

- iii. The depth of fill permitted;
- iv. The maximum extent to which an area may be modified; and
- v. The size and type of structure that may be constructed; and

2. A precise description of the geographic area to which the general permit applies, including, when appropriate, limits on the type(s) of water(s) or wetlands where activities may be conducted.

(d) The Department may modify an adopted general permit as it applies to a particular project by adding special conditions which must be met in order to qualify for authorization under the general permit.

(e) The Department may repeal an adopted general permit and thereafter require individual permits for activities previously covered by the general permit, if it finds that the general permit no longer meets the standards of the Freshwater Wetlands Protection Act and this chapter.

(f) The Department shall review each general permit at least every five years. This review shall include public notice and opportunity for public hearing. Upon this review the Department shall modify, readopt or repeal each general permit.

(g) If a general permit is not modified or readopted in accordance with (f) above within five years of publication of its adoption in the New Jersey Register, it shall automatically expire.

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

7:7A-4.2 Using a general permit to authorize specific activities

(a) To use a general permit to authorize regulated activities, an applicant shall submit an application for a general permit authorization, using the application procedures for all permits and waivers set forth at N.J.A.C. 7:7A-10, except in an area under the jurisdiction of the Pinelands Commission. In such an area, the application shall be submitted to the Pinelands Commission rather than to the Department, in accordance with the Pinelands Comprehensive Management Plan (CMP). For information on freshwater wetlands and transition areas in the Pinelands, contact the Pinelands Commission at (609) 894-7300 or through its website at www.state.nj.us/pinelands.

(b) Each general permit specifies whether it covers activities in freshwater wetlands, transition areas, State open waters, or a combination thereof. An authorization issued under a general permit that covers activities in freshwater wetlands satisfies the requirement for a freshwater wetlands permit. An authorization issued under a general permit that covers activities in State open waters satisfies the require-

ment for an open water fill permit. An authorization issued under a general permit that covers activities in a transition area satisfies the requirement for a transition area waiver.

(c) Each general permit authorization shall include a limited transition area waiver to allow access to the authorized activity, in accordance with N.J.A.C. 7:7A-6.1(a)6. No fee or application is required for this waiver and the disturbance authorized under this waiver is not counted in calculating the amount of disturbance under the general permit. An access transition area waiver allows regulated activities only:

1. In that portion of the transition area bordering on that portion of the freshwater wetland in which the activity authorized by the general permit will take place; and

2. For an activity that the Department determines is necessary to accomplish the activity authorized in the wetlands under the general permit. An activity not directly required in order to obtain access to the activity authorized in the wetlands under the general permit shall require a separate transition area waiver.

(d) Usually, a general permit is the only wetlands approval required for activities in freshwater wetlands in New Jersey. However, if an activity is located in non-delegable waters, as defined at N.J.A.C. 7:7A-1.4, both a general permit authorization from the Department and a Federal 404 program approval from the ACOE may be required. In addition, if an activity is located in wetlands or transition areas in an area under the jurisdiction of the Pinelands Commission, approval may be required from the Pinelands Commission, in accordance with the Pinelands Comprehensive Management Plan (CMP). For information on freshwater wetlands and transition areas in the Pinelands, contact the Pinelands Commission at (609) 894-7300 or through its website at www.state.nj.us/pinelands.

(e) The Department shall deny an application for a general permit authorization and require an application for an individual permit if the Department finds that:

1. Additional permit conditions added under N.J.A.C. 7:7A-4.1 and/or 13.2 would not be sufficient to ensure compliance with this chapter and other applicable laws; or

2. Special circumstances make an individual permit necessary to ensure compliance with the Freshwater Wetlands Protection Act, this chapter, any permit or order issued pursuant thereto, or the Federal Act.

(f) The limits on disturbance in each general permit apply to the entire site upon which activities authorized under the general permit occur. An applicant shall not segment a project or its impacts by applying for general permit authorization for one portion of the project and applying for an individual permit for another portion of the project. Similarly, an applicant shall not segment a project or its impacts by

separately applying for general permit authorizations for different portions of the same project.

(g) Unless otherwise specified, the limits on disturbance under a general permit apply to total disturbance, including both temporary and permanent disturbance.

(h) If a regulated activity is not covered by any general permit or combination of general permits, an individual freshwater wetlands or open water fill permit must be obtained under N.J.A.C. 7:7A-7 in order to authorize the activity under this chapter. If a regulated activity in a transition area is not covered by any general permit or combination of general permits, an individual transition area waiver must be obtained under N.J.A.C. 7:7A-6 in order to authorize the activity under this chapter.

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

7:7A-4.3 Conditions that apply to all general permit authorizations

(a) A person acting under the authority of a general permit shall comply with:

1. The conditions listed under the general permit itself;
2. The standard conditions for all general permits set forth at (b) below;
3. The conditions for all permits at N.J.A.C. 7:7A-13;
4. The limits on the use of multiple general permits in N.J.A.C. 7:7A-4.4; and
5. If required under a particular general permit, mitigation pursuant to N.J.A.C. 7:7A-15.

(b) The following conditions apply to all activities conducted under the authority of a general permit:

1. Activities performed under a general permit shall be associated with a proposed project. The Department shall not authorize activities under a general permit for the purpose of eliminating a natural resource in order to avoid regulation. For the purposes of this subsection, project shall mean the use and configuration of all buildings, pavements, roadways, storage areas and structures, and all associated activities;
2. The regulated activity shall not occur in the proximity of a public water supply intake;
3. The activities shall not destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the continued existence of any local population of a threatened or endangered species;

4. The activity will not occur in a component of either the Federal or State Wild and Scenic River System; nor in a river officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system while the river is in an official study status; except that the activity may occur in these waters if approved by the National Park Service in accordance with 40 CFR § 233;

5. The activity shall not adversely affect properties which are listed or are eligible for listing on the National Register of Historic Places. If the permittee, before or during the work authorized, encounters a probable historic property that may be eligible for listing in the National Register, the permittee shall immediately notify the Department and proceed as directed;

6. Any discharge of dredged or fill material shall consist of clean, suitable material free from toxic pollutants (see 40 CFR 401) in toxic amounts, and shall comply with all applicable Department rules regarding use of dredged or fill material;

7. Any structure or fill authorized shall be maintained as specified in the construction plans;

8. During construction activities, all excavation must be monitored for the presence of acid-producing deposits. If any such deposits are encountered, the permittee shall implement the mitigation and disposal standards in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 and shall establish an annual post-planting monitoring program to ensure the reestablishment of vegetation in temporarily disturbed areas. The plantings shall have a minimum 85 percent plant survival and coverage rate after two complete growing seasons. If the plantings fail to achieve this survival rate, the Department will require the permittee to implement additional corrective measures;

9. The activity will not result in a violation of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 or implementing rules at N.J.A.C. 7:13;

10. If activities under the general permit will result in a one-quarter acre or greater increase in impervious surfaces, the stormwater resulting from the general permit activities shall be treated in accordance with the water quality requirements in the Department's Flood Hazard Area Control Act rules at N.J.A.C. 7:13-2.8;

11. If activities under the general permit involve excavation or dredging, the applicant shall use an acceptable disposal site for the excavated or dredged material. No material shall be deposited or dewatered in freshwater wetlands, transition areas, State open waters or other environmentally sensitive areas. The Department may require testing of dredged material if there is reason to suspect that the material is contaminated. If any dredged material is contaminated with toxic substances, the dredged material shall be removed and disposed of in accordance with Department-approved procedures;

12. The amount of rip-rap or other energy dissipating material shall not exceed the minimum necessary to prevent erosion, as calculated under the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90;

13. Best management practices, as defined at N.J.A.C. 7:7A-1.4, shall be followed whenever applicable;

14. If the general permit activities are subject to the Department's Water Quality Management Planning rules at N.J.A.C. 7:15, the activities shall be consistent with those rules and with the applicable approved Water Quality Management Plan (208 Plan) adopted under the New

Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.;

15. The timing requirements at (c) below shall be met; and

16. Activities authorized under a general permit shall not take place in a vernal habitat, as defined at N.J.A.C. 7:7A-1.4, or in a transition area adjacent to a vernal habitat.

(c) In order to protect the fishery resources and/or the spawning of the fish population, any activity which may introduce sediment into a stream or cause a stream to become turbid shall not be performed during the time periods listed in Table A below:

Table A¹

RESTRICTED TIME PERIODS FOR WATERS WITH FISHERY RESOURCES

Water body or water body classification	Time period (inclusive) during which activities shall not be performed
Brook trout production waters; Brown trout production waters; and All other trout production waters except Rainbow trout production waters	September 15 through March 15
Rainbow trout production waters	February 1 through April 30
Trout-stocked waters; Trout maintenance waters; and An area within one mile upstream of a trout-stocked or a trout maintenance water	March 15 through June 15
All unimpeded tidal waters open to the ocean, including: Coastal bays; Delaware Bay and River up to any impassable barrier; and Water bodies identified as anadromous migratory pathways.	April 1 to June 30
Water bodies that support general game fish	May 1 to June 30
Water bodies that support pickerel	Ice out to April 30
Water bodies that support walleye	March 1 to May 30
Water bodies used by American Shad for migrations in the Delaware River:	
—Mouth of Delaware Bay to Delaware Memorial Bridge; and —Tidal Maurice River.	March 1 through June 30; and October 1 through November 30
—Delaware Memorial Bridge to Trenton; and —Tidal portions of Rancocas, Raccoon, and Crosswicks Creeks.	March 1 through June 30; and September 1 through November 30
—Delaware River from Trenton to New York State line.	April 1 through June 30; and September 1 through November 30

¹ Note that the Delaware River Basin Commission (DRBC) imposes additional timing restrictions 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.

(d) The Department may reduce, extend or otherwise modify the timing requirements listed at (c) above on a case-by-case basis provided:

1. The applicant demonstrates that the impact to the fishery resource shall be less if the regulated activities occur during the timing restriction rather than during an unrestricted period;

2. The combined effects of the timing restrictions above would restrict activities to less than 183 calendar days per year. In such a case, the Department may allow regulated activities to occur for up to 183 calendar days if the applicant demonstrates to the Department that proper

steps will be taken that will minimize the impact to the fishery resources;

3. The Department determines that regulated activities must occur during periods when local schools are not in session in order to avoid increased risks or excessive delays to school buses or vans; or

4. The Department determines that, due to the nature of the project or an unusual circumstance on site, the timing restriction must be modified or extended in order to prevent a substantial adverse impact to the fishery resource, to the aquatic environment, or to a threatened or endangered species or its habitat.

(e) If an activity will take place in a non-delegable water, as defined at N.J.A.C. 7:7A-1.4, and the activity requires approval from the ACOE under the Federal 404 program, the activities authorized under the general permit shall not begin until the permittee obtains the required Federal 404 program approval.

(f) No activity is authorized under a general permit without a written approval from the Department, except for the following, which are subject to the notice and application requirements set forth in the applicable provisions cited below:

1. Maintenance of an off-stream stormwater management facility, as authorized under general permit 1 at N.J.A.C. 7:7A-5.1(d);
2. Repair of a malfunctioning septic system, as authorized under general permit 25 at N.J.A.C. 7:7A-5.25; and
3. Minor channel or stream cleaning activities, as authorized under general permit 26 at N.J.A.C. 7:7A-5.26.

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

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

Amended by R.2002 d.320, effective October 7, 2002.

See: 33 N.J.R. 2937(a), 33 N.J.R. 3631(a), 34 N.J.R. 3518(a).

In (b), added 16.

7:7A-4.4 Use of multiple general permits

(a) The Department may authorize activities under one or more general permits on a single site, provided that:

1. The individual limits of each general permit are complied with. If activities under one general permit are conducted in more than one place on a site, the total disturbance caused by all activities at all locations onsite under that general permit shall be summed in order to determine if the limits in the general permit are met; and
2. The total combined area of wetlands, State open waters, and transition areas disturbed or modified on the site under general permits 2, 6, 7, 8, 10A, 10B, 11, 12, 13, 14, 17, 18, 19, 21, 22, 24, 25, and 26 does not exceed one acre with the exception of the following:

i. Disturbance of State open waters as part of a lake dredging project under general permit 13 at N.J.A.C. 7:7A-5.13. However, disturbance of wetlands or transition area in the lake or for access to the dredging project shall be counted toward the one acre limit in this subsection;

ii. Disturbance of State open waters as part of a channel or stream cleaning project under general permit 26 at N.J.A.C. 7:7A-5.26. However, disturbance of wetlands or transition area in the channel or stream or for access to the channel or stream cleaning project shall be counted toward the one acre limit in this subsection;

iii. Disturbance of a transition area solely for access to a general permit activity performed in a wetland in accordance with N.J.A.C. 7:7A-4.2(c); and

iv. Disturbance authorized under general permit 17 on a publicly owned site.

(b) The Department may authorize activities under a general permit more than once on the same site, and/or at different times on the same site. However, the total disturbance authorized on a site under general permits since July 1, 1988 shall meet the criteria for use of multiple general permits set forth at (a)1 and 2 above.

(c) If a general permit is not listed at (a)2 above, any acreage disturbed under that general permit is not counted towards the one acre limit in (a)2 above, regardless of whether the general permit is used singly or in combination with other general permits, and regardless of whether the general permit is used once or repeatedly.

(d) In addition to the limits above in this section, the Department shall not authorize activities under general permit numbers 13, 15, or 18 more often than once every five years on a single site.

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

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

7:7A-4.5 Application for authorization to act under General Permits

(a) An applicant for authorization to act under a general permit shall follow all application procedures and information requirements at N.J.A.C. 7:7A-10, Application Contents and Procedures, unless the activity is one of the following, in which case the application requirements are found in the general permit itself:

1. Maintenance of an off-stream stormwater management facility under N.J.A.C. 7:7A-5.1(d);
2. Repair or modification of a malfunctioning individual subsurface sewage disposal system under N.J.A.C. 7:7A-5.25; or
3. Minor channel or stream cleaning under N.J.A.C. 7:7A-5.26.

New Rule, R.2001 d.312, effective September 4, 2001.

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

7:7A-4.6 Combined general permit authorization and flood hazard area permit

(a) An applicant may obtain a combined freshwater wetlands general permit authorization and flood hazard area permit for an activity that is in a freshwater wetlands and also in an area regulated under the Department's Flood Hazard Area Control Act rules under the following provisions:

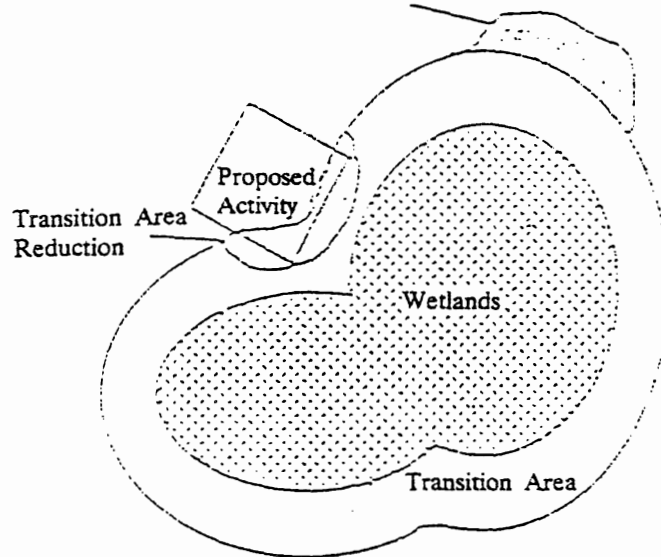
1. N.J.A.C. 7:7A-5.2A, authorizing an underground utility line;
2. N.J.A.C. 7:7A-5.10C, authorizing a minor road crossing;

3. N.J.A.C. 7:7A-5.11A, authorizing an intake or out-fall structure;

Appendix A

Example of a transition area averaging plan.

Transition Area Compensation



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

SUBCHAPTER 7. INDIVIDUAL FRESHWATER WETLANDS AND OPEN WATER FILL PERMITS

7:7A-7.1 General provisions for individual permits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Is otherwise lawful;

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

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

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

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

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

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

(c) The following shall apply to the Department's consideration of whether an alternative is practicable under (b)1 above:

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

i. In considering cost in accordance with (c)1 above, the Department shall consider the acquisition history of the property as a whole, as defined at N.J.A.C. 7:7A-1.4, and the amount, nature, and date of investments that the applicant has made in the property as a whole; and

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

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

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

Recodified from 3.1; added references to State open water.

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

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

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

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

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

Amended by R.2003 d.44, effective January 21, 2003.

See: 34 N.J.R. 2388(a), 35 N.J.R. 418(a).

Deleted (b)12viii; in (c), deleted “, or under N.J.A.C. 7:7A-7.3(b)” following “above” and added 1i.

Case Notes

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

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

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

7:7A-7.3 (Reserved)

New Rule, R.2001 d.312, effective September 4, 2001.

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

Repealed by R.2003 d.44, effective January 21, 2003.

See: 34 N.J.R. 2388(a), 35 N.J.R. 418(a).

Section was “Taking without compensation”.

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

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

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

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

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

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

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

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

Recodified from 3.3; added references to trout production waters.

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

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

1. The authorization is made in writing by a person described in (a) above;

2. The authorization specifies either an individual or a position having overall responsibility for the construction and/or completion of the regulated project or activity, such as the position of contractor, construction site supervisor, or position of equivalent responsibility. A duly authorized representative may, thus, be either a named individual or any individual occupying a named position; and

3. The written authorization is submitted with the application to the Department.

(c) If an authorization under (b) above is no longer accurate because a different individual or position has overall responsibility for the construction and/or completion of the regulated facility or activity, a new authorization satisfying the requirements of (b) above must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) If an application, report, survey, environmental impact statement, or other document required under this chapter is prepared for an applicant by a professional such as a consultant, engineer, architect, surveyor, attorney, or scientist, the document shall include the certification required under (e) below, signed by the professional responsible for preparing the document. This certification shall be in addition to the certification signed by the applicant.

(e) Any person signing a document under (a) or (b) above shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining and preparing the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(f) Any survey submitted under this chapter shall be performed by a surveyor licensed in New Jersey. In addition, the Department may in some cases require that other documents be submitted, signed, sealed, and/or certified by a person with relevant qualifications such as a license or certification.

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

Punctuation only.

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

7:7A-10.11 Confidentiality

(a) Any information submitted to the Department under this chapter may be claimed as confidential by the submitter at the time of submittal.

(b) Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;
2. Effluent data;
3. Permit application; and
4. Permit decision.

(c) Claims of confidentiality for all information not listed in (b) above will be denied unless the claimant can show that the information should be kept confidential under the requirements and procedures of 40 CFR Part 2.

New Rule: R.1992 d.117, effective March 16, 1992.

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

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

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

SUBCHAPTER 11. FEES

7:7A-11.1 General fee provisions

(a) Each application submitted to the Department under this chapter shall include a fee, except as provided at (b) below. An application that does not include the fee required under this subchapter shall be considered administratively incomplete, and shall be handled accordingly under N.J.A.C. 7:7A-12.1. The fees for each application are set forth in the fee tables below.

(b) The following applications shall not require an application fee:

1. An application submitted by an agency of the State under N.J.A.C. 7:7A-2.1(b);
2. An application for authorization under general permit 16 or general permit 25, found at N.J.A.C. 7:7A-5.16 and 5.25, respectively;
3. An application for authorization of activities on public land under general permit 17, found at N.J.A.C. 7:7A-5.17; and
4. An application for a minor modification under N.J.A.C. 7:7A-14.3(c).

(c) All fees shall be paid by personal check, certified check, attorney check, government purchase order, or money order, in accordance with the applicable application checklist.

(d) If proposed activities require approval under this chapter and in addition require one or more other Land Use Regulation Program permits (such as a CAFRA permit, waterfront development permit, coastal wetlands permit, or flood hazard area permit), the application fee shall be the sum of the following:

1. The highest single application fee of all the permits required for the project; and
2. Seventy-five percent of the application fee for each additional approval required.

(e) Any fee required under this chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

(f) An application fee is refundable if the Department returns the application as administratively incomplete under N.J.A.C. 7:7A-12.1(b). An application fee is not refundable once the application has been declared administratively complete under N.J.A.C. 7:7A-12.1. However, if the Department denies an application, or if the applicant withdraws the application under N.J.A.C. 7:7A-12.6, the Department shall credit the fee towards a new application for a revised project on the same site, if the new application is submitted within one year of the denial or withdrawal.

(g) In some cases, an applicant's act or omission makes it necessary for Department staff to perform more than one site visit during the review of an application. In such a case, the Department shall assess an additional fee of up to \$1,000 for each additional site visit. No permit, waiver, or letter of interpretation shall be issued until this fee has been paid.

FEE TABLES

Application fees for LOIs (N.J.A.C. 7:7A-3):

Type of LOI	Fee
Presence/absence LOI—whole site	\$200.00
Presence/absence LOI under N.J.A.C. 7:7A-3.2—portion of a site or footprint of disturbance	\$400.00
Line delineation LOI under N.J.A.C. 7:7A-3.3—site smaller than one acre	\$500.00
Line verification LOI under N.J.A.C. 7:7A-3.4—site smaller than one acre	\$500.00
Line verification LOI under N.J.A.C. 7:7A-3.4—site one acre or larger	\$500.00 plus \$70.00 per acre ¹ , up to \$50,000
LOI extension under N.J.A.C. 7:7A-3.6	\$200.00, or 25 percent of original fee, whichever is greater

Type of LOI	Fee
LOI (any type) and a transition area waiver, (any type) if the site is one acre or smaller.	\$700.00 Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
LOI (any type) and a transition area waiver, (any type) if the site is larger than one acre.	\$900.00 plus \$80.00 per acre ¹ Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
LOI (any type) and a general permit authorization	Sum of applicable LOI and general permit authorization fees
LOI (any type) and an individual permit	Applicable individual permit fee

Application fees for general permit authorizations (N.J.A.C. 7:7A-5):

Type of general permit	Fee
Any general permit authorization, except:	\$500.00
1. General permit 16 (wildlife management);	
2. General permit 25 (septic repair); or	
3. General permit 17 (trail/boardwalk) on public land.	
Authorization under any of the following:	None
1. General permit 16 (wildlife management);	
2. General permit 25 (septic repair); or	
3. General permit 17 (trail/boardwalk) on public land.	
Multiple general permit authorizations for one site	\$500.00 plus \$200.00 for each additional general permit
General permit authorization extension	\$200.00
Combined general permit 2 authorization and flood hazard area permit	\$975.00
General permit 10A, 11, or 20 authorization combined with a major flood hazard area permit	\$4,375
General permit 10A, 11 or 20 combined with a minor flood hazard area permit	\$975.00

<u>Type of general permit</u>	<u>Fee</u>
Combined general permit 26 authorization and flood hazard area permit	\$500.00

Application fees for transition area waivers (N.J.A.C. 7:7A-6):

<u>Type of transition area waiver</u>	<u>Fee</u>
Any transition area waiver, if: 1. The entire site is covered by a valid line delineation or line verification LOI; and 2. The site is one acre or smaller.	\$200.00

Any transition area waiver, if: 1. The affected portion of the site is covered by a valid line delineation or line verification LOI; and 2. The site is over one acre.	\$500.00 plus \$40.00 per acre affected ²
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Any transition area waiver, if: 1. The site is not covered by a valid LOI, or has a presence/absence LOI only; and 2. The site is one acre or less.	\$700.00 Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
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Any transition area waiver if: 1. The site is not covered by a valid LOI, or has a presence/absence LOI only; and 2. The site is larger than one acre.	\$900.00 plus \$80.00 per acre affected ³ Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
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Multiple transition area waivers (unless all are special activity transition area waivers)	Sum of all fees for all of the applicable transition area waivers
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Multiple special activity transition area waivers for a single site	\$500.00 plus \$200.00 for each additional special activity waiver
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Transition area waiver (any type) and an individual freshwater wetlands or open water fill permit	Either the applicable transition area waiver fee or the individual permit fee, whichever is higher
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Transition area waiver (any type) and one or more general permit authorizations	The applicable transition area waiver fee, plus \$500.00 for the first general permit authorization, and \$200.00 for each additional general permit authorization
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Transition area waiver extension	\$200.00
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Application fees for exemption letters (N.J.A.C. 7:7A-2.10):

<u>Type of approval</u>	<u>Fee</u>
Exemption letter	\$200.00

Application fees for individual permits (N.J.A.C. 7:7A-7):

<u>Type of approval</u>	<u>Fee</u>
Individual freshwater wetlands or open water fill permit	\$2,000 plus \$200.00 per 1/10 acre affected ⁴

Individual permit extension	\$1,000
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Application fees for modifications (N.J.A.C. 7:7A-14):

<u>Type of approval</u>	<u>Fee</u>
Minor modification	None

General permit authorization modification	\$200.00
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Major modification	25 percent of the application fee originally charged for the approval that is being modified, or \$200.00, whichever is higher.
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Application fees for Water Quality Certifications (N.J.A.C. 7:7A-2.1(d)):

<u>Type of approval</u>	<u>Fee</u>
Water Quality Certificate	\$2,000 plus \$200.00 per 1/10 acre affected

Water Quality Certificate extension	\$1,000
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¹ When these fee tables refer to a cost "per acre," this means the cost is per acre or fraction thereof. For example, an area of one and one third acres would have the same fee as an area of two acres. When these fee tables refer to a cost "per 1/10 acre," this means the cost is per tenth of an acre or fraction thereof, such that an area of 0.12 acres would have the same fee as an area of 0.2 acres. When these fee tables refer to an "acre affected," this means an acre of freshwater wetlands, State open waters, or transition area that will be affected by a regulated or prohibited activity.

² See note 1 above.

³ See note 1 above.

⁴ See note 1 above.

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

At (a) added to list of documents which must be accompanied by a fee.

Amended by R.1993 d.111, effective March 1, 1993.
See: 24 N.J.R. 2768(a), 25 N.J.R. 924(a).

Added subsection (d).

Amended by R.1995 d.205, effective April 17, 1995. See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

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

Former N.J.A.C. 7:7A-11.1, Application contents for Individual Freshwater Wetlands and Open Water Fill Permits, was repealed.
Amended by R.2003 d.298, effective July 21, 2003.

See: 35 N.J.R. 928(a), 35 N.J.R. 3354(a).

Amended the fee tables.

7:7A-11.2 (Reserved)

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

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

Section was "Recordkeeping".

7:7A-11.3 through 7:7A-11.4 (Reserved)

SUBCHAPTER 12. DEPARTMENT REVIEW OF APPLICATIONS

7:7A-12.1 Completeness review

(a) Within 20 working days, as defined at N.J.A.C. 7:7A-1.4, after receiving an application, the Department shall review the application as follows:

1. If all items required by the application checklist are included, the Department shall declare the application administratively complete. However, if an included item is clearly deficient, the item shall not be considered to be included and the Department shall declare the application administratively incomplete; and

2. If each application item is adequate to allow the Department to determine if the proposed project complies with this chapter, the Department shall declare the application technically complete.

(b) If the application is not administratively complete under (a)1 above, the Department shall return the application to the applicant with a list of the missing items. The applicant may resubmit the application at any time. If the application is resubmitted within one year, the original application fee shall be credited to the fee for the resubmitted application. If the application is not resubmitted, the applicant may obtain a fee refund upon request.

(c) If the application is administratively complete under (a)1 above, the Department shall:

1. Notify the applicant that the application is administratively complete;

2. Transmit a copy of the application to other agencies if required under this chapter. For example, an application for an individual permit for a major discharge must be transmitted to EPA for comment under N.J.A.C. 7:7A-12.2;

3. Publish notice of the application in the DEP Bulletin; and

4. If the application is not technically complete under (a)2 above, request any additional information necessary for technical completeness.

(d) If the Department requests additional information under (c)4 above, the applicant shall provide copies of the additional information to the persons who received a copy of the initial application under N.J.A.C. 7:7A-10.9, and to the reviewing agencies who received a copy under (c)2 above.

(e) If an application is returned for incompleteness under (b) above, the applicant may submit a new application without repeating the public notice requirements of N.J.A.C. 7:7A-10.9 if the new application:

1. Is submitted within 60 days after the date the Department returned the original submittal; and

2. Is sufficiently similar to the original submittal that the original public notice would provide reasonable notice of the characteristics of the new submittal to potential interested parties.

(f) If a person submits an application and does not receive a response from the Department within the deadlines imposed in this subchapter, the person shall not be entitled to assume that the application is approved, except if the application is for authorization of the following activities and complies with the applicable general permit:

1. Maintenance of a stormwater management facility under general permit 1;

2. Repair of a malfunctioning individual subsurface sewage disposal system under general permit 25; or

3. Minor channel or stream cleaning activities under general permit 26.

Repeal and New Rule, R.2001 d.312, effective September 4, 2001.

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

Section was "Initial Department action for Individual Freshwater Wetlands and Open Water Fill Permits".

7:7A-12.2 USEPA review

(a) Because the Department has assumed responsibility for the Federal 404 program in most freshwater wetlands and State open waters in New Jersey, the Federal Act requires that the USEPA oversee the State's administration of the program set forth in this chapter. The procedures in (b) through (j) below explain USEPA's oversight role, and the procedures which the State will follow to facilitate USEPA's oversight. In areas where the Department has assumed the Federal 404 program, the Department's freshwater wetlands or open water fill permit constitutes the permit required under this chapter as well as the Federal 404 permit, unless the permit specifies otherwise.

(b) The Department shall transmit the following items to USEPA for review:

1. Each new proposed draft general permit. In general, an application for authorization to act under an adopted general permit will not require USEPA review, unless the activity proposed under the general permit itself constitutes a major discharge;

2. Each application involving a major discharge, as defined at N.J.A.C. 7:7A-1.4;

3. Any permit application, or category of permit applications, that the Department determines is appropriate for USEPA review;

4. Any permit application that USEPA requests to review;

5. Any additions or changes made to an application listed at (b)2 through 4 above after the application has been submitted to USEPA, as a result of a contested case proceeding in the Office of Administrative Law; and

6. For informational purposes, an initial decision issued by an administrative law judge in a contested case proceeding which involves an application listed at (b)2 through 4 above.

(c) For an item that requires USEPA review under (b) above, the Department shall promptly transmit to the Regional Administrator:

1. A complete copy of the item;
2. Notice of every significant action taken by the Department related to the consideration of the permit application or other item; and
3. A copy of any decision on the application or other item.

(d) If USEPA intends to comment upon, object to, or make recommendations with respect to an item, or with respect to the Department's failure to accept the recommendations of an affected state pursuant to N.J.A.C. 7:7A-12.3(d), USEPA may notify the Department of this intent within 30 days of receipt of the permit application or other item. If the Department has been so notified, the permit or other item shall not be issued until after the receipt of such comments or within 90 days of the USEPA's receipt of the application or other item, or the Department response, whichever comes first. The USEPA may notify the Department within 30 days of receipt that there is no comment but that USEPA reserves the right to object within 90 days of receipt, based on any new information brought out by the public during the comment period or at a hearing.

(e) When the Department has received a USEPA objection or requirement for a permit condition under this section, the State shall not issue the Federal 404 permit unless the steps required by the USEPA to eliminate the objection have been taken. However, the Department may issue a freshwater wetlands permit. Such a permit shall satisfy only the requirements of the New Jersey Freshwater Wetlands Protection Act and the permit shall not constitute a 404 permit. In such a case, the applicant would be responsible for obtaining any necessary 404 program approvals from the ACOE.

(f) Within 90 days after receiving an objection or requirement for a permit condition by the USEPA, the Department or any interested person may request that the USEPA hold a public hearing on the objection or requirement. USEPA shall conduct a public hearing if requested by the Depart-

ment, or if warranted by significant public interest based on requests received.

(g) If USEPA holds a public hearing under (f) above, USEPA shall, following that hearing, reaffirm, modify or withdraw the objection or requirement for a permit condition. USEPA shall notify the Department of this decision.

(h) If USEPA holds a public hearing, the Department shall have 30 days after USEPA gives the Department notice of its decision under (g) above to take either of the actions at (i)1 or 2 below. If USEPA does not hold a public hearing, the Department shall have 90 days after receiving USEPA's original objection or requirement for a permit condition to take either of the actions at (i)1 or 2 below.

(i) The Department shall take one of the following actions within the applicable deadline in (g) or (h) above:

1. If the USEPA has withdrawn the objection or requirement for a permit condition, the State may issue the Federal 404 permit; or

2. If the USEPA has not withdrawn the objection or requirement for a permit condition, the Department must do one of the following:

- i. Issue a revised permit satisfying the USEPA's objection or including the required permit condition;

- ii. Notify USEPA of its intent to deny the permit. If the Department intends to deny the permit it shall notify EPA of this intent within 30 days after receiving USEPA's notification; or

- iii. Issue a State freshwater wetlands permit that does not constitute a Federal 404 permit and require the applicant to apply to the appropriate Federal agency for a permit under the Federal 404 program.

(j) No Federal 404 permit shall be issued by the Department in the following circumstances, although the Department may issue a State freshwater wetlands permit that does not constitute a Federal 404 permit:

1. When the Regional Administrator has objected to issuance of the permit and the objection has not been resolved;

2. When the proposed discharges would be in an area which has been prohibited, withdrawn, or denied as a disposal site by the USEPA under Section 404(c) of the Federal Act, or when the discharge would fail to comply with a restriction imposed thereunder; or

3. If the Army Corps of Engineers determines, after consultation with the Secretary of the Department in which the Coast Guard is operating, that anchorage and navigation of any of the navigable waters would be substantially impaired.

(k) The Department shall submit an application to the U.S. Fish and Wildlife Service for review of the potential for

impacts on Federally listed threatened or endangered species if the application is for an individual permit, or for authorization under general permit 2, 4, 5, 6, 7, 10A, 10B, 11, 13, 15, 17, 18, 20, 22, 23, 24, 26 or 27, and the site is located in a municipality that has documented occurrences of threatened or endangered species, or critical habitat, as defined in the Federal Endangered Species Act, 16 U.S.C. §§ 1531 et seq. If an application is submitted for such review, the time required for a final decision on the application will be extended as necessary to complete the review in accordance with the time limits set forth in the Memorandum of Agreement between the Department and the U.S. Fish and Wildlife Service, executed in order for the Department to assume responsibility for the Federal 404 program.

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

Recodified from 2.3; original 2.2, Draft permits, was repealed by this rulemaking.

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

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

Rewrote the section.

7:7A-12.3 Public comment on an application

(a) The Department shall publish notice in the DEP Bulletin of each administratively complete application in accordance with N.J.A.C. 7:7A-12.1, except for an application for a minor modification. This notice shall constitute notice of the application to all interested persons except those who must be notified by the applicant under N.J.A.C. 7:7A-10.9.

(b) The Department shall make copies of all applications available for public inspection by appointment in the offices of the Department in Trenton (see N.J.A.C. 7:7A-1.3 for address) during normal business hours.

(c) The applicant shall transmit a copy of each application to the clerk of the municipality in which the project is located in accordance with N.J.A.C. 7:7A-10.9, to be made available for public inspection.

(d) The public shall have 30 days to comment on an application after the Department publishes notice of the application in the DEP Bulletin under (a) above. The Department shall consider all written public comments submitted within this time. The Department may, in its discretion, consider comments submitted after this date.

(e) If a proposed discharge may affect the biological, chemical, or physical integrity of the waters of any state(s) other than New Jersey, the Department shall provide an opportunity for such state(s) to submit written comments within the public comment period and to suggest permit conditions. If these recommendations are not accepted, the Department shall notify the affected state and the USEPA in writing, prior to permit issuance, of the Department's intent not to accept these recommendations, together with the reasons for so doing. The EPA shall then have the same amount of time provided for applications and draft general permits in N.J.A.C. 7:7A-12.2 to comment upon, object to, or make recommendations regarding the Department's action.

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

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

Recodified from 2.4, added new (d).

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

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

Rewrote the section.

7:7A-12.4 Hearings on an application for an individual permit or individual transition area waiver

(a) Within 30 days after a notice of an application for an individual permit or individual transition area waiver is published in the DEP Bulletin, interested persons may request in writing that the Department hold a public hearing on the application. Requests shall state the nature of the issues proposed to be raised at the hearing.

(b) The Department may issue or deny an individual permit or individual transition area waiver without a public hearing. However, the Department will hold a public hearing if:

1. There is a significant degree of public interest in the application, as manifested by written requests for a hearing within the 30 day hearing request period set forth in (a) above. In considering the degree of public interest, the Department will consider whether the issues raised in the hearing requests are relevant to the application review;
2. A public hearing is requested by USEPA; or
3. The Department determines that the public interest would be served by holding a hearing.

(c) If a hearing is to take place, the Department shall, within 30 days after the end of the 30 day hearing request period set forth in (a) above:

1. Set a date and time for the public hearing;
2. Choose a location for the hearing, in the county where the freshwater wetlands, transition areas, and/or State open waters affected by the application are located;
3. Notify the applicant; and
4. Publish a notice announcing the date, place, and time of the public hearing in the DEP Bulletin.

(d) A public hearing held under this section shall be a non-adversarial proceeding, conducted solely to provide information to the public and the Department regarding the application under review.

(e) The applicant shall give public notice of the public hearing by doing the following, at least 30 days before the hearing:

1. Sending a completed public hearing notice form, obtained from the Department at the address in N.J.A.C. 7:7A-1.3 or the Land Use Regulation Program website at www.state.nj.us/dep/landuse, to the following:
 - i. All persons to whom a complete application must be sent under N.J.A.C. 7:7A-10.9(d);