

"This letter is to provide you with legal notification that a request for modification of a coastal permit will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program to modify an existing coastal permit in order to construct the development shown on the enclosed plan.

The complete request for modification of the coastal permit can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter to:

New Jersey Department of Environmental Protection
Land Use Regulation Program
PO Box 439
501 East State Street
Trenton, New Jersey 08625-0439
Attn: (Municipality in which property is located)
Section Chief,"

iii. For modified developments proposed on the site of an industrial, commercial or residential development of at least 100 acres or a park facility of at least 50 acres, provided there is no change in land use, the Department may, at its discretion, limit the requirement for public notice to property owners at (j)1ii above to only those property owners the Department has determined are likely to be affected by the modification(s) to the previously approved development. The determination shall be based on the size of the proposed modification and its proximity to properties within 200 feet.

2. For a minor modification of a CAFRA permit or a waterfront development permit for a development located landward of the mean high water line, public notice in accordance with (j)1i above.

3. For a modification of a coastal wetlands permit or waterfront development permit for a development located below (outshore of) the mean high water line, public notice shall consist of the following:

i. Notice to the municipal clerk, planning board and environmental commission in accordance with (j)1i above;

ii. Notice, including a copy of the amended site plan and completed LURP application form, to all owners of real property including easements, sharing a common property boundary with the property on which the proposed development would occur. The amended site plan referred to in this subparagraph need not include a full set of plans, but shall depict the proposed devel-

opment in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as described at (j)1ii above and a copy shall be included in the application to the Department;

4. Rather than public notice as required under (j)1 through 3 above, for a modification of any coastal permit, if the change is to a linear development of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance or dune creation of one half-mile or more in length, public notice shall consist of the following:

i. Notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. This newspaper notice shall be published as a display advertisement of at least four inches in width;

ii. Notice to the municipal clerk, planning board and environmental commission in accordance with (j)1i above;

iii. Notice, including a copy of the amended site plan and completed LURP application form, to the construction official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. The amended site plan requirements and notice language are found at (j)3ii above.

iv. Notice including a copy of the amended site plan and completed LURP application form to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of a proposed above ground structure related to the proposed linear development or shore protection structure, such as a treatment plant, groin, revetment, gabion or bulkhead rather than to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur. The amended site plan requirements and notice language are found at (j)3ii above.

(k) The Department shall publish in the DEP Bulletin notice of the receipt of each request for modification of a coastal permit and notice of the approval or disapproval of each request.

Amended by R.1987 d.217, effective May 18, 1987.
See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added "minor".

Amended by R.1994 d.378, effective July 18, 1994.
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Amended by R.1995 d.356, effective July 3, 1995.
See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

In (b) substituted "Land Use Regulation Program (LURP) permit application form" for "CP-1 form".

Amended by R.1995 d.550, effective October 16, 1995.
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

Rewrote the section.

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

7:7-4.11 Suspension and revocation of permits

(a) A permit is suspendable for good cause, such as, but not limited to, violations of permit condition, significant changes in the plan for the development which occur after a permit is issued which are not explicitly authorized in writing by the Department, the applicant's failure to correctly identify project impacts, or unanticipated adverse effects caused by the development.

1. Prior to the suspension, the Department shall furnish written notice to the permittee by certified mail, providing 10 days within which to either remedy the violations, provide an explanation of why such violations cannot be remedied, offer a plan to remedy these violations, or demonstrate to the Department that good cause for suspension does not exist. Any remedial plan shall indicate the time necessary to implement the remedy.

2. If the above requirements have not been met, the permit shall be suspended. Construction may not commence, or if underway, shall then cease until the Department has lifted the suspension.

3. A permittee may appeal suspension of a permit according to the provisions of N.J.A.C. 7:7-5 only if construction has ceased.

(b) A suspended permit is revocable for good cause.

1. Prior to revocation, the Department shall provide the permittee with written notice, by certified mail, of intent to revoke the permit and of the permittee's right to a hearing pursuant to the provisions of N.J.A.C. 7:7-5. A request for a hearing shall be addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625-0402.

2. If such a hearing is not requested within 10 days of receipt of said notice, the permit shall automatically be revoked.

3. Should a permit be revoked, the permittee shall make all reasonable efforts to restore the site to its pre-construction condition.

Administrative change to (b)1.

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

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

7:7-4.12 (Reserved)

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2056(a), 19 N.J.R. 861(b).

Added "final review or public hearing".

Repealed by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Section was "Expedited application process".

SUBCHAPTER 5. PROCEDURES TO REQUEST AN ADJUDICATORY HEARING TO CONTEST A PERMIT DECISION

Law Review and Journal Commentaries

Administrative Procedure—Environmental Law. Steven P. Bann, 137 N.J.L.J. No. 1, 67 (1994).

7:7-5.1 Hearing request

(a) Subject to the limitation on thirdparty hearing rights specified in (d) below, any interested persons who consider themselves aggrieved by a permit decision of the Land Use Regulation Program may, within 30 days of publication of notice of the permit decision in the DEP Bulletin submit a written request for an adjudicatory hearing to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, PO Box 402, Trenton, New Jersey 086250402. The DEP Bulletin is available through the Department's website at www.state.nj.us/dep. The written request shall include:

1. All information required by the "Adjudicatory Hearing Request Checklist and Tracking Form" available from the Department's Land Use Regulation Program, PO Box 439, Trenton, NJ 08625-0439 and on the Land Use Regulation Program's website at www.state.nj.us/dep/landuse, including the following:

- i. Information on the person requesting the hearing;
- ii. Information on the decision being appealed;
- iii. A copy of the decision document;
- iv. The legal and factual basis for the appeal;
- v. Information on the issues being appealed, whether they were discussed during the review process and suggestions to settle these issues; and
- vi. Any special hearing requirements.

2. If the hearing request is submitted by someone other than the applicant, in addition to submitting the information requested above, the person requesting the hearing shall submit additional information including the following:

- i. Evidence of notice to the permit applicant;
- ii. Information regarding the participation of the person requesting the hearing in the application review process; and
- iii. Information necessary for the Department to determine whether the appellant has a legal right to a hearing.

(b) A hearing request may include a request that the permit or any and all conditions of the permit be stayed.

(c) Nothing in this section shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14B-3.1 through 3.3 (P.L.1993, c.359).

(d) If a permittee submits a hearing request contesting any condition of a permit, construction shall not commence until the adjudicatory hearing is resolved, unless the Commissioner issues a stay of the condition pursuant to N.J.A.C. 7:7-5.3(c).

Administrative change to (a)1.

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

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Amended by R.1995 d.550, effective October 16, 1995.

See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

Rewrote the section.

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote (a); deleted former (b); recodified former (c) through (e) as (b) through (d).

Case Notes

Issuance of waterfront development permit during pendency of application did not entitle marine conservation group to a review hearing. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Marine conservation group had standing to seek judicial review of grant of waterfront development permit. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Two avenues of appeal of permit decision are an appeal to the Department Commissioner or to the Coastal Area Review Board (citing former N.J.A.C. 7:7D-1 and 7:7D-2.8). In re Egg Harbor Associates, 185 N.J.Super. 507, 449 A.2d 1324 (App.Div.1982), affirmed 94 N.J. 358, 464 A.2d 1115 (1983).

Noted that conceptual approval permit not granted and additional evidence from objectors not permitted by Coastal Area Review Board (citing former N.J.A.C. 7:7D-1.9). *Crema v. Dept. of Environmental Protection*, 94 N.J. 286, 463 A.2d 910 (1983).

7:7-5.2 Response to a hearing request

(a) Any interested person may, within 10 days of receiving notice of a hearing request or appeal statement, submit a written response.

(b) If the responding party contends that the hearing request should be denied, the answer should fully explain the basis for that contention.

(c) Any person or entity having a significant interest in the outcome of a hearing request, may, in addition to filing a response, request permission to participate in the appeal process. A request to participate must be postmarked within 10 days of publication of the notice of the hearing request in

the DEP Bulletin, and must specify the requesting party's interest in the matter being appealed.

(d) Where the request to participate is filed by someone other than the applicant, evidence that a copy of the request has been mailed to the applicant shall be submitted.

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

In (b), substituted "hearing" for "appeal" preceding "request"; and in (c), deleted "original" preceding "hearing" in the second sentence.

7:7-5.3 Action on hearing request

(a) The Department shall publish notice of all hearing requests in the DEP Bulletin.

(b) The Commissioner shall act on any hearing request which complies with the requirements of this subchapter within 21 days of its receipt.

(c) The Commissioner may, upon request and for good cause shown, stay the effective date of the permit or any or all of the conditions of the permit pending resolution of the adjudicatory hearing.

(d) Requests for which a hearing is granted shall be referred to the Office of Administrative Law which shall assign an administrative law judge to conduct a hearing on the matter in the form of a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Within 45 days of receipt of the administrative law judge's decision, the Commissioner shall accept, reject, or modify the decision.

(f) The Commissioner's action shall be considered final agency action for the purposes of the Administrative Procedure Act, and shall be subject only to judicial review as provided in the Rules of Court.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

In (a), substituted "hearing" for "appeal"; in (b), substituted "hearing request" for "appeal"; and rewrote (c).

Case Notes

Permit granted while permit application was still pending was invalid. In re Waterfront Development Permit No. WD88-0443-1, Lincoln Harbor Final Development, Weehawken, Hudson County, 244 N.J.Super. 426, 582 A.2d 1018 (A.D.1990) certification denied 126 N.J. 320, 598 A.2d 880.

Appeal by interested persons of decision granting CAFRA permit does not require a contested case evidentiary hearing; hearing received was fair and adequate; permit decision supported by ample credible evidence; Commissioner not required to hold hearing in considering appeal (citing former N.J.A.C. 7:7D-2.8). *Normandy Beach Improvement Assn. v. Dept. of Environmental Protection*, 193 N.J.Super. 57, 472 A.2d 156 (App.Div.1983) certification denied 96 N.J. 305, 475 A.2d 596 (1984).

7:7-5.4 Settlement in response to a hearing request

(a) Any applicant who has requested a hearing on a permit decision or has had a permit decision contested by a third party pursuant to this subchapter may, at any time prior to rendering of an initial decision by the Office of Administrative Law, submit a revised application for the purpose of negotiating a settlement.

(b) Applicants will be required to submit information adequate to allow the Department to fully assess any proposed revisions to the project.