant choose to apply for a permit in such a case, the flood hazard area limit shall first be calculated according to Method 6, as described at N.J.A.C. 7:13-3.6.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (d), deleted the last sentence.

7:13-3.6 Flood hazard area and floodway determined by calculation (Method 6)

(a) This section sets forth the procedure for determining a flood hazard area design flood elevation and floodway limit via hydrologic and hydraulic calculations.

(b) If the following conditions exist, Method 6 is the only method by which an applicant may determine the flood hazard area and floodway along a regulated water:

1. Method 1 (Department delineation method) set forth at N.J.A.C. 7:13-3.3 cannot be used because no Department delineation exists for the section of regulated water in question;

2. Methods 2 through 4 (FEMA fluvial, FEMA tidal and FEMA hydraulic methods) set forth at N.J.A.C. 7:13-3.4 cannot be used because no qualifying FEMA flood insurance study exists for the section of regulated water in question; and

3. Method 5 (approximation method) set forth at N.J.A.C. 7:13-3.5 cannot be used for one of the following reasons:

- i. The requirements for using the approximate method at N.J.A.C. 7:13-3.5(b) are not satisfied;

- ii. The Department determines that the approximate method will significantly underestimate the depth of flooding on the site in question, pursuant to N.J.A.C. 7:13-3.5(e); or

- iii. The applicant is proposing a regulated activity for which the requirements at N.J.A.C. 7:13-9.7 are not satisfied.

(c) Under Method 6, the flood hazard area design flood elevation and floodway limit shall be based on a standard step backwater analysis and determined as follows:

1. A hydrologic analysis shall be performed to determine the peak flow rate for the 100-year flood for the regulated water. The hydrologic analysis shall assume existing development conditions in the drainage area, as of the date of the application to the Department;

2. For a tidal flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using the 100-year flow rate determined under (c)1 above;

3. For a fluvial flood hazard area, a hydraulic analysis shall be performed to determine the flood hazard area design flood elevation using 125 percent of the 100-year flow rate determined under (c)1 above; and

4. A hydraulic analysis shall be performed to determine the floodway limit using the 100-year flow rate determined under (c)1 above, assuming a maximum rise of 0.2 feet in the 100-year flood elevation. The floodway limits shall be calculated assuming equal conveyance reduction, unless

the applicant demonstrates (prior to the submission of an application for a verification to the Department) that due to the topography of the area, the proximity of structures to the channel and/or other physical characteristics of the watershed or flood hazard area, use of another method will more optimally calculate the floodway limits at a given location.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (a), deleted the last sentence.

SUBCHAPTER 4. DETERMINING THE RIPARIAN ZONE

7:13-4.1 The riparian zone

(a) A riparian zone exists along every regulated water, except there is no riparian zone along the Atlantic Ocean nor along any manmade lagoon, stormwater management basin, or oceanfront barrier island, spit or peninsula.

(b) The riparian zone includes the land and vegetation within each regulated water described in (a) above, as well as the land and vegetation within a certain distance of each regulated water as described in (c) below. The portion of the riparian zone that lies outside of a regulated water is measured landward from the top of bank. If a discernible bank is not present along a regulated water, the portion of the riparian zone outside the regulated water is measured landward as follows:

1. Along a linear fluvial or tidal water, such as a stream, the riparian zone is measured landward of the feature's centerline;
2. Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;
3. Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water; and
4. Along an amorphously-shaped feature, such as a wetland complex, through which a regulated water flows but which lacks a discernible channel, the riparian zone is measured landward of the feature's centerline.

(c) The width of the riparian zone along each regulated water described in (a) above is as follows:

1. The riparian zone is 300 feet wide along both sides of any Category One water, and all upstream tributaries situated within the same HUC-14 watershed;
2. The riparian zone is 150 feet wide along both sides of the following waters not identified in (c)1 above:
 - i. Any trout production water and all upstream waters (including tributaries);

ii. Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;

iii. Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and

iv. Any segment of a water flowing through an area that contains acid producing soils; and

3. The riparian zone is 50 feet wide along both sides of all waters not identified in (c)1 or 2 above.

(d) The riparian zones established by this chapter are separate from and in addition to any other similar zones or buffers established to protect surface waters. For example, the Stormwater Management rules at N.J.A.C. 7:8 and the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38 establish 300-foot Special Water Resource Protection Areas and buffers, respectively, along certain waters. Furthermore, the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A establish 50-foot and 150-foot transition areas along freshwater wetlands and other features that are also regulated under this chapter. Compliance with the riparian zone requirements of this chapter does not constitute compliance with the requirements imposed under any other Federal, State or local statute, regulation or ordinance.

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 177) adopted, concluding that where (1) petitioner in 2003 applied to the local board of adjustment to construct a building with mixed residential and office use and parking near Pascack Brook, (2) the local board of adjustment in January 2004 issued a resolution that gave site plan approval for the development, but which was conditioned upon petitioner receiving approval from the county planning board and any other governmental agencies, if required, and complying with "any and all State and Federal laws and applicable regulations," (3) the Department of Environmental Protection in August 2004 upgraded Pascack Brook to a Category One water at a time when petitioner had not yet commenced construction, petitioner's argument that it was unfair to not grandfather the project was without merit; courts have upheld new Department requirements on development that had previously received site plan or subdivision approval, when necessary to promote public health and safety (decided under former rules). ANM Realty v. N.J. Dep't of Env'tl. Prot., OAL Dkt. No. ESA 1029-06, 2007 N.J. AGEN LEXIS 918, Final Decision (August 3, 2007).

SUBCHAPTER 5. APPLICABILITY DETERMINATIONS

7:13-5.1 General provisions for applicability determinations

(a) A flood hazard area applicability determination is the Department's statement of whether an activity is regulated and, therefore, requires a permit under this chapter.

(b) An applicability determination is optional. However, if it is unclear whether a particular activity is regulated, the Department encourages applicants to obtain an applicability determination prior to commencing work since unauthorized regulated activities may result in enforcement action pursuant to N.J.A.C. 7:13-19.

(c) An application for an applicability determination shall contain the following:

1. One copy of an application report, as described at N.J.A.C. 7:13-15.3; and

2. One set of drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, detailing the proposed activities. If fill or grading is proposed, the drawing shall show existing and proposed topography unless the Department determines that topography is not necessary to determine compliance with this chapter. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary.

(d) After reviewing an application for an applicability determination, the Department shall:

1. Notify the applicant that the application did not include all the material required at (c) above and request the missing information. The Department may cancel the request for an applicability determination if the missing information is not provided within 60 calendar days. Otherwise, when the requested material is received, the Department shall take one of the actions in (d)2 below; or

2. Inform the applicant in writing that:

i. The Department is unable to determine whether this chapter applies to the proposed activities because the limit of the flood hazard area and/or riparian zone onsite cannot be determined without additional information. Therefore, the Department shall not issue an applicability determination until the applicant obtains a verification under N.J.A.C. 7:13-6;

ii. This chapter does not apply to the proposed activity and no permit is required pursuant to N.J.A.C. 7:13-2.1, provided the chapter is not amended to establish stricter standards or conditions; or

iii. This chapter does apply to the proposed activities and the regulated activities must be conducted in accordance with a permit pursuant to N.J.A.C. 7:13-2.1. The Department will also inform the applicant whether the proposed activities qualify for a permit-by-rule or whether an application for a general permit authorization or individual permit is necessary, provided the application contains sufficient detail regarding the proposed activities for the Department to make such a determination.

(e) Workload permitting, the Department shall make a final decision on an application for an applicability determination

within 30 calendar days of receiving a complete application.

(f) Except as provided in (g) below, an applicability determination is valid for five years from its issuance date and shall not be extended. However, an applicant may request a new applicability determination to replace an expired one by submitting an application under (c) above. An applicability determination may also be transferred upon the sale of a property to which it applies to a new owner pursuant to N.J.A.C. 7:13-14.1.

(g) If the Department determines under (d)2ii above that this chapter does not apply to a proposed activity, and this chapter is subsequently amended to put in place stricter standards or conditions such that the proposed activity becomes regulated, or else the Department amends the flood hazard area or riparian zone onsite such that the proposed activity now lies within one of these regulated areas, the applicability determination shall become void and the applicant shall obtain a permit pursuant to N.J.A.C. 7:13-2.1 prior to commencing the regulated activities onsite.

SUBCHAPTER 6. VERIFICATIONS

7:13-6.1 General provisions for verifications

(a) A verification is a document containing the Department's approval of the flood hazard area design flood elevation on a site, includes either a flood hazard area limit or an indication that the entire site is in a flood hazard area, and may also include a floodway limit and/or a riparian zone limit, if applicable.

(b) The flood hazard area design flood elevation, flood hazard area and/or floodway limits on a site shall be determined in accordance with the procedures outlined in N.J.A.C. 7:13-3. The riparian zone limits on a site shall be determined in accordance with N.J.A.C. 7:13-4.

(c) An application for a verification shall include the following:

1. Three copies of an application report, as described at N.J.A.C. 7:13-15.3. If a hydrologic and/or hydraulic model is submitted with the application, the photographs required in the application report shall depict any water control structures, as well as a representative sampling of the locations of any cross-sections, which are referenced by the models;

2. One copy of an engineering report, as described at N.J.A.C. 7:13-15.4, which includes all necessary supporting calculations, maps and other documentation and a description of which delineation method under N.J.A.C. 7:13-3 was used;

3. Documentation that the applicable public notice requirements of N.J.A.C. 7:13-16 have been met;

4. The appropriate application fee required at N.J.A.C. 7:13-17; and

5. Six sets of drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, which include the following:

i. Topography that references NGVD, or includes the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary;

ii. The limit of the flood hazard area under existing conditions on the site. If the entire site is in a flood hazard area, the drawings shall include a note to this effect, as well as the elevation(s) of the flood hazard area design flood on the site;

iii. The limit of any floodway under existing conditions on the site, if the applicant seeks verification of the floodway limits. If the entire site is in a floodway, the drawings shall include a note to this effect;

iv. A metes and bounds description of any flood hazard area limit and floodway limit under existing conditions onsite. If the verification is submitted concurrently with a permit application that proposes to affect one or both of these limits, the drawings shall also include a metes and bounds description of the proposed flood hazard area and/or floodway limits;

v. The following statement: "NOTE: All or a portion of this site lies in a flood hazard area. Certain activities in flood hazard areas are regulated by the New Jersey Department of Environmental Protection and some activities may be prohibited on this site or may first require a permit. Contact the Division of Land Use Regulation at (609) 292-0060 for more information prior to any construction onsite.";

vi. A note indicating which method described at N.J.A.C. 7:13-3 was used to determine the limit of the flood hazard area and/or floodway;

vii. The limit of any riparian zone onsite as described at N.J.A.C. 7:13-4.1; and

viii. An indication of the location of any cross-section and water control structure referenced in the engineering report as well as a graphic depiction of each cross-section.

(d) The Department shall review an application for a verification according to the same procedure established for individual permit applications at N.J.A.C. 7:13-9.3.

(e) A verification is valid for five years from its issuance date, unless the verification is issued concurrently with a 10-year individual permit under N.J.A.C. 7:13-9.4(b), in which case the verification is valid for 10 years from its issuance

date. A verification shall not be extended. However, a verification can be reissued automatically with the issuance of a permit for a regulated activity at that site pursuant to (f) below and can be transferred at the time of sale of a property to which the verification applies to a new owner pursuant to N.J.A.C. 7:13-14.1.

(f) If the Department issues a verification for a site, and within five years issues a general permit authorization or an individual permit for a regulated activity that references or relies upon the verification at that site, the Department shall automatically reissue the verification upon approval of the permit or authorization so that the verification and permit or authorization have the same expiration date. This automatic reissuance shall occur only once per verification and there is no fee for this reissuance. The reissued verification shall reflect any alterations to the flood hazard area design flood elevation, flood hazard area limit and/or floodway limit that will result from the regulated activities authorized under the individual permit or general permit authorization. All pre-construction and post-construction elevations and limits shall be demarcated on drawings approved under the verification.

(g) Within 90 calendar days after the Department issues a verification on a privately owned lot, or on a publicly owned lot other than a right-of-way, the applicant shall submit the following information to the clerk of each county in which the site is located, and shall send proof to the Department that this information is recorded on the deed of each lot referenced in the verification. Failure to have this information recorded in the deed of each lot and/or to submit proof of recording to the Department constitutes a violation of this chapter and may result in suspension or termination of the verification and/or subject the applicant to enforcement action pursuant to N.J.A.C. 7:13-19:

1. The Department file number for the verification;
2. The approval and expiration dates of the verification;
3. A metes and bounds description of any flood hazard area limit and/or floodway limit approved under the verification;
4. The flood hazard area design flood elevation, or range of elevations if variable, approved under the verification; and

5. The following statement: "The State of New Jersey has determined that all or a portion of this lot lies in a flood hazard area. Certain activities in flood hazard areas are regulated by the New Jersey Department of Environmental Protection and some activities may be prohibited on this site or may first require a permit. Contact the Division of Land Use Regulation at (609) 292-0060 for more information prior to any construction onsite."

SUBCHAPTER 7. PERMITS-BY-RULE

7:13-7.1 General provisions for permits-by-rule

(a) This subchapter establishes permits-by-rule for certain regulated activities. Each permit-by-rule specifically describes the regulated activity authorized, including the size and type of regulated activity and in some cases where in the flood hazard area and riparian zone the regulated activity may be conducted. The Department may, by rulemaking in accordance with the Administrative Procedure Act, rescind or modify an existing permit-by-rule, or establish new ones. The flood hazard area permits-by-rule are set forth at N.J.A.C. 7:13-7.2, and are summarized, for informational purposes only, in Table A below.

(b) The following requirements apply to every permit-by-rule at N.J.A.C. 7:13-7.2:

1. Each limit or condition of a particular permit-by-rule shall be satisfied without requiring a review of detailed engineering calculations; and

2. All structures shall be suitably anchored.

(c) A regulated activity that meets the requirements of a permit-by-rule may be conducted without prior Department approval. However, if it is unclear whether a particular activity meets a permit-by-rule, the Department encourages applicants to obtain an applicability determination under N.J.A.C. 7:13-5.1 prior to commencing work, since unauthorized regulated activities may result in enforcement action pursuant to N.J.A.C. 7:13-19. Furthermore, a person may wish to obtain an applicability determination in order to demonstrate to a local government that a proposed activity meets a permit-by-rule.

(d) A person intending to undertake a regulated activity under any of the eight permits-by-rule at N.J.A.C. 7:13-7.2(a) shall, at least 14 days prior to initiating the activity, provide written notification to the Department (via letter, electronic mail, fax or in person) as follows:

1. The notification shall include:

- i. The property owner's name and contact information;
- ii. The contractor's name (if applicable) and contact information;

iii. The street address and lot, block, municipality and county for the site at which the regulated activity will be conducted;

iv. Which permit-by-rule applies to the activity;

v. The proposed start and end date for the activity; and

vi. A brief description of the activity.

2. The notification shall be submitted to:

Attn: Permit-By-Rule Notification
New Jersey Department of Environmental
Protection
Bureau of Coastal and Land Use Compliance and
Enforcement
P.O. Box 422
401 East State Street
Trenton, New Jersey 08625-0422
Fax: (609) 633-6798
Electronic mail: floodhazard-pbrnotice@dep.state.nj.us
Website: <http://nj.gov/dep/enforcement/lu.html>

(e) Prior to undertaking a regulated activity that fails to comply with any limit, condition or requirement of a permit-by-rule in this subchapter, the applicant must first obtain a general permit authorization (pursuant to N.J.A.C. 7:13-8), an individual permit (pursuant to N.J.A.C. 7:13-9, 10 and 11), an emergency permit (pursuant to N.J.A.C. 7:13-12) or a CAFRA or waterfront development permit (pursuant to N.J.A.C. 7:7 and 7:7E) for the regulated activity. Furthermore, a person may undertake a regulated activity under a permit-by-rule only up to any given limit specified by the permit-by-rule. For example, the placement of no more than five cubic yards of fill under the permit-by-rule at N.J.A.C. 7:13-7.2(b)3 means either the one-time placement of five cubic yards of fill or multiple placements of fill over time that cumulatively do not exceed five cubic yards. A person may also concurrently undertake activities under two or more permits-by-rule provided all activities meet the requirements of this subchapter. For example, a person could elevate a building under the permit-by-rule at N.J.A.C. 7:13-7.2(a)3, construct an addition to the building under the permit-by-rule at N.J.A.C. 7:13-7.2(a)4, and build a fence around the building under the permit-by-rule at N.J.A.C. 7:13-7.2(b)5, without requiring another approval under this chapter, provided each activity meets the descriptions of each applicable permit-by-rule.

Table A
SUMMARY OF PERMITS-BY-RULE

This Table is for informational purposes only. See N.J.A.C. 7:13-7.2(a) through (f) for specific applicable limits and requirements for each permit-by-rule.

(a) Activities that require 14-day prior notice to the Department

1. Reconstructing a lawfully existing structure outside a floodway
2. Constructing in a disturbed riparian zone or at or below grade in a flood hazard area
3. Reconstructing, relocating, or elevating a building above the flood hazard area design flood elevation
4. Constructing an addition to a building of no more than 300 square feet outside a floodway
5. Removing a major obstruction from a regulated water with machinery
6. Constructing a boat launching ramp of no more than 1,000 square feet
7. Constructing an aquatic habitat enhancement device
8. Constructing a USGS-approved flow gauge or weir

(b) General construction and maintenance activities

1. Conducting normal property maintenance in a riparian zone
2. Removing a lawfully existing structure outside a floodway
3. Placing no more than five cubic yards of fill material outside a floodway
4. Repairing a lawfully existing structure
5. Constructing a fence
6. Construction in a tidal flood fringe that does not need a coastal permit
7. Constructing an addition above a building outside a floodway
8. Constructing a non-habitable building of no more than 150 square feet outside a floodway
9. Constructing an open structure with a roof outside a floodway (for example, car port, patio, pole barn)
10. Constructing an aboveground recreational structure (for example, bleacher, picnic table, backstop)
11. Constructing an aboveground swimming pool outside a floodway
12. Constructing an in-ground swimming pool
13. Constructing an open deck attached to a building
14. Constructing an open dock of no more than 1,000 square feet on an impounded water
15. Placing an aboveground fuel tank of no more than 2,000 gallons outside a floodway
16. Placing an underground fuel tank
17. Filling an abandoned raceway
18. Maintaining a manmade canal that passes through a regulated area
19. Constructing a wind turbine development consisting of one to three wind turbines.

(c) Activities associated with utilities

1. Placing a utility pole
2. Placing an open-frame utility tower outside a floodway
3. Jacking an underground utility line beneath a water
4. Placing an underground utility line beneath existing pavement
5. Attaching a utility line to the downstream face of a roadway that crosses a water
6. Placing an underground utility line in a flood hazard area outside a riparian zone

(d) Activities associated with roadways and parking areas

1. Repaving a roadway or parking area outside a floodway
2. Placing an open guardrail along a public roadway
3. Removing sediment by hand adjacent to a bridge, culvert or outfall along a public roadway
4. Reconstructing a bridge superstructure above a flood hazard area

(e) Activities associated with the storage of unsecured material

1. Temporary storage of construction material outside a floodway
2. Incidental storage of material associated with a residence
3. Incidental storage of material associated with a non-residence
4. Operating an existing business that stores and distributes material
5. Operating an existing hazardous waste facility
6. Operating an existing solid waste facility

(f) Agricultural activities

1. Continuing ongoing agricultural activities that result in no fill
2. Commencing new agricultural activities that result in no fill
3. Undertaking soil conservation practices outside a floodway
4. Constructing an agricultural building of no more than 1,000 square feet outside a floodway

Public Notice.

See: 41 N.J.R. 2728(a), 3851(a), 4127(b).

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

In Table A, added (b)19.

Public Notice.

See: 43 N.J.R. 1605(a), 3470(a).

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In the introductory paragraph of Table A, inserted a period at the end; and in paragraph (a)3 of Table A, substituted "Reconstructing, relocating, or elevating" for "Elevating".

7:13-7.2 Permits-by-rule

(a) The permits-by-rule at (a)1 through 8 below apply to the specified construction and maintenance activities listed therein. Pursuant to N.J.A.C. 7:13-7.1(d), prior written notice to the Department is required for each of these permits-by-rule.

1. The reconstruction of a lawfully existing structure outside a floodway, provided:

- i. The structure is not a habitable building;
- ii. The structure is not a retaining wall that extends four feet or more above the ground;
- iii. The reconstructed structure lies within the footprint of the existing structure and is not enlarged;
- iv. The reconstruction is not a major development, as defined at N.J.A.C. 7:8-1.2, and is, therefore, not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8;
- v. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the structure if such disturbance is necessary to facilitate its reconstruction; and
- vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

2. Any construction activity, provided:

- i. If the activity is located in a flood hazard area, all construction is situated at or below grade and the existing ground elevation is not raised (such as for the construction of a bicycle path, driveway, fishing or hunting area, garden, lawn, nature preserve, outdoor recreation area, park, parking area, picnic ground, playground, playing field, roadway, sidewalk or trail);

ii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

iii. The construction activity is not a major development, as defined at N.J.A.C. 7:8-1.2, and is therefore not subject to the requirements of the Stormwater Management rules at N.J.A.C. 7:8;

iv. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

3. The reconstruction, relocation, and/or elevation of a lawfully existing building outside a floodway, provided:

- i. The footprint of the building is not increased by more than 300 square feet;
- ii. The lowest floor of the building is reconstructed or elevated to at least one foot above the flood hazard area design flood elevation;
- iii. The area below the lowest floor of the building is not used for habitation and remains open to floodwaters, in accordance with N.J.A.C. 7:13-11.5(n), (o), and (p);
- iv. The building is not expanded or relocated closer to any regulated water or within a floodway;
- v. Any building being relocated is either moved outside any riparian zone or situated within an area where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);
- vi. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the building if such disturbance is necessary to facilitate its reconstruction, relocation, and/or elevation; and
- vii. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity;

4. The construction of an addition that is connected to a lawfully existing building outside a floodway, provided:

- i. No hazardous substances are stored unless;
 - (1) The storage of hazardous substances is essential to the operation of the business or facility;
 - (2) The hazardous substances are isolated from potential contact with floodwaters; and
 - (3) The hazardous substances are stored in accordance with all Federal, State and local laws;
 - ii. The business or facility was established prior to October 2, 2006;
 - iii. The business or facility has been in continuous operation since October 2, 2006; and
 - iv. The size of the business or facility and the peak volume of material stored in the flood hazard area have not increased since October 2, 2006. Any increase in size or peak volume requires that an individual permit be obtained pursuant to N.J.A.C. 7:13-11.16;
5. The placement, storage or processing of hazardous waste at a lawfully existing hazardous waste facility located in a regulated area, provided:
- i. The facility was established prior to October 2, 2006;
 - ii. The facility has been in continuous operation since October 2, 2006;
 - iii. The facility is operating in compliance with all Federal, State and local requirements; and
 - iv. The size of the facility and the peak volume of hazardous waste in the flood hazard area have not increased since October 2, 2006. Any increase in size or peak volume requires that an individual permit be obtained pursuant to N.J.A.C. 7:13-11.17; and
6. The placement, storage or processing of solid waste at a lawfully existing solid waste facility (such as a composting facility, landfill or recycling center), located in a regulated area, provided:
- i. The facility was established prior to October 2, 2006;
 - ii. The facility has been in continuous operation since October 2, 2006;
 - iii. The facility is operating in compliance with all Federal, State and local requirements; and
 - iv. The size of the facility and the peak volume of solid waste in the flood hazard area have not increased since October 2, 2006. Any increase in size or peak volume requires an individual permit pursuant to N.J.A.C. 7:13-11.18.
- (f) The permits-by-rule at (f)1 through 4 below apply to the specified agricultural activities listed therein.
1. The continuation of lawfully existing agricultural activities (such as grazing, harvesting, horticulture, irrigation, planting, tilling, viticulture and watering, as well as forestry under an approved forestry management plan that does not allow clear cutting), provided:
 - i. The activities are undertaken on land that has been actively farmed since October 2, 2006; and
 - ii. The activities do not result in the displacement of flood storage volume or the construction of an above-ground structure;
 2. The commencement of new agricultural activities (such as grazing, harvesting, horticulture, irrigation, planting, tilling, viticulture and watering, as well as forestry under an approved forestry management plan that does not allow clear cutting) on land that is not actively farmed provided:
 - i. The activities do not result in the displacement of flood storage volume or the construction of an above-ground structure; and
 - ii. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated);
 3. The continuation or commencement of soil conservation practices outside a floodway, such as terracing, subsurface tile drainage or construction of a diversion, a grassed swale or an excavated pond, provided:
 - i. The activities are undertaken on land that has been actively farmed since October 2, 2006;
 - ii. The activities are approved in writing by the local Soil Conservation District or the USDA Natural Resource Conservation Service, as appropriate;
 - iii. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;
 - iv. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and
 - v. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity; and
 4. The construction of a building with no foundation outside a floodway, provided:
 - i. The building is located on land that has been actively farmed since October 2, 2006;

ii. The building has a footprint of no more than 1,000 square feet;

iii. The building is designed for agricultural use. Examples of such buildings include a plastic covered greenhouse, a roadside farm stand and a tool shed placed on an existing farm field;

iv. No disturbance related to the regulated activity is located within 25 feet of any top of bank or edge of water;

v. No vegetation is cleared, cut or removed in a riparian zone, except where previous development or disturbance has occurred (such as an area maintained as a lawn or garden or an abandoned parking area that has partially revegetated); and

vi. All vegetated areas temporarily disturbed within the riparian zone are replanted with indigenous, non-invasive species upon completion of the regulated activity.

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

In the introductory paragraph of (b), substituted "19" for "18"; in (b)17v, deleted "and" from the end; in (b)18iv, substituted "; and" for a period at the end; and added (b)19.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

Rewrote (a)3; added new (a)4iv and (b)7iii; recodified former (a)4iv and (a)4v as (a)4v and (a)vi and former (b)7iii through (b)7v as (b)7iv through (b)vi; and in (b)7ii, deleted "finished" following "lowest".

SUBCHAPTER 8. GENERAL PERMITS

7:13-8.1 Standards applicable to all general permits

(a) This subchapter establishes general permits for certain regulated activities. Each general permit describes the regulated activity authorized, including the size and type of regulated activity and in some cases where in the flood hazard area or riparian zone the regulated activity may be conducted. The Department may, by rulemaking in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., rescind or modify an existing general permit or establish new ones. The flood hazard general permits established in this subchapter are set forth as follows:

Table B

SUMMARY OF GENERAL PERMITS

This Table is for informational purposes only. See N.J.A.C. 7:13-8.3 through 8.12 for specific applicable limits and requirements for each general permit

| <u>Permit</u> | <u>Description</u> | <u>Citation (N.J.A.C. 7:13-)</u> |
|---------------|--|--------------------------------------|
| 1 | Channel cleaning by a public entity under the Stream Cleaning Act | 8.3 |
| 2A | Agricultural: Soil erosion control, bank stabilization or bank restoration | 8.4(c)1 |
| 2B | Agricultural: Channel cleaning | 8.4(c)2 |
| 2C | Agricultural: Constructing a roadway across a water | 8.4(c)3 |
| 2D | Agricultural: Filling a manmade water for freshwater wetlands restoration | 8.4(c)4 |
| 2E | Agricultural: Creating a ford across a water to manage livestock | 8.4(c)5 |
| 2F | Agricultural: Constructing a fence across or along a water to manage livestock | 8.4(c)6 |
| 2G | Agricultural: Constructing a pump or water intake along a water for livestock | 8.4(c)7 |
| 3 | Bridge or culvert scour protection by a public entity | 8.5 |
| 4 | Stormwater maintenance by a public entity | 8.6 |
| 5 | Relocating a building to reduce flood damage | 8.7 |
| 6 | Reconstructing a damaged or destroyed residence | 8.8 |
| 7 | Residential construction in a tidal flood hazard area | 8.9 |
| 8 | Utility line across or along a water draining less than 50 acres | 8.10 |
| 9 | Roadway or footbridge across a water draining less than 50 acres | 8.11 |
| 10 | Stormwater outfall along a water draining less than 50 acres | 8.12 |

- i. No trees are cleared, cut or removed in a riparian zone;
- ii. The fence is placed parallel to the channel where possible;
- iii. If the fence crosses a channel and/or is located in a floodway, it has sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as a barbed-wire, split-rail or strand fence. A fence with little or no open area, such as a chain link, lattice or picket fence, is not permitted across a channel or in a floodway; and
- iv. The fence will not impede bank-full flow in the channel; and

7. General permit 2G: The construction of a pump and/or water intake structure in or along a regulated water, in order to provide water for livestock outside the channel (and thereby limit livestock access to the channel), provided:

- i. No trees are cleared, cut or removed in a riparian zone;
- ii. Fill within the flood hazard area is minimized; and
- iii. The pump or structure will not impede bank-full flow in the channel.

7:13-8.5 General permit 3 for bridge or culvert scour protection by a public entity

(a) This section sets forth a general permit that authorizes a public entity to place rip-rap and other stabilization material within or along one or more regulated waters to replace material that has eroded away, in order to prevent the scouring of an existing bridge or culvert along a public roadway. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a scour protection activity is eligible for authorization under general permit 3 only if:

- 1. It is approved by and performed under the supervision of a public entity;
- 2. It is necessary for the maintenance and/or protection of an existing bridge or culvert along a public roadway;
- 3. The stabilizing material placed in the channel is in the same location as the material that has eroded away since the bridge or culvert was originally constructed. This stabilizing material can be placed within any open void area that has been created by previous scour in the channel, and/or can replace any unconsolidated material in the

channel, such as silt or sediment, which has subsequently been deposited in any such void area;

4. The amount of stabilizing material placed in the channel is no greater than necessary to replace the material that has eroded away (and which may have subsequently been replaced by unconsolidated material) since the bridge or culvert was originally constructed;

5. The stabilizing material consists of, or is covered by, indigenous substrate where possible;

6. The stabilizing material does not obstruct flow in the channel or floodway;

7. The project does not disturb the channel bank or the riparian zone, unless such disturbance is unavoidable, necessary to gain access to the channel and minimized. If access to the channel results in topographic changes to the bank, such as ruts from trucks or other machinery, the grade of the bank shall be restored to its pre-construction topography where possible;

8. All cleared, cut or removed vegetation in the riparian zone is replanted with indigenous, non-invasive vegetation, except where the removed vegetation has been replaced by the stabilizing material;

9. Every effort is made to perform the activity from only one bank; and

10. Vegetation and canopy on the more southerly or westerly bank is preserved for shading of the water where possible.

7:13-8.6 General permit 4 for stormwater maintenance by a public entity

(a) This section sets forth a general permit that authorizes the maintenance, repair and replacement of lawfully existing stormwater management structures and conveyance features by a public entity, in cases where such activities are regulated under this chapter. This general permit does not authorize any new stormwater discharges or the expansion of an existing stormwater management or collection system. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a maintenance and repair activity is eligible for authorization under general permit 4 only if:

- 1. It is approved by and performed under the supervision of a public entity;
- 2. It occurs within and is necessary for the maintenance of a lawfully existing, manmade conveyance structure or drainage feature, such as a pipe, culvert, ditch, channel or basin, not including natural channels that were previously modified;

3. It involves one or more of the following:

- i. The removal of accumulated sediment, debris or nuisance vegetation;
- ii. The stabilization of an eroded structure; and/or
- iii. The reconstruction, repair and/or in-kind replacement of any:

- (1) Culvert along a manmade channel;
- (2) Stormwater pipe, manhole, inlet, catch basin;
- (3) Headwall, discharge structure or associated conduit outlet protection; and/or
- (4) Tidegate, levee or pump station along a water that is separated from tidal influence by these structures;

4. Disturbance to vegetation in the riparian zone is minimized; and

5. All temporarily cleared, cut or removed vegetation in the riparian zone is replanted with indigenous, non-invasive vegetation.

7:13-8.7 General permit 5 for the relocation of a building to reduce flood damage

(a) This section sets forth a general permit that authorizes the relocation of a lawfully existing building to another location on the same site in order to reduce flood damage potential. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), the relocation of a lawfully existing building is eligible for authorization under general permit 5 only if:

- 1. Where possible, the building is moved further from the regulated water and to higher ground on the same site;
- 2. The building is not enlarged (except for an addition that meets a permit-by-rule at N.J.A.C. 7:13-7.2);
- 3. The building is not located in a floodway (either before or after relocation);
- 4. The lowest floor of the building is raised to at least one foot above the flood hazard area design flood elevation;
- 5. The area below the lowest floor of the building is not used for habitation and remains open to floodwaters, in accordance with N.J.A.C. 7:13-11.5(n), (o), and (p);
- 6. The proposed location of the building is situated outside the riparian zone if a suitable location exists on the same site. Otherwise, the removal of trees within the riparian zone shall be minimized to accommodate the new building location; and

7. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the existing and/or proposed building if such disturbance is necessary to facilitate its relocation. In such a case, all temporarily disturbed areas shall be replanted with indigenous, non-invasive vegetation upon completion of the project, including the area where the relocated building originally existed.

(c) The flood hazard area design flood elevation and floodway limits must be known in order to determine compliance with this general permit authorization. If the flood hazard area design flood elevation and/or floodway limits can be determined using Methods 1, 2 or 3 (at N.J.A.C. 7:13-3.3, 3.4(d) and 3.4(e), respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 does not need to be obtained prior to obtaining authorization under this general permit authorization. However, if the flood hazard area design flood elevation and/or floodway limits are determined using Methods 4, 5 or 6 (at N.J.A.C. 7:13-3.4(f), 3.5 and 3.6, respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 must be obtained from the Department prior to, or concurrent with, obtaining authorization under this general permit.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (b)4 and (b)5, deleted "finished" preceding "floor"; and in (b)5, substituted "7:13-11.5(n), (o), and (p)" for "7:13-11.5(l)."

7:13-8.8 General permit 6 for the reconstruction of a damaged or destroyed residence

(a) This section sets forth a general permit that authorizes the reconstruction of a lawfully existing private residence that has been damaged or destroyed by fire, flood or other natural disaster. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), the reconstruction of a lawfully existing private residence is eligible for authorization under general permit 6 only if:

- 1. The residence has been damaged or destroyed by fire, flood or other natural disaster within five years prior to application to the Department under this general permit authorization;
- 2. The new residence is constructed within the footprint of the residence that was damaged or destroyed or is moved further from the regulated water to higher ground onsite;
- 3. The residence is not enlarged (except for an addition that meets a permit-by-rule at N.J.A.C. 7:13-7.2);
- 4. The residence is not located in a floodway (either before or after reconstruction);

5. The lowest floor of the new residence is constructed at least one foot above the flood hazard area design flood elevation;

6. The area below the lowest floor of the residence is not used for habitation and remains open to floodwaters, in accordance with N.J.A.C. 7:13-11.5(n), (o), and (p);

7. If the residence is to be moved, it is situated outside the riparian zone if a suitable location exists on the same site. Otherwise the removal of trees within the riparian zone shall be minimized to accommodate the new building location; and

8. No vegetation is cleared, cut or removed in a riparian zone, except for vegetation within 20 feet of the existing and/or proposed residence if such disturbance is necessary to facilitate its reconstruction. In such a case all temporarily disturbed areas shall be replanted with indigenous, non-invasive vegetation upon completion of the project including, if the residence is relocated, the area where the residence originally existed.

(c) The flood hazard area design flood elevation and floodway limits must be known in order to determine compliance with this general permit authorization. If the flood hazard area design flood elevation and/or floodway limits can be determined using Methods 1, 2 or 3 (at N.J.A.C. 7:13-3.3, 3.4(d) and 3.4(e), respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 does not need to be obtained prior to obtaining authorization under this general permit. However, if the flood hazard area design flood elevation and/or floodway limits are determined using Methods 4, 5 or 6 (at N.J.A.C. 7:13-3.4(f), 3.5 and 3.6, respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 must be obtained from the Department prior to, or concurrent with, obtaining authorization under this general permit.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (b)1, substituted "five years" for "one year"; in (b)5 and (b)6, deleted "finished" preceding "floor"; and in (b)6, substituted "7:13-11.5(n), (o), and (p)" for "7:13-11.5(j)".

7:13-8.9 General permit 7 for residential construction in a tidal flood hazard area

(a) This section sets forth a general permit to construct the following residential buildings in a tidal flood hazard area:

1. One new private residence, which is not being constructed as part of a larger residential subdivision;
2. An addition to a private residence; and/or
3. A building appurtenant to a private residence, such as a garage, barn or shed.

(b) The application requirements and review procedures for this general permit are set forth at N.J.A.C. 7:13-8.1(c) through (e). The construction of certain types of residential additions and appurtenant structures may occur pursuant to a permit-by-rule in accordance with N.J.A.C. 7:13-7.2(a) and

(b). Activities covered by a permit-by-rule do not require a general permit authorization under this section.

(c) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a private residence, addition or appurtenant structure is eligible for authorization under general permit 7 only if:

1. It is located in a tidal flood hazard area;
2. It does not require a CAFRA or waterfront development permit under N.J.A.C. 7:7 and 7:7E;
3. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, including any justification that may be required for the activity and any limitations on the area of vegetation that can be cleared, cut or removed in the riparian zone; and
4. It meets the applicable requirements for a building at N.J.A.C. 7:13-11.5.

(d) The flood hazard area design flood elevation and floodway limits must be known in order to determine compliance with this general permit. If the flood hazard area design flood elevation and/or floodway limits can be determined using Methods 1, 2 or 3 (at N.J.A.C. 7:13-3.3, 3.4(d) and 3.4(e), respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 does not need to be obtained prior to obtaining authorization under this general permit. However, if the flood hazard area design flood elevation and/or floodway limits are determined using Methods 4, 5 or 6 (at N.J.A.C. 7:13-3.4(f), 3.5 and 3.6, respectively), then a verification pursuant to N.J.A.C. 7:13-6.1 must be obtained from the Department prior to, or concurrent with, obtaining authorization under this general permit.

7:13-8.10 General permit 8 for a utility line across or along a water with a drainage area of less than 50 acres

(a) This section sets forth a general permit to construct a utility line across or along a regulated water that has a drainage area of less than 50 acres. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a utility crossing is eligible for authorization under general permit 8 only if:

1. It is located across or along a regulated water that has a drainage area of less than 50 acres;
2. It is not located in the flood hazard area or riparian zone of another regulated water that has a drainage area of 50 acres or greater;
3. It is authorized under a valid freshwater wetlands general permit 2 or 21, pursuant to N.J.A.C. 7:7A-5.2 or 5.21, respectively;
4. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, including any justification

tion that may be required for the activity and any limitations on the area of vegetation that can be cleared, cut or removed in the riparian zone; and

5. It meets the requirements at N.J.A.C. 7:13-11.9 for the construction of a utility line.

7:13-8.11 General permit 9 for a roadway or footbridge across a water with a drainage area of less than 50 acres

(a) This section sets forth a general permit to construct a roadway or footbridge across a regulated water that has a drainage area of less than 50 acres. The application requirements and review procedures for this general permit are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a roadway or footbridge is eligible for authorization under general permit 9 only if:

1. It crosses a regulated water that has a drainage area of less than 50 acres;

2. It is not located in the flood hazard area or riparian zone of another regulated water that has a drainage area of 50 acres or greater;

3. It is authorized under a valid freshwater wetlands general permit 10A or 10B, pursuant to N.J.A.C. 7:7A-5.10A or 5.10B, respectively;

4. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, including any justification that may be required for the activity and any limitations on the area of vegetation that can be cleared, cut or removed in the riparian zone; and

5. It meets the requirements at N.J.A.C. 7:13-11.7(e) through (f) for the protection of aquatic habitat and the maintenance of low-flow aquatic passage.

7:13-8.12 General permit 10 for a stormwater outfall along a water with a drainage area of less than 50 acres

(a) This section sets forth a general permit to construct a stormwater outfall structure along a regulated water that has a drainage area of less than 50 acres. The application requirements and review procedures for this general permit authorization are set forth at N.J.A.C. 7:13-8.1(c) through (e).

(b) In addition to satisfying the requirements applicable to all general permits at N.J.A.C. 7:13-8.1(b), a stormwater outfall structure is eligible for authorization under general permit 10 only if:

1. It is located along a regulated water that has a drainage area of less than 50 acres;

2. It is not located in the flood hazard area or riparian zone of another regulated water that has a drainage area of 50 acres or greater;

3. It is authorized under a valid freshwater wetlands general permit 11, pursuant to N.J.A.C. 7:7A-5.11;

4. It meets the requirements for disturbance in the riparian zone at N.J.A.C. 7:13-10.2, including any justification that may be required for the activity and any limitations on the area of vegetation that can be cleared, cut or removed in the riparian zone; and

5. It meets the requirements at N.J.A.C. 7:13-11.10 for the construction of a stormwater outfall structure.

SUBCHAPTER 9. INDIVIDUAL PERMITS

7:13-9.1 General provisions for individual permits

(a) This subchapter sets forth application and review procedures for an individual permit. Design and construction standards for activities that require an individual permit are set forth in this chapter as follows:

1. Standards associated with the location of a project in a particular regulated area, such as a channel or floodway, or the location of the project in relation to certain natural resources, are set forth at N.J.A.C. 7:13-10; and

2. Standards associated with a particular regulated activity, such as the construction of a building or roadway, are set forth at N.J.A.C. 7:13-11.

(b) A regulated activity that requires an individual permit is typically subject to multiple requirements that are set forth throughout N.J.A.C. 7:13-10 and 11 as described in (a) above. The applicant shall evaluate each regulated activity according to its location, nature and potential impacts in order to determine which design and construction standards will apply to the applicant's particular project.

7:13-9.2 Application requirements for an individual permit

(a) An application for an individual permit shall include information on all planned activities that are reasonably related to the proposed project. In general, the level of detail and documentation required for an application shall correspond to the size and likely impact of the proposed project, its proximity to a channel and/or riparian zone, and its potential to adversely affect flooding and the environment. The Department shall, upon request, provide an applicant with guidance regarding the appropriate level of detail for a particular application.

(b) An application for an individual permit shall include the following:

1. One copy of the appropriate checklist for the proposed activities, completed as directed by its instructions. Checklists summarize the requirements of this chapter and ask various questions about the project in order to guide the applicant through the permitting process and ensure that the correct material is submitted with each application. For

example, checklists ask how the applicant determined the flood hazard area and floodway limits onsite, whether construction is proposed in a floodway or flood fringe, and how much impervious surface is proposed, all in order to alert the applicant as to whether hydrologic, hydraulic, flood storage and/or stormwater management calculations are required as part of the permit application. Checklists also ask the applicant to identify all regulated activities proposed onsite to ensure that public notice is provided where necessary and to help the applicant determine the correct application review fee. Checklists do not set forth application requirements in addition to those listed in this chapter. Checklists are provided at www.nj.gov/dep/landuse or can be obtained from the Department at the address listed in N.J.A.C. 7:13-1.1(f);

2. Three copies of an application report, as described at N.J.A.C. 7:13-15.3. The photographs required in the application report shall show any sections of channel or riparian zone that will be disturbed by the project;

3. One copy of an engineering report, as described at N.J.A.C. 7:13-15.4, if the Department must review detailed engineering calculations in order to determine whether the proposed activity complies with this chapter;

4. Three copies of an environmental report, as described at N.J.A.C. 7:13-15.5, except that no environmental report is required if a project consists solely of the following activities:

i. The construction of one private residence, which is not being constructed as part of a larger residential subdivision; and/or

ii. The construction of a building appurtenant to a private residence, such as a garage, barn or shed;

5. Documentation that the applicable public notice requirements of N.J.A.C. 7:13-16 have been met;

6. The application fee required under N.J.A.C. 7:13-17; and

7. Six sets of drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, which contain the following information:

i. All proposed regulated activities (including the size, location and all construction details for each regulated activity);

ii. The limit of any riparian zone onsite;

iii. Existing and proposed topography if fill or grading is proposed, unless the Department determines that topography is not necessary to determine compliance with this chapter. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary;

iv. The limit of the flood hazard area and floodway onsite if present. If proposed fill, construction and/or

grading will affect these limits, then both existing and proposed flood hazard area and floodway limits shall be included on all drawings;

v. Details of proposed soil erosion and sediment control measures;

vi. If construction is proposed in a regulated water, the drawings shall also include the following:

(1) A thorough explanation of the proposed method of construction;

(2) A timetable for the construction; and

(3) All proposed trenching, diversionary channels and temporary piping of the regulated water; and

vii. If construction is proposed in a riparian zone, the drawings shall also include the following:

(1) All locations where vegetation will be cleared, cut or removed; and

(2) Details of any replanting pursuant to N.J.A.C. 7:13-10.2.

(c) An application that proposes activities in a regulated area known or suspected to contain acid producing soils shall include the following:

1. A comprehensive evaluation of the potential environmental risks caused by exposure of the acid producing soils; and

2. A plan to minimize any such risks.

(d) An application that proposes the use of fill credits to balance fill on a site in the Central Passaic Basin, as described at N.J.A.C. 7:13-10.4(s) and (t), shall include documentation that the fill credits have been purchased by the applicant prior to the submittal of the application.

(e) An application that proposes a flood-proofed building shall include the following material, signed and sealed by an architect or engineer:

1. Drawings that clearly show the proposed flood-proofing measures;

2. Calculations that demonstrate that the structure meets the requirements for flood resistance at N.J.A.C. 7:13-11.4(b); and

3. A flood-proofing certification, which confirms that the requirements of N.J.A.C. 7:13-11.5(q), (r), and/or (s) are met, as applicable, and which is accompanied by all supporting documentation, calculations, and other information upon which the certification is based.

(f) An application proposing an activity that adversely impacts a property not owned by the applicant, as described at N.J.A.C. 7:13-11.1(f), shall include documentation demonstrating that one or more of the following applies to each adversely impacted property:

1. The applicant is a public entity that intends to appropriate the adversely impacted property through its power of eminent domain;

2. The applicant has entered into a contract to purchase the adversely impacted property;

3. The applicant has obtained an easement that encompasses the entire area that will be adversely impacted by the proposed activity, which specifically allows the applicant to undertake the proposed activity; and/or

4. The applicant has obtained written permission from the owners of the adversely impacted property. Written permission shall include the following:

i. An explanation of the nature and purpose of the project;

ii. An estimate of the length of time regulated activities will occur;

iii. An estimate of the extent to which the adversely impacted property will be affected by flooding or stormwater discharges and the frequency at which these impacts are expected to occur; and

iv. The notarized signature of all owners of the adversely impacted property.

(g) The Department shall accept for review an application for an individual permit for an activity subject to the Department's Water Quality Management Planning rules at N.J.A.C. 7:15 only if the activity is consistent with N.J.A.C. 7:15 and the applicable Water Quality Management Plan adopted under the Water Quality Management Planning Act, N.J.S.A. 58:11A-1 et seq.

(h) The Department shall accept for review an application for an individual permit for an activity located in an area under the jurisdiction of the Pinelands Commission, as defined at N.J.S.A. 13:18A-11, only if the applicant has first received a Certificate of Filing, a Notice of Filing, a Certificate of Compliance or a Resolution of Approval from the Pinelands Commission for the proposed activity, as appropriate. For more information, contact the Pinelands Commission at (609) 894-7300 or through its website at www.state.nj.us/pinelands.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In the introductory paragraph of (e), deleted "to construct" preceding and "dry" following "a"; in (e)1, deleted "dry" following "proposed"; and rewrote (e)3.

7:13-9.3 Application review procedures for a verification or individual permit

(a) This section sets forth the Department's application review process for verifications and individual permits with the following exceptions:

1. Pursuant to the Construction Permits Law at N.J.S.A. 13:1D-29 et seq., the default approval provisions

at (e) through (h) below do not apply to an application for an individual permit for an electric generating facility or for a petroleum processing or storage facility, including a liquefied natural gas facility, with a storage capacity of over 50,000 barrels; and

2. Pursuant to the Highlands Water Protection and Planning Act at N.J.S.A. 13:20-1 et seq., this section does not apply to a regulated activity associated with a Major Highlands Development, the application requirements and review procedures for which are found in the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38.

(b) Within 20 working days following the receipt of an application for a verification or individual permit, the Department shall:

1. Determine that all necessary information required by this chapter for a complete application has been provided, and declare the application complete for review;

2. Determine that all necessary information required by this chapter for a complete application has not been provided, or that one or more submitted items are deficient, and request in writing that the applicant submit the missing material and/or address any deficiencies within a reasonable time period. The Department may cancel the application if the requested information is not provided within 60 calendar days. The Department shall subsequently declare the application complete for review within 20 working days of receiving the requested information; or

3. If the Department does not take action under (b)1 or 2 above within 20 working days, the application shall be deemed complete for review. In such a case, the Department may request additional information, which is necessary to bring the application into compliance with the requirements of this chapter during the review of the application.

(c) Upon written request of the applicant, the Department shall cancel an application and fully refund the submitted application fee provided:

1. The request to cancel the application is received within 20 working days of the submittal of the application and the Department has not already approved or denied the application; or

2. The request to cancel the application is received within 60 calendar days of the submittal of an application that remains incomplete under (b)2 above.

(d) If the Department determines during the review of a complete application under (b) above that the application does not meet the requirements of this chapter, the Department can request additional information and/or changes to the project in order to bring the project into compliance, provided such changes are possible within the remaining application review period described in (e) below.

(e) Within 90 calendar days following the receipt of a complete application under (b) above, the Department shall:

(w) If the Department issues or has issued an individual permit for a regulated activity that displaces flood storage volume on a site, and that activity was subject to a flood storage displacement limit at the time the permit was issued, subsequent subdivision of that site shall not increase the total amount of flood storage volume that can be displaced on the site under future applications. Instead, the following shall apply:

1. Flood storage volume can be displaced within a portion of the subdivided site only to the extent that the total flood storage volume displaced within the entire subdivided site does not exceed the flood storage displacement limits of this section;

2. If the subdivided site involves multiple lots owned (or to be owned) by different persons, any remaining allowable flood storage volume shall be divided equally among all lots in the flood fringe, unless the owners of all lots in the flood fringe otherwise agree in writing; and

3. The volume of flood storage displacement permissible on each lot shall be described in any individual permit issued for the site as well as in the deed of record for each affected property. The modified deed shall be filed with the applicable county clerk, a copy of which shall be provided to the Department within 90 calendar days of the issuance of the individual permit.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (d)5ii, substituted "7:13-11.5(n), (o), and (p)" for "7:13-11.5(l)".

7:13-10.5 Requirements for a regulated activity in or along a water with fishery resources

(a) This section sets forth specific design and construction standards that apply to any regulated activity proposed in the channel and/or riparian zone of a regulated water containing fishery resources. Further standards for the construction of a bridge or culvert in or along waters with fishery resources are described at N.J.A.C. 7:13-11.7.

(b) The waters identified by the Department as containing fishery resources are listed in the Department's Surface Water Quality Standards at N.J.A.C. 7:9B, and are further supplemented by the following reports as updated, which are included here by reference. Copies of these reports are included in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g):

1. "Classification of New Jersey Waters as Related to Their Suitability for Trout";

2. "List of Waters Stocked with Trout by the New Jersey Division of Fish and Wildlife"; and

3. "Locations of Anadromous American Shad and River Herring During Their Spawning Period in New Jersey's Freshwaters Including Known Migratory Impediments and Fish Ladders."

(c) The Department shall issue an individual permit for a regulated activity in the channel and/or riparian zone of a regulated water containing fishery resources only if the following requirements are satisfied:

1. Except as provided in (e) below, the activity meets the timing restrictions of (d) below;

2. Unset or raw cement is not allowed to come into contact with water in the channel during construction;

3. No logs or boulders that provide fish habitat are removed from the channel, unless the Department determines that such removal is necessary to accomplish the project; and

4. Low-flow aquatic passage is maintained in the channel throughout the entire area of disturbance during and after the performance of the regulated activity. In order to provide low-flow aquatic passage, the depth of flow in the modified channel during low-flow conditions must be equal to or greater than pre-project conditions. Where feasible, the applicant shall also provide low-flow aquatic passage in areas that do not currently contain low-flow aquatic passage.

(d) Except as provided at (e) below, certain activities are prohibited during times when fish are breeding or are especially sensitive to disturbance. The following activities are prohibited during the restricted periods listed in Table E below:

1. Any construction, excavation, filling or grading in the channel; and

2. Any construction, excavation, filling or grading in the riparian zone, unless the applicant demonstrates that appropriate soil erosion and sediment control measures are in place which will prevent sediment from reaching the channel. All proposed measures shall meet the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90.

Table E

RESTRICTED TIME PERIODS FOR WATERS WITH FISHERY RESOURCES

| Water and classification | Time period (inclusive) during which activities are prohibited |
|---|--|
| 1. Trout Waters | |
| • All trout production waters except rainbow trout | September 15 through March 15 |
| • Rainbow trout production waters | February 1 through April 30 |
| • Trout stocked waters • Trout maintenance waters • Any water located within one mile upstream of a trout stocked or a trout maintenance water | March 15 through June 15 |
| 2. Non-Trout Waters | |
| • Waters that support general game fish | May 1 through June 30 |
| • Waters that support pickerel | Ice out through April 30 |
| • Waters that support walleye | March 1 through May 30 |
| 3. Anadromous Waters | |
| • All unimpeded tidal waters open to the Atlantic Ocean or any coastal bay • All waters identified as anadromous migratory pathways | April 1 through June 30 |
| • Delaware River upstream of U.S. Route 202 | April 1 through June 30 and September 1 through November 30 |
| • Delaware River between U.S. Route 202 and Interstate 276 (Pennsylvania Turnpike Bridge) | March 1 through June 30 |
| • Delaware River between Interstate 276 (Pennsylvania Turnpike Bridge) and Interstate 295 (Delaware Memorial Bridge) • Tidal portions of Raccoon, Rancocas Creek, Crosswicks Creeks and Cooper River | March 1 through June 30 and September 1 through November 30 |
| • All unimpeded tidal waters open to the Delaware River downstream of Interstate 295 (Delaware Memorial Bridge) • Tidal portions of the Maurice River, Cohansey River and Salem River | March 1 through June 30 and October 1 through November 30 |

(e) An applicant may request that the Department reduce, extend or otherwise modify a timing restriction listed in Table E. The Department shall grant such a request if one or more of the following requirements is satisfied:

1. The applicant demonstrates that the adverse impacts to fishery resources will be less if a regulated activity occurs during the restricted time period rather than during an unrestricted time period;

2. A regulated activity is subject to more than one restricted time period, the combined effect of which would limit the regulated activity to fewer than 183 calendar days per year. In such a case, the Department shall allow the regulated activity to occur for up to 183 calendar days, provided the applicant demonstrates that additional measures shall be taken to reduce adverse impacts to fishery resources to a level acceptable to the Department. Note that the 183-day period during which the Department determines that activities may occur need not be consecutive. For example, the Department may determine that restricting activities for three months in the spring and three

months in the fall best protects fishery resources in a particular case;

3. The Department determines that observance of a timing restriction for the reconstruction of a public road crossing would cause increased risks or excessive delays to school buses or vans, and the applicant demonstrates that additional measures shall be taken to reduce adverse impacts to fishery resources to an acceptable level; or

4. The Department determines that, due to the nature of the project or an unusual circumstance onsite, the timing restriction must be modified in order to prevent a substantial adverse impact to the fishery resource or to the environment.

(f) The Delaware River Basin Commission (DRBC) may impose timing restrictions in addition to those listed in Table E above on certain activities in waters under DRBC jurisdiction. Contact the U.S. Fish and Wildlife Service's River Basin Coordinator through the DRBC at (609) 883-9500 for information on these additional timing restrictions.

3. The lowest floor of a multi-residence building is set at least one foot above the flood hazard area design flood elevation, unless all of the following are satisfied:

i. The building is used for both residential and non-residential purposes;

ii. The lowest floor of any residential portion of the building, including any common area, such as a lobby or other portion of the building that is used for both residential and non-residential purposes, is set at least one foot above the flood hazard area design flood elevation;

iii. The applicant demonstrates that it is not feasible to set the lowest floor of any or all of the non-residential portions of the building at least one foot above the flood hazard area design flood elevation;

iv. The lowest floor of the non-residential portions of the building identified in (g)3iii above is set as close as feasible to one foot above the flood hazard area design flood elevation; and

v. An architect or engineer certifies that the non-residential portions of the building identified in (g)3iii above will be constructed in accordance with the flood-proofing requirements at (q) below; and

4. The lowest floor of any habitable building not identified in (g)1, 2, or 3 above, such as a commercial business, house of worship, office complex, or shopping center, is set at least one foot above the flood hazard area design flood elevation, unless all of the following are satisfied:

i. The applicant demonstrates that it is not feasible to construct the lowest floor of any or all portions of the building at least one foot above the flood hazard area design flood elevation;

ii. The lowest floor of the portions of the building identified in (g)4i above is constructed as close as feasible to one foot above the flood hazard area design flood elevation; and

iii. An architect or engineer certifies that the portions of the building identified in (g)4i above will be constructed in accordance with the flood-proofing requirements at (q) below.

(h) The Department shall issue an individual permit to undertake the substantial improvement of a lawfully existing habitable building that has been damaged by fire, flooding, or other natural disaster only if the following requirements are satisfied:

1. The lowest floor of the entire building is constructed or modified where necessary to meet the requirements of (g) above to the extent feasible. In no case shall the lowest floor be set below the FEMA 100-year flood elevation, except as provided in (g)3 and 4 above; and

2. Any enclosed area beneath the lowest floor of the entire building is modified as necessary to meet the requirements of (n), (o), and (p) below, as appropriate.

(i) The Department shall issue an individual permit to undertake the substantial improvement of a lawfully existing building that has not been damaged by fire, flooding, or other natural disaster only if the following requirements are satisfied:

1. The lowest floor of any constructed, elevated, enlarged, or modified portion of the building meets the requirements of (g) above;

2. The lowest floor of the remainder of the building is modified where necessary to meet the requirements of (g) above to the extent feasible. In no case shall the lowest floor of this portion of the building be set below the FEMA 100-year flood elevation, except as provided in (g)3 and 4 above; and

3. Any enclosed area beneath the lowest floor of the entire building is modified as necessary to meet the requirements of (n), (o), and (p) below, as appropriate.

(j) The Department shall issue an individual permit to elevate, enlarge, or otherwise modify all or a portion of a lawfully existing building, which does not result in a substantial improvement, only if the following requirements are satisfied:

1. The lowest floor of the elevated, enlarged, or modified portion of the building meets the requirements of (g) above.

i. Where only a portion of a building is elevated, enlarged, or modified, the lowest floor of the remainder of the building is not required to be elevated or otherwise modified to meet the requirements of (g) above; and

2. Any enclosed area beneath the lowest floor of the elevated, enlarged, or modified portion of the building is modified as necessary to meet the requirements of (n), (o), and (p) below, as appropriate.

(k) The Department shall issue an individual permit to reconstruct, elevate, enlarge, or otherwise modify a habitable building that was constructed in violation of this chapter only if the existing building is modified as necessary to meet the requirements of (g) through (j) above, as applicable.

(l) The Department shall issue an individual permit to convert an existing building from a non-residential use to a residential use only if the lowest floor of the converted building is modified as necessary to meet the requirements of (g) above.

(m) The Department shall issue an individual permit to construct a public building or multi-residence building, or to convert an existing building to one of these uses, only if the following requirements are met:

1. If the building is located in a fluvial flood hazard area, the applicant demonstrates that the building is served by at least one existing or proposed roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation; and

2. If the building is located in a tidal flood hazard area, the applicant demonstrates either that the building is served by at least one existing or proposed roadway, the travel surface of which is constructed at least one foot above the flood hazard area design flood elevation, or that such access is not feasible.

(n) The Department shall issue an individual permit to enclose an area that lies below the lowest floor of a habitable building only if the following requirements are satisfied:

1. The enclosure is used solely for parking of vehicles, building access or storage;

2. The floor of the enclosure is situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area; and

3. The enclosure is constructed with permanent flood openings that meet the requirements of the Uniform Construction Code at N.J.A.C. 5:23.

(o) The Department shall issue an individual permit for an enclosure that lies below the flood hazard area design flood elevation and that is intended to be used as a garage for one private residence, whether the enclosure is attached to or below a private residence or is freestanding, only if the following requirements are satisfied:

1. The garage meets the requirements for an enclosure under (n)1, 2, and 3 above;

2. The garage is not being constructed as part of a residential subdivision or multi-unit development; and

3. The lot on which the garage is being constructed did not receive preliminary or final subdivision approval after November 5, 2007.

(p) The Department shall issue an individual permit for an enclosure under (n) above that is greater than six feet in height, or for a garage under (o) above, only if:

1. The deed for the lot on which the enclosure or garage is constructed is modified to:

i. Explain that the enclosure or garage is likely to be inundated by floodwaters, which may result in damage and/or inconvenience;

ii. Disclose the depth of flooding that the enclosure or garage would experience during the FEMA 100-year flood and flood hazard area design flood, if either elevation is known;

iii. Prohibit habitation of the enclosure or garage; and

iv. Explain that converting the enclosure or garage into a habitable area may subject the property owner to enforcement under this chapter; and

2. Within 90 calendar days of the issuance of the individual permit for the enclosure or garage, a copy of the modified deed as filed with the local county clerk is provided to the Department at the address set forth at N.J.A.C. 7:13-1.1(f).

(q) The Department shall issue an individual permit for a building that is flood-proofed only if one of the following requirements is satisfied:

1. The applicant dry flood-proofs the building in accordance with (r) below; or

2. The applicant demonstrates that it is not feasible to dry flood-proof the building in accordance with (r) below and instead wet flood-proofs the building in accordance with (s) below.

(r) The Department shall issue an individual permit to dry flood-proof a building only if the building is designed and constructed with measures to prevent floodwaters from entering the building during a flood depth of at least one foot above the flood hazard area design flood elevation.

(s) The Department shall issue an individual permit to wet flood-proof a building only if the building is designed and constructed to be flood-resistant during a flood depth of at least one foot above the flood hazard area design flood elevation, so that floodwaters can enter the building through permanent openings, while not damaging the structural integrity of the building.

(t) The Department shall not issue an individual permit to flood-proof a new private residence, a new public building, or any residential portions of a new multi-residence building.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In (a) and (c)5, substituted "(t)" for "(q)"; in the introductory paragraph of (e), substituted "to elevate or reconstruct" for "for the reconstruction of"; rewrote (g) through (q); and added (r) through (t).

7:13-11.6 Requirements for a railroad, roadway or parking area

(a) This section sets forth specific design and construction standards that apply to any railroad, roadway or parking area proposed in a flood hazard area.

(b) The Department shall issue an individual permit to construct or reconstruct a railroad or public roadway only if one of the following requirements is satisfied:

1. The travel surface of the railroad or public roadway is constructed at least one foot above the flood hazard area design flood elevation; or

2. The applicant demonstrates that it is not feasible to construct the travel surface of the proposed railroad or public roadway at least one foot above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface as close to this elevation as feasible.

(c) The Department shall issue an individual permit to construct or reconstruct a driveway that only serves one private residence, which is not being constructed as part of a larger residential subdivision, only if one of the following requirements is satisfied:

1. The travel surface of the driveway is constructed at least one foot above the flood hazard area design flood elevation; or

2. The applicant does the following:

i. Demonstrates that it is not feasible to construct the travel surface of the proposed driveway at least one foot above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface as close to this elevation as feasible; and

ii. Modifies the deed of the property to disclose (c)2ii(1) through (3) below. The modified deed shall be filed with the local county clerk, a copy of which shall be provided to the Department within 90 calendar days of the issuance of the individual permit.

(1) That the driveway is likely to be inundated by floodwaters, which may result in damage and/or inconvenience;

(2) The minimum frequency storm at which the driveway will be inundated; and

(3) The depth of flooding during the flood hazard area design flood.

(d) The Department shall issue an individual permit to construct or reconstruct a private roadway that serves a public building or multi-residence building only if one of the following requirements is satisfied:

1. The travel surface of the private roadway is constructed at least one foot above the flood hazard area design flood elevation;

2. For a new private roadway in a fluvial flood hazard area, the applicant demonstrates that the public building or multi-residence building is already served by one or more roadways having a travel surface at least one foot above the flood hazard area design flood elevation, which is of adequate size and capacity to serve the building, and instead constructs the travel surface of the roadway as close to this elevation as feasible; or

3. For a new private roadway in a tidal flood hazard area, or for any reconstructed private roadway that currently lies below the flood hazard area design flood elevation, the applicant demonstrates that it is not feasible to construct the travel surface of the roadway at least one foot above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface of the roadway as close to this elevation as feasible.

(e) The Department shall issue an individual permit to construct or reconstruct a parking area that serves a public building or multi-residence building only if one of the following requirements is satisfied:

1. The travel surface of the parking area is constructed at least one foot above the flood hazard area design flood elevation; or

2. The applicant demonstrates that it is not feasible to construct the travel surface of the parking area at least one foot above the flood hazard area design flood elevation pursuant to (g) below, and instead constructs the travel surface of the parking area as close to this elevation as feasible.

(f) The Department shall issue an individual permit to construct or reconstruct a private roadway and/or parking area that serves a building, or group of buildings, not covered by (c), (d) or (e) above, such as a commercial business, house of worship, office complex, shopping center or residential subdivision of two or more private residences, only if one of the following requirements is satisfied:

1. The travel surface of each proposed private roadway and parking area that serve the building or group of buildings is constructed at least one foot above the flood hazard area design flood elevation;

2. The applicant demonstrates the following:

i. Each building or group of buildings is already served by one or more roadways having a travel surface at least one foot above the flood hazard area design flood elevation, which is of adequate size and capacity to serve the building or group of buildings;

ii. The travel surface of each proposed roadway is constructed as close to one foot above the flood hazard area design flood elevation as feasible; and

iii. The travel surface of each proposed parking area is constructed at least one foot above the flood hazard area design flood elevation; or

3. The applicant demonstrates the following:

i. It is not feasible to construct the travel surface of each private roadway and parking area at least one foot above the flood hazard area design flood elevation pursuant to (g) below;

ii. The travel surface of each private roadway and parking area is constructed as close to one foot above the flood hazard area design flood elevation as feasible;

iii. Every effort has been taken to provide some parking areas or sections of roadway in the overall development that are situated at least one foot above the flood hazard area design flood elevation so that vehicles can be moved to higher ground during a flood;

iv. No extraordinary risk is posed to any person using each private roadway or parking area that is constructed at an elevation less than one foot above the flood hazard area design flood elevation; and

v. An adequate number of permanent signs are posted in prominent locations indicating which private roadways and parking areas are subject to flooding in the following cases:

(1) The roadway and/or parking area serves a residential subdivision of two or more private residences; or

(2) The parking area has 10 spaces or more.

(g) An applicant seeking to demonstrate that it is not feasible to construct the travel surface of a railroad, roadway or parking area at least one foot above the flood hazard area design flood elevation, as is required for various activities in this section, shall prove that strict compliance with this requirement would result in one or more of the following:

1. Prohibitively high construction costs;

2. Construction costs that are disproportionately high compared with any benefit that would be obtained by strict compliance;

3. A design that necessitates excessive volumes of fill that exceed the flood storage displacement limits at N.J.A.C. 7:13-10.4, for which flood storage cannot feasibly be created in compensation either onsite or offsite; and/or

4. A design that causes unavoidable and adverse impacts to the environment (such as to the channel, riparian zone or fishery resources), or which would cause unavoidable and significant increases in the flood hazard area design flood elevation.

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).

See: 45 N.J.R. 360(a).

In the introductory paragraph of (d), (d)2, and the introductory paragraph of (e), inserted "or multi-residence building"; and in (d)2, deleted "public" preceding "building".

7:13-11.7 Requirements for a bridge or culvert

(a) This section sets forth specific design and construction standards that apply to any bridge or culvert proposed in any regulated area.

(b) The Department shall issue an individual permit to construct or reconstruct a bridge or culvert only if the following requirements are satisfied:

1. The bridge or culvert, and all embankments, are designed to remain stable, scour resistant and resistant to displacement and/or damage during any flood event up to and including the flood hazard area design flood. At a minimum, each bridge shall have stable abutments, each culvert shall have stable headwalls, and each abutment and headwall shall have footings that extend no less than three feet below the invert of the channel; and

2. The bridge or culvert, and its associated roadway, are designed to minimize flooding and adverse impacts to channel stability and fishery resources. To help achieve this goal, the bridge or culvert opening shall match or exceed the dimensions of the existing channel where feasible, so that the size and shape of the natural channel is preserved through the structure. If additional flood conveyance is required, parallel culverts can be placed alongside the primary structure to carry flows that exceed the banks. Examples of acceptable designs are provided in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g).

(c) The Department shall issue an individual permit to construct a new bridge or culvert only if the following requirements are satisfied (for the purpose of determining compliance with this subsection, calculations shall be rounded to the nearest 0.1 feet):

1. The new structure does not cause any offsite building, railroad, roadway or parking area to be subject to increased frequency or depth of flooding during any flood event up to and including the flood hazard area design flood; and

2. The new structure does not cause an increase of more than 0.2 feet in the flood hazard area design flood elevation offsite.

(d) The Department shall issue an individual permit to reconstruct an existing bridge or culvert only if the following requirements are satisfied (for the purpose of determining compliance with this subsection, calculations shall be rounded to the nearest 0.1 feet):

1. The reconstructed structure does not cause any off-site building, railroad, roadway or parking area to be subject to increased frequency or depth of flooding during any flood event up to and including the flood hazard area design flood;

2. The reconstructed structure does not cause an increase of more than 0.2 feet in the flood hazard area design flood elevation offsite within 500 feet of the structure; and

3. The reconstructed structure does not cause any increase in the flood hazard area design flood elevation offsite more than 500 feet from the structure.

(e) Subsections (f) through (m) below set forth standards for the protection of aquatic habitat and the maintenance of low-flow aquatic passage associated with the construction of a bridge or culvert. Examples of various designs described in this section are depicted in the Flood Hazard Area Technical Manual, available from the Department at the address listed at N.J.A.C. 7:13-1.1(g). For the purposes of this section, regulated waters are divided into three classes as follows:

1. Class A waters, which include the following:

- i. Category One waters;
- ii. Trout production waters;
- iii. Trout maintenance waters;
- iv. Trout stocked waters;
- v. Anadromous waters;
- vi. Waters supporting cool and warmwater game-fish; and

| | | |
|------------------------|--|---|
| Westfield Town | Elizabeth River | Entire reach |
| | Rahway River | Entire reach |
| | Nomahegan Brook | Entire reach |
| | Rahway River Tributary | Downstream of a point located 720 feet upstream of Gallows Hill Road |
| | Robinsons Branch 15 | Downstream of a point located 180 feet downstream of Shackamaxon Drive |
| | Robinsons Branch 15-1 | Downstream of a point located 130 feet downstream of Rahway Avenue |
| Winfield Township | Robinsons Branch 15-2 | Downstream of a point located 500 feet downstream of Grove Street |
| | Rahway River | Entire reach |
| Warren County | | |
| <u>Municipality</u> | <u>Name of Studied Water</u> | <u>Section Studied</u> |
| Allamuchy Township | Musconetcong River | Entire reach |
| Alpha Borough | Pequest River | Entire reach |
| Belvidere Town | None | N/A |
| | Delaware River* | Entire reach |
| | Pequest River | Entire reach |
| Blairstown Township | Paulins Kill | Entire reach |
| Franklin Township | Mill Brook | Downstream of a point located 2,050 feet upstream of State Highway 57 |
| | Montana Brook | Downstream of a point located 100 feet upstream of State Highway 57 |
| | Musconetcong River | Entire reach |
| | Musconetcong River Tributary A | Downstream of a point located 1,400 feet upstream of Asbury Road |
| | Pohatcong Creek | Entire reach |
| | Sigler Brook | Downstream of Bloomsbury Road |
| Frelinghuysen Township | None | N/A |
| Greenwich Township | Lopatcong Creek | Entire reach |
| | Merrill Creek (Including Left Channel) | Entire reach |
| | Musconetcong River | Entire reach |
| | Pohatcong Creek | Entire reach |
| Hackettstown Town | Hackettstown Brook | Downstream of a private road located 400 feet upstream of Franklin Street |
| | Musconetcong River | Entire reach |
| | Trout Brook | Entire reach |
| Hardwick Township | Delaware River* | Entire reach |
| Harmony Township | Buckhorn Creek | Entire reach |
| | Buckhorn Creek Tributary 1 | Downstream of a point located 1,700 feet upstream of County Route 519 |
| | Delaware River* | Entire reach |
| | Lopatcong Creek | Downstream of a point located 250 feet |

| | | |
|-----------------------|--------------------------------|---|
| Hope Township | Beaver Brook | upstream of Allen Mills Road |
| | Honey Run | Downstream of Interstate Highway 80 |
| Independence Township | Pequest River | Downstream of a point located Swayze Mill Road |
| | | Upstream of a point located 100 feet downstream of U.S. Highway 46 |
| Knowlton Township | Delaware River* | Entire reach |
| Liberty Township | None | N/A |
| Lopatcong Township | Delaware River* | Entire reach |
| | Dry Run | Downstream of a point located 650 feet upstream of Powder Horn Road |
| Mansfield Township | Lopatcong Creek | Entire reach |
| | Hances Brook | Downstream of Highland Avenue |
| | Musconetcong River | Entire reach |
| | Pohatcong Creek | Downstream of Janes Chapel Road |
| | Trout Brook | Entire reach |
| Oxford Township | None | N/A |
| Pahaquarry Township | None | N/A |
| Phillipsburg Town | Delaware River* | Entire reach |
| | Lopatcong Creek | Entire reach |
| Pohatcong Township | Delaware River* | Entire reach |
| | Lopatcong Creek | Entire reach |
| | Musconetcong River | Entire reach |
| | Pohatcong Creek | Entire reach |
| | Pohatcong Creek Tributary 1 | Downstream of a point located 800 feet upstream of Conrail Railroad |
| Washington Borough | Shabbecong Creek | Entire reach |
| Washington Township | Musconetcong River | Entire reach |
| | Musconetcong River Tributary B | Downstream of State Highway 57 |
| | Pohatcong Creek | Entire reach |
| | Shabbecong Creek | Downstream of Washington Borough, Warren County |
| White Township | Beaver Brook | Entire reach |
| | Delaware River* | Entire reach |
| | Pequest River | Entire reach |

Emergency amendment, R.2013 d.041, effective January 24, 2013 (to expire March 25, 2013).
See: 45 N.J.R. 360(a).

In the introductory paragraph, substituted "promulgated" for "adopted", and inserted the last sentence; and rewrote the table.