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CHAPTER 1C

NINETY-DAY CONSTRUCTION PERMITS

Authority

N.J.S.A. 13:1D-9 and 13:1D-29 et seq., specifically 13:1D-33.

Source and Effective Date

R.2000 d.283, effective June 12, 2000.
See: 32 N.J.R. 1273(a), 32 N.J.R. 2426(a).

Executive Order No. 66(1978) Expiration Date

Chapter 1C, Ninety-Day Construction Permits, expires on June 12, 2005.

Chapter Historical Note

Chapter 1C, Ninety-Day Construction Permits, was adopted as R.1975 d.347, effective December 22, 1975. See: 7 N.J.R. 548(a). Pursuant to Executive Order No. 66(1978), Chapter 1C expired on June 30, 1983.

Chapter 1C, Ninety-Day Construction Permits, was adopted as new rules by R.1985 d.316, effective June 17, 1985. See: 16 N.J.R. 3243(a), 17 N.J.R. 1544(a).

Pursuant to Executive Order No. 66(1978), Chapter 1C, Ninety-Day Construction Permits, was readopted as R.1990 d.343, effective June 15, 1990. See: 22 N.J.R. 73(a), 22 N.J.R. 2143(c).

Pursuant to Executive Order No. 66(1978), Chapter 1C, Ninety-Day Construction Permits, was readopted as R.1995 d.356, effective June 12, 1995. See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

Pursuant to Executive Order No. 66(1978), Chapter 1C, Ninety-Day Construction Permits, was readopted as R.2000 d.283, effective June 12, 2000. See: Source and Effective Date.

Cross References

Flood control, projects exposing deposits of acid-producing soils, see N.J.A.C. § 7:13-3.7.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. NINETY-DAY CONSTRUCTION PERMIT RULES

7:1C-1.1	Purpose
7:1C-1.2	Definitions
7:1C-1.3	Pre-application procedure and requirements
7:1C-1.4	Application for construction permit
7:1C-1.5	Fees
7:1C-1.6	DEP Bulletin
7:1C-1.7	Review of application
7:1C-1.8	Decision on permit application
7:1C-1.9	Appeals
7:1C-1.10	Other State statutes, rules and regulations
7:1C-1.11	Severability
7:1C-1.12	Related regulations
7:1C-1.13 through 7:1C-1.14	(Reserved)

SUBCHAPTER 1. NINETY-DAY CONSTRUCTION PERMIT RULES

7:1C-1.1 Purpose

This chapter implements P.L. 1975, Chapter 232 (N.J.S.A. 13:1D-29 et seq.), to secure timely decisions by the Department of Environmental Protection on construction permit applications as defined therein, to assure adequate public notice of procedures thereunder, and to continue effective administration of the substantive provisions of other laws.

7:1C-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Act” means N.J.S.A. 13:1D-29 et seq.

“Applicant” means any person requesting a construction permit who has submitted an application to the Department.

“Application form” means the permit application form required and provided by the appropriate agency.

“Appropriate agency” means:

1. The Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439 for:

i. Approval of plans for the development of any waterfront upon any tidal or navigable waterway pursuant to N.J.S.A. 12:5-3 (Waterfront Development Permit);

ii. Permits for a regulated activity under the Wetlands Act of 1970, P.L. 1970, c.272 (N.J.S.A. 13:9A-1 et seq.);

iii. Permits issued pursuant to the Coastal Area Facility Review Act, P.L. 1993, c.190 (N.J.S.A. 13:19-1 et seq.); and

iv. Stream encroachment permits under N.J.S.A. 58:16A-50 et seq.

2. The Division of Water Quality, PO Box 029, Trenton, NJ 08625-0029 for:

i. A treatment works approval for the construction, change, improvement, alteration or extension of sanitary sewage collection and treatment systems issued pursuant to N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14A-22.

“Commissioner” means the Commissioner of the New Jersey Department of Environmental Protection.

“Construction cost” means the project cost, not including financing or insurance charges, of that portion of a project which is subject to review for a construction permit.

“Construction permit” means:

1. Approval of plans for the development of any waterfront upon any tidal or navigable waterway pursuant to N.J.S.A. 12:5-3;
2. A permit for a regulated activity pursuant to “The Wetlands Act of 1970,” P.L. 1970, c.272 (N.J.S.A. 13:9A-1 et seq.);
3. A permit issued pursuant to the Coastal Area Facility Review Act, P.L. 1993, c.190 (N.J.S.A. 13:19-1 et seq.);
4. A permit issued pursuant to the “Flood Hazard Area Control Act,” N.J.S.A. 58:16A-50 et seq. and the “Flood Hazard Area Control Regulations,” N.J.A.C. 7:13; and
5. A treatment works approval for the construction, change, improvement, alteration or extension of sanitary sewage collection and treatment systems issued pursuant to N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14A-22.

Note: “Construction permit” does not include any approval of or a 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.

“Department” means the New Jersey Department of Environmental Protection.

“DEP Bulletin” means the official publication of the Department of Environmental Protection required by N.J.S.A. 13:1D-34, listing the status of pending construction permit applications.

“Person” means corporations, companies, associations, societies, firms, partnerships, and joint stock companies, as well as individuals, owners or operators of a domestic or industrial treatment works, the State, and all political subdivisions of the State or any agencies or instrumentalities thereof.

“Structure” means any assembly of materials above or below the surface of land or water, including but not limited to buildings, fences, dams, pilings, breakwaters, fills, levees, bulkheads, dikes, jetties, embankments, causeways, culverts, pipes, pipelines, roads, railroads, bridges and the facilities of any utility or governmental agency. Trees or other vegetation shall not be considered to be structures.

“Treatment works approval” means an approval issued pursuant to N.J.S.A. 58:10A-6 or N.J.A.C. 7:14A-22.

Amended by R.1977 d.200, effective June 3, 1977.
See: 9 N.J.R. 321(a).

Amended by R.1980 d.75, effective February 14, 1980.

See: 11 N.J.R. 432(b), 12 N.J.R. 113(d).

Amended by R.1989 d.436, effective August 21, 1989.

See: 21 N.J.R. 819(a), 21 N.J.R. 2530(c).

“Appropriate agency”, “Construction permit”, and “Person” revised. “Treatment works approval” added.

Amended by R.1990 d.343, effective July 16, 1990.

See: 22 N.J.R. 731(a), 22 N.J.R. 2143(c).

Addresses corrected at “appropriate agency.”

Amended by R.1994 d.337, effective July 5, 1994.

See: 26 N.J.R. 787(a), 26 N.J.R. 2789(a).

Amended by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

Substituted a definition of “Application form” for “Application”; and corrected citations.

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

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

7:1C-1.3 Pre-application procedure and requirements

(a) A pre-application review is an optional service especially recommended for major development. During this review the Department will discuss the apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The conference is intended to provide guidance and does not constitute a commitment of approval or denial of a permit for the proposed development. However, if the appropriate agency determines that the proposed project is exempt from the permit requirement, the agency shall issue a written statement of such finding which shall bind the agency. The written statement issued as a result of a pre-application review shall be based solely on the information submitted by the applicant pursuant to (a)1 below. Therefore, this written statement will not constitute an exemption letter, issued pursuant to N.J.A.C. 7:7-2.1(e), certifying that a development is exempt from the requirements of CAFRA.

1. A request for a pre-application review shall be made in writing and shall include a conceptual proposal of the proposed development, including a written description of the site and the proposed development including the dimensions, number, and uses of proposed structures, as well as a tax lot and block designation of the site.

(b) Prior to submitting an application to the Department, the applicant shall, if required by the appropriate agency, notify the following local agencies of intent to file an application by mailing them the completed application form, and shall obtain an acknowledgement of receipt of notification by certified mail return receipt requested:

1. Municipal clerk;
2. Municipal environmental commission, if any;
3. County environmental commission, if there is no municipal environmental commission;
4. Municipal planning board;
5. If applicable, those agencies which are required to be notified in accordance with the provisions of N.J.A.C. 7:13-4.2.

Note: The foregoing requirements may be postponed or modified by the appropriate agency in cases of emergency as the public interest dictates.

(c) Applicants for stream encroachment permits shall follow the procedures set forth in the Flood Hazard Area Control Rules at N.J.A.C. 7:13.

(d) Applicants for a treatment works approval shall obtain the consent of the affected sewerage authority and/or municipality in accordance with the procedures at N.J.A.C. 7:14A-22.8.

(e) Applicants for CAFRA, Waterfront Development and coastal wetland permits shall follow the procedures set forth in the Coastal Permit Program Rules at N.J.A.C. 7:7.

Amended by R.1989 d.436, effective August 21, 1989.
See: 21 N.J.R. 819(a), 21 N.J.R. 2530(c).

Technical changes made to (a) and (b). In (d), "treatment works approval" was "wastewater allocation permit"; cross-reference added. Amended by R.1994 d.379, effective July 18, 1994.
See: 26 N.J.R. 913(a), 26 N.J.R. 1561(a), 26 N.J.R. 2920(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 "application form" for "DEP Application Form CP-1"; rewrote (c); in (d) inserted "in accordance with the procedures at"; added (e); and corrected citations.

7:1C-1.4 Application for construction permit

(a) To apply for a permit, the applicant shall prepare and submit a formal application to the appropriate agency.

1. The application shall consist of a complete application form, the fee required by N.J.A.C. 7:1C-1.5, and other materials of a format and content as specified by rules or checklist for individual permit programs.

2. Any inaccurate material which could affect the outcome of a permit decision or falsification of information submitted shall be cause for rejection of the application at any time during the review procedure, or voiding a permit approved before the misinformation was discovered.

Amended by R.1989 d.436, effective August 21, 1989.
See: 21 N.J.R. 819(a), 21 N.J.R. 2530(c).

(a)1: deleted "construction permit Standard" from form designation. Amended by R.1995 d.356, effective July 3, 1995.
See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

In (a)1 substituted "application form" for "and acknowledged DEP Application Form CP-1"; and substituted "checklist" for "otherwise".

7:1C-1.5 Fees

(a) Fees shall be charged for the review of any application for a construction permit in accordance with the following schedule:

1. Waterfront Development permits:

i. The fee for any work requiring a coastal general permit or consisting solely of capital repairs or reconstruction with all work taking place landward of the mean high water elevation on piles or other support

structures or taking place landward of the mean high water line or the identical structural replacement of piles or other supports in the same location shall be \$250.00. Regulated activities eligible for a coastal general permit include, but are not limited to, the following: minor reconstruction or maintenance of currently serviceable legal existing structures in all navigable waters, minor construction of new bulkheads in man-made tidal lagoons and minor maintenance dredging in man-made tidal lagoons.

ii. The permit fee for any waterfront development taking place landward of the mean high water line shall be calculated as follows:

(1) The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be \$500.00 per unit. The fee for a residential development consisting of a single duplex shall be \$500.00.

(2) The fee for all other residential developments shall be \$3,000 plus:

(i) \$50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;

(ii) \$40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

(iii) \$30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

(3) The fee for non-residential developments shall be calculated based on the following schedule:

Construction Cost	Fees
\$0 to \$50,000	\$1,450 + 1/2 of one percent of construction costs
\$50,001 to \$100,000	\$1,700 + one percent of construction costs above \$50,000
\$100,001 to \$200,000	\$2,200 + 1 1/4 percent of construction costs above \$100,000
\$200,001 to \$350,000	\$3,450 + 1 1/2 percent of construction costs above \$200,000
greater than \$350,000	\$5,700 + one percent of construction costs above \$350,000

The fee payable at the time of application shall not exceed \$30,000. If the fee calculated under this formula would have exceeded \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(4) The fee for mixed Residential and Non-Residential Facilities shall be the sum of the Residential and Non-Residential Facilities fee as calculated under (a)1ii(1) or (2) and (3) above.

iii. The permit fee for all other waterfront developments taking place waterward of the mean high water line shall be as follows:

(1) The permit fee for residential site improvements for a single private residential unit or duplex, including without limitation: shore structures (bulkheads, riprap) piers and docks, walkways and activities associated with a single private residential unit or duplex, shall be \$250.00 plus one half of one percent of the construction cost above \$10,000.

(2) The permit fee for all other activities requiring a waterfront development permit shall be based on the following schedule:

Construction Cost	Fees
\$0 to \$50,000	\$1,450 + ½ of one percent of construction costs
\$50,001 to \$100,000	\$1,700 + one percent of construction costs above \$50,000
\$100,001 to \$200,000	\$2,200 + 1¼ percent of construction costs above \$100,000
\$200,001 to \$350,000	\$3,450 + 1½ percent of construction costs above \$200,000
greater than \$350,000	\$5,700 + one percent of construction costs above \$350,000

The fee payable at the time of application shall not exceed \$30,000. If the fee calculated under this formula would have exceeded \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

2. Wetland permits: The fee for a Wetlands Act of 1970 permit (N.J.A.C. 7:7-2.2) shall be one percent of the construction costs, or a minimum of \$250.00 for residential dock construction associated with a single family or duplex dwelling unit, and \$500.00 for all other regulated activities.

3. CAFRA permits:

i. The fee for residential developments shall be calculated as follows:

(1) The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be \$500.00 per unit. The fee for a residential development consisting of a single duplex shall be \$500.00.

(2) The fee for all other residential developments shall be \$3,000 plus:

(i) \$50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;

(ii) \$40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

(iii) \$30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

(3) For a combined multi-dwelling residential development and golf course submitted as a single and complete project, the fee shall be calculated according to the formula found at (a)3i(2) above.

ii. The fee for non-residential developments shall be calculated as follows:

(1) The fee for Commercial, Public or Industrial Development located on a beach or dune or located between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, shall be calculated based on the following schedule:

Construction Cost	Fees
\$0 to \$50,000	\$1,450 + ½ of one percent of construction costs
\$50,001 to \$100,000	\$1,700 + one percent of construction costs above \$50,000
\$100,001 to \$200,000	\$2,200 + 1¼ percent of construction costs above \$100,000
\$200,001 to \$350,000	\$3,450 + 1½ percent of construction costs above \$200,000
greater than \$350,000	\$5,700 + one percent of construction costs above \$350,000

The fee payable at the time of application shall not exceed \$30,000. If the fee calculated under this formula would have exceeded \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(2) The fee for commercial, public or industrial developments located beyond 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, shall be \$3,500 plus \$500.00 per acre included in the site plan, except as provided at (a)3ii(2)(A) through (D) below. The fee payable at the time of application shall not exceed \$30,000. If the fee calculated under this formula would have exceeded \$30,000, the Department shall document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(A) For a proposed linear development, the fee shall be \$3,500 plus \$500.00 per acre to be disturbed. For the purposes of this section, "linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, which have the basic function of connecting two points. Linear development shall not mean residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

(B) For a proposed mining operation, as defined at N.J.A.C. 7:7E-7.8, the fee shall be \$3,500 plus \$100.00 per acre to be disturbed.

(C) For a proposed development associated with a solid waste landfill, the fee shall be \$3,500.

(D) For a proposed public development to be located entirely within a publicly owned park or recreation area, the fee shall be \$3,500 plus \$100.00 per acre to be disturbed.

(3) For a non-residential commercial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area and does not trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-2.1(a)5, the fee shall be calculated considering the entire development using the formula found at (a)3ii(1) above.

(4) For a non-residential commercial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area and does trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-2.1(a)5, the fee shall be calculated considering the entire development using the formula found at (a)3ii(2) above.

(5) For a public or industrial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area, the fee shall be calculated considering the entire development using the formula found at (a)3ii(2) above.

iii. The fee for mixed residential and non-residential facilities shall be the sum of the residential and non-residential facilities fee as calculated under (a)3i and (a)3ii above.

iv. The fee for the review of a coastal general permit authorization application pursuant to N.J.A.C. 7:7-7 shall be \$250.00.

v. The fee for the review and processing of a request for an exemption letter certifying that a development is exempt from the requirements of CAFRA shall be \$125.00.

4. Stream encroachment permits:

i. As used in this paragraph, the following terms shall have the following meanings:

(1) "Drainage area" means the total area contributing run-off to a specified point, expressed in acres or square miles;

(2) "Minor stream encroachment project" means an encroachment project that does not require hydrologic and/or hydraulic review; does not require review of any stormwater detention basin; does not increase potential for erosion or sedimentation in stream and does not require substantial channel modification or relocation; and does not need to be reviewed for the zero percent or 20 percent "net fill" limitations other than that associated with a single family dwelling. These shall include, but are not limited to, the following activities in a floodplain: major desnagging and stream clearing, minor dredging projects, dug ponds without structure, stormwater discharge, including direct discharge into a floodplain, minor water intake facilities, minor regrading, utilities in the flood plain, each channel crossing of utility, bank stabilization at grade, minor bank reestablishment and/or protection projects, less than 100 linear feet of channel modification, less than 100 linear feet of a retaining wall four foot high or less, footbridges, bridge deck replacements, recreation and habitat management structures of the Division of Fish, Game and Wildlife, farming practices (including ditches) approved by the Soil Conservation Service, and projects whose major purpose is mosquito control pursuant to N.J.S.A. 26:9-1 et seq. Governmental agencies may combine their stream cleaning projects for a calendar year and submit them as one project which will be considered a minor project.

(3) "Major stream encroachment project" means a project that requires hydrologic and/or hydraulic review or the review of stormwater detention basin(s) or involves fill or structures necessitating review for compliance with the zero percent or 20 percent "net fill" limitation specified in N.J.A.C. 7:13. In addition, the following shall be classified as a major project: development where the applicant owns or controls more than one acre in a floodplain for commercial use or a subdivision of more than 10 acres for residential use. Major project elements shall include, but not be limited to, the following activities within a floodplain: bridges, culverts, small dams, greater than 100 linear feet of channel modifications, and greater than 100 linear feet of a retaining wall more than four feet high.

ii. For each project element of minor stream encroachment projects, the fee shall be \$300.00 for each project element that is to be reviewed.

iii. For each project element of major projects, the fee shall be \$2,000 for each project element that is to be reviewed.

iv. For major stream encroachment projects requiring the establishment of an encroachment line or the modification to a stream, the fee shall be \$2,000 for each 1,000-foot reach of the channel or portion thereof.

v. For major stream encroachment projects that consist of an individual driveway culvert and fill in the floodplain for one single family residence, the fee shall be \$1,000 for the culvert and \$400.00 for the fill.

vi. Except as provided at (a)4vi above, an additional fee shall not be charged for projects involving fill associated with the development of a single family residential lot or for fill associated with bridges and culverts.

5. Treatment works approval fees shall be calculated as follows:

i. Applicants for a treatment works approval shall be categorized based on the construction costs of their projects as follows:

- (1) Category 1 includes projects where the construction costs are greater than \$1,000,000;
- (2) Category 2 includes projects where the construction costs are greater than \$250,000 but are less than or equal to \$1,000,000.
- (3) Category 3 includes projects where the construction costs are less than or equal to \$250,000.

ii. Fees for treatment works approvals shall be based upon the coefficient "P" where:

$$(1) \text{ "P" } = \frac{\text{EB}}{\text{T1} + 2(\text{T2}) + 4(\text{T3}) + 1,500,000(\text{N1}) + 500,000(\text{N2})}$$

(2) "EB" = the estimated budget for the Department's treatment works approval program for the forthcoming fiscal year;

(3) "T1" = the sum of the construction costs for all projects in Category 1 from the prior fiscal year;

(4) "T2" = the sum of the construction costs for all projects in Category 2 from the prior fiscal year;

(5) "T3" = the sum of the construction costs for all projects in Category 3 from the prior fiscal year;

(6) "N1" = the total number of projects in Category 1 from the prior fiscal year; and

(7) "N2" = the total number of projects in Category 2 from the prior fiscal year.

iii. All applicants for a treatment works approval shall pay one of the following fees based upon the category in which the project falls as determined by (a)5i above:

(1) Category 1 fee = $4P(\$250,000) + 2P(\$750,000) + P(\text{construction cost of the applicant's project} - \$1,000,000)$;

(2) Category 2 fee = $4P(\$250,000) + 2P(\text{construction cost of the applicant's project} - \$250,000)$; or

(3) Category 3 fee = $4P(\text{construction cost of the applicant's project})$.

iv. An applicant for a treatment works approval shall pay a minimum fee of \$450.00.

v. The Department shall prepare an annual fee schedule report which will include the following:

(1) The coefficient "P" of the fee formula derived from the equation in (a)5ii above;

(2) A detailed financial statement showing the estimated budget for the forthcoming fiscal year. The statement shall include a breakdown of the treatment works approval program by account title (for example, print and office supplies, vehicular, and maintenance of vehicles); and

(3) A detailed financial statement of the previous fiscal year's actual expenditures including a breakdown by account titles, total by category of permits reviewed, actual revenue and any credit/deficit to be carried forward to the next fiscal year.

vi. The Department shall hold a public hearing concerning the fees to be assessed for the forthcoming fiscal year only when projected fees exceed 10 percent increase as compared to the previous fiscal year's fees. The Department shall hold the hearing prior to the actual assessment of fees. The Department shall provide public notice of the hearing in the New Jersey Register, DEP Bulletin, and several newspapers with general circulation.

vii. In those years not requiring a public hearing, publication of the forthcoming fiscal year's coefficient "P" together with a synopsis of the annual fee schedule report shall appear in the New Jersey Register, DEP Bulletin and several newspapers with general circulation.

viii. The annual fee schedule report may be obtained, at any time after public notice is published in accordance with (a)5vi or vii above, by submitting a request and self addressed 10 inch by 13 inch (minimum size) envelope to:

New Jersey Department of Environmental Protection
 Environmental Regulation
 Division of Water Quality
 Bureau of Construction and Connection Permits
 Annual Report Request
 PO Box 029, 3rd Floor
 Trenton, New Jersey 08625-0029

(b) Authorization to continue construction for one year beyond the expiration date of an issued CAFRA, Waterfront Development or Coastal Wetlands permit will be granted in accordance with N.J.A.C. 7:7-1.5(c), (d) and (e).

1. Besides the base fee, an additional \$50.00 shall be charged for each extension of time requested for a Category 3 treatment works approval, and \$150.00 for each extension of time requested for a Category 1 or 2 treatment works approval.

(c) The Department shall assess a single permit fee for a project which requires more than one of the following permits, if the permit applications are submitted and processed simultaneously: CAFRA permits; waterfront development permits; coastal wetlands permits; stream encroachment permits; or freshwater wetlands permits (including individual permits, general permits, and transition area waivers) issued under N.J.A.C. 7:7A. The permit fee for the project is equal to the sum of the following:

1. The single highest permit fee for the above listed permits required for the project; and
2. Seventy-five percent of the sum of the permit fees for all other permits required for the project.

(d) For the purposes of this section, a modification to an issued permit, excluding CAFRA, Waterfront Development and Coastal Wetlands permits, will be processed for modified projects which will not result in a significant change in the scale, use, or impact of the project as approved. The determination as to what constitutes a significant change is within the sole discretion of the Department and will be based on a review of the original application file and the new information submitted by the applicant. A change that will cause less environmental impact than the original project will not constitute a "significant change." Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious coverage, reduction in buffers, change in foot print location, and a change in the hydraulics of a stream. The fees for modifications to CAFRA, Waterfront Development and Coastal Wetlands permits are found at (d)2 and 3 below. In addition, the description of permit activities which are subject to major and minor modifications is found at N.J.A.C. 7:7-4.10.

1. The fee for a request for an approval of a modification of the approved project, excluding CAFRA, Water-

front Development and Coastal Wetlands permits, shall be one-quarter of the total original permit fee or a minimum of \$100.00;

2. The application fee for a minor modification to a Waterfront Development, Coastal Wetlands, or CAFRA permit is \$100.00; and

3. The application fee for a major modification to an Upland Waterfront Development or CAFRA permit is 20 percent of the total original permit fee, with a minimum fee of \$250.00 and a maximum fee of \$5,000.

(e) The Department may also charge additional fees to engage such essential expertise as may be necessary for the processing and review of large scale and complex projects. The applicant will be consulted before imposition of such fees.

(f) Where a public hearing is conducted, the cost thereof, including but not limited to court reporter attendance fees, transcript costs, hearing officer fees and hearing room rental, shall be borne by the applicant unless otherwise determined by the Department for good cause shown.

(g) All fees shall be paid by check, made payable to the "Treasurer, State of New Jersey—Environmental Services Fund" and shall accompany the application.

(h) The Department shall annually adjust the fees for each activity provided in this section for waterfront development permits, coastal wetlands permits, CAFRA permits and stream encroachment permits. For each such permit program, the Department shall calculate a fee adjustment factor annually, and multiply each fee within that program by that fee adjustment factor. The Department shall calculate the fee adjustment factor by taking the following steps:

1. Project the total amount of money required to fund each 90-day permit program in the coming year. This projection shall be based upon the following data:

- i. The number and type of Department staff required to perform each activity for which fees are charged;
- ii. The total salaries of those staff members;
- iii. The cost of fringe benefits for those staff members, calculated as a percentage of salaries, which percentage is set by the New Jersey Department of the Treasury based upon costs associated with pensions, health benefits, workers' compensation, disability benefits, unused sick leave, and the employer's share of FICA;
- iv. Indirect costs attributable to those staff members. "Indirect costs" means costs incurred for a common or joint purpose, benefiting more than one cost objective, and not readily assignable to the cost objective specifically benefited without effort disproportionate to the results achieved. Indirect costs shall be

calculated at the rate negotiated annually between the Department and the United States Environmental Protection Agency, multiplied by the total of salaries and fringe benefits;

v. Operating expenses (including, without limitation, expenses for postage, telephone, travel, supplies and data system management) attributable to those staff members; and

vi. The budgeted annual cost of legal services rendered by the Department of Law and Public Safety, Division of Law, in connection with each of the permit programs listed in the introductory language of (h) above.

2. Project the total amount to be available from sources other than fees, such as State appropriations or Federal grants;

3. Subtract the amount in (h)2 above from the amount in (h)1 above. The remainder is the fee revenue necessary for the coming year;

4. Divide the fee revenue necessary for the coming year by the fee revenue which was necessary for the current year;

5. Divide the volume of permit applications the Department received in the current year by the volume it expects to receive in the coming year. In projecting the expected volume of permit applications, the Department shall consider the following factors:

i. The volume of permit applications received in previous years;

ii. Based on (h)5i above, any trends toward an increasing or decreasing volume of permit applications;

iii. Information indicating a trend toward increasing or decreasing construction activity in various areas of the State; and

iv. Other data concerning economic trends reasonably likely to influence the volume of permit applications; and

6. Multiply the number provided in (h)5 above by the number provided in (h)4 above. This result is the fee adjustment factor.

(i) Each year, the Department shall prepare an Annual Ninety-Day Construction Permit Fee Schedule Report. Promptly after completing the report, the Department shall publish in the New Jersey Register a notice of opportunity for public input setting forth the adjusted fees. The notice shall state that the report is available and direct interested persons to contact the Department for a copy of the report and to provide comments within 45 days of the notice date. The Department shall promptly provide a copy to each person requesting a copy. The Department will evaluate the comments submitted and publish its findings and the final adjusted fees with their operative dates in a notice of administrative change, pursuant to N.J.A.C. 1:30-2.7(c).

(j) The Department will not make the adjustment of fees provided in (h) above or prepare the report described in (i) above for any one-year period ending June 30, if in that period the Department proposes or promulgates amendments to any fees for waterfront development permits, wetlands permits, CAFRA permits or stream encroachment permits.

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

Amended by R.1976 d.76, effective March 10, 1976.

See: 8 N.J.R. 180(a).

Amended by R.1981 d.187, effective June 4, 1981.

See: 13 N.J.R. 123(c), 13 N.J.R. 334(b).

(a) substantially amended: (b): "\$50.00" was "\$25.00"; (c): "50 percent" was "25 percent".

(g): New text substituted for old.

Amended by R.1981 d.473, effective December 21, 1981.

See: 13 N.J.R. 564(a), 13 N.J.R. 943(b).

(g): deleted text concerning no maximum fee and substituted text requiring \$10,000 maximum fee with exceptions for permit applications.

Amended by R.1989 d.436, effective August 21, 1989.

See: 21 N.J.R. 819(a), 21 N.J.R. 2530(c).

Old (a)5 concerning "wastewater allocation permit" fees replaced with new (a)5 on "treatment works approval" fees. In (b), "treatment works approvals" replaced "Wastewater Allocation Permits" regarding exception nonapplication; in (b)1, categories 1-3 added; in (c), "subject to a minimum fee of \$100" added.

Amended by R.1990 d.343, effective July 16, 1990.

See: 22 N.J.R. 731(a), 22 N.J.R. 2143(c).

New fee schedule for smaller projects.

Amended by R.1993 d.111, effective March 1, 1993.

See: 24 N.J.R. 2768(a), 25 N.J.R. 924(a).

Permit fees specified at (a), text at (c) deleted and new text added at (c) and (d) and (h) through (l).

Amended by R.1994 d.337, effective July 5, 1994.

See: 26 N.J.R. 787(a), 26 N.J.R. 2789(a).

Amended by R.1994 d.379, effective July 18, 1994.

See: 26 N.J.R. 913(a), 26 N.J.R. 1561(a), 26 N.J.R. 2920(a).

Amended by R.1995 d.205, effective April 17, 1995.

See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

Added (k).

Amended by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

Made changes throughout the section.

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

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

Rewrote (a), (b) and (d).

7:1C-1.6 DEP Bulletin

(a) The Department shall publish in the "DEP Bulletin", a report of the receipt of each new application and each agency action on applications currently before it. An annual subscription for the DEP Bulletin will be distributed free of charge to each of the municipalities, each of the county planning boards, and each New Jersey public depository. All other interested persons shall pay an annual subscription fee of \$50.00 per subscription requested to cover printing and mailing costs. Publication in the "DEP Bulletin", constitutes constructive notice to all interested persons of Department actions on construction permits.

(b) The application status report shall include, but is not limited to:

1. The applicant's name;
2. The agency project number;
3. The nature of the project;
4. The date and description of significant agency action on the project.

Amended by R.1980 d.75, effective February 14, 1980.

See: 11 N.J.R. 432(b), 12 N.J.R. 113(d).

Amended by R.1993 d.111, effective March 1, 1993.

See: 24 N.J.R. 2768(a), 25 N.J.R. 924(a).

"Energy" added to Department acronym.

Amended by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

Rewrote (a).

7:1C-1.7 Review of application

(a) Within a maximum of 20 working days following the date of receipt of the application, the appropriate agency shall:

1. Accept the application for filing, assign an agency project number, and proceed to review on the merits; or
2. Assign an agency project number, accept the application for filing, but request in writing that the applicant submit within a specific period of time, additional information to assist in its review. In such cases, the application will not be considered complete for final review or public hearing until all the additional information has been received and deemed acceptable for review; or
3. Return the application without filing, explaining why it is unacceptable for review, and return the filing fee upon notification that the applicant does not intend to reapply.
4. Following the assignment of the agency project number, the initial application status report will be published in the DEP Bulletin.

5. The Department shall consider written initial comments from public agencies and other interested persons, received at or within 15 days after the public hearing, if one is held, or during the public comment period. Additional comments received after this date will also be included in the application file and may be considered by the Department in the application review process if relevant to the application.

(b) Except as provided in N.J.A.C. 7:50-4.1, an application subject to these rules for development of any land within the Pinelands Area as defined in N.J.S.A. 13:18A-11 is not complete unless and until the applicant has in his or her possession a Certificate of Filing, a Certificate of Compliance or an Approval Resolution from the Pinelands Commission for the proposed development of that land. Pursuant to N.J.S.A. 13:18A-10(c), no approval shall be granted for an application subject to these rules for any development in the Pinelands Area unless that development conforms to all applicable provisions of the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50).

(c) Notwithstanding the requirements of (a) above, applications for CAFRA, waterfront development, and coastal wetlands permits shall be reviewed in accordance with the procedure set forth in the Coastal Permit Program Rules at N.J.A.C. 7:7.

(d) Notwithstanding the requirements of (a) above, applications for stream encroachment permits shall be reviewed in accordance with the procedures set forth in the Flood Hazard Area Control Rules at N.J.A.C. 7:13.

(e) Applications for treatment works approvals shall be reviewed in accordance with the procedure set forth in the treatment works approval rules, N.J.A.C. 7:14A-22 and 23.

Amended by R.1980 d.75, effective February 14, 1980.

See: 11 N.J.R. 432(b), 12 N.J.R. 113(d).

Amended by R.1989 d.436, effective August 21, 1989.

See: 21 N.J.R. 819(a), 21 N.J.R. 2530(c).

(a)5: technical change.

Amended by R.1990 d.343, effective July 16, 1990.

See: 22 N.J.R. 731(a), 22 N.J.R. 2143(c).

"Following the date" added at (a).

Amended by R.1993 d.111, effective March 1, 1993.

See: 24 N.J.R. 2768(a), 25 N.J.R. 924(a).

Text added at (d) regarding completeness of application.

Amended by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

Rewrote (a)5; deleted (b) and (c); redesignated former (d) as (b); added (c) to (e).

7:1C-1.8 Decision on permit application

(a) The Department shall approve, condition, or disapprove an application for a construction permit, other than CAFRA permit, within 90 days following the date of receipt of an application that has been accepted for filing, except when additional information has been requested pursuant to N.J.A.C. 7:1C-1.7(a)2. In the latter case, the Department shall make a decision on the permit application within 90 days following the date of receipt of the information re-

quested. The date of receipt of the application or of the additional information requested is the date that an application or additional information is received by the appropriate agency.

(b) Applications for CAFRA permits shall be reviewed in accordance with the procedures set forth in the Coastal Permit Program Rules at N.J.A.C. 7:7.

(c) Where a project requires more than one type construction permit, an approval of one permit shall be conditioned on the applicant obtaining approval on the remaining necessary permits.

(d) If the Department fails to act within this time period the application shall be deemed to have been approved, to the extent that the application does not violate other statutes or regulations then in effect, and subject to any standard terms and conditions applicable to such permits. The Department shall promptly publish in the DEP Bulletin a notice that the application has been deemed approved.

(e) This time period may be extended for a one time only 30 day period by the mutual consent of the applicant and the appropriate agency, provided that the applicant or the appropriate agency, request from the other such an extension prior to the expiration date for the approval, conditioning, or disapproval of such an application.

(f) The effect of disapproval is as follows:

1. A disapproval without prejudice is a disapproval of the application. However, a subsequent application by the same applicant for a revised project of the same or reduced scope on the same site may be submitted within one year of the date of disapproval without additional fees (limited to one resubmittal, without additional fee). The resubmitted application will be treated as a new application, although references may be made to the previously reviewed application.

2. A disapproval with prejudice is a disapproval of the application.

Amended by R.1980 d.75, effective February 14, 1980.

See: 11 N.J.R. 432(b), 12 N.J.R. 113(d).

Amended by R.1989 d.436, effective August 21, 1989.

See: 21 N.J.R. 819(a), 21 N.J.R. 2530(c).

(f)1: added "one resubmittal" limitation.

Amended by R.1990 d.343, effective July 16, 1990.

See: 22 N.J.R. 731(a), 22 N.J.R. 2143(c).

Timetable for application review clarified.

Amended by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

Rewrote (b); in (e) following "an extension" deleted "at least 15 days"; in (f)1 substituted "a revised project of the same or reduced scope" for "the same project" and added the last sentence.

Case Notes

Applications for waterfront development and coastal wetlands permits; failure by DEPE to comply with the "90-Day Construction Permits" Act (N.J.S.A. 13:1D-32) by neglecting to act upon the applica-

tions within the statutorily mandated 90-day period. *Nappi v. DEPE*, 94 N.J.A.R.2d (EPE) 49.

7:1C-1.9 Appeals

(a) An appeal from an action of the Land Use Regulation Program on a coastal permit pursuant to N.J.S.A. 12:5-3, N.J.S.A. 13:19-1 et seq. or N.J.S.A. 13:9A-1 et seq. shall be to the Commissioner in accordance with the procedures of N.J.A.C. 7:7-5.

(b) An appeal of an approval or denial of a stream encroachment permit shall be to the Commissioner in accordance with the procedures of N.J.A.C. 7:13-4.10.

(c) Any interested person who considers himself or herself aggrieved by the approval or denial of a treatment works approval for the construction, change, improvement, alteration or extension of sanitary sewage collection systems may, within 10 days of publication of notice of the decision in the DEP Bulletin, or within 10 days of publication of notice of the decision by the permittee pursuant to (d) below, whichever occurs first, request a hearing by addressing a written request for such hearing to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402.

1. The written notice of request for hearing on appeal shall include the appropriate agency project number and where the appeal is taken by someone other than the applicant, evidence that a copy of the written request for hearing an appeal has been mailed to the Applicant.

2. The person appealing the decision shall, within 14 days of the date on which the initial hearing request was postmarked, submit an additional statement describing, in detail, how that person is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.

(d) A permittee may, if it so desires, publish notice of the final decision in a newspaper of Statewide circulation and a newspaper of regional circulation which includes the municipality in which the project site is located, and by certified mail to any person who requested such notice. The Department shall maintain a list of such newspapers and a list of all persons who have requested notice of the decision.

(e) Pending the decision on appeal by the Commissioner and upon a typewritten request with stated reasons therefore, the Commissioner may stay the issuance of the permit, for good cause shown, upon such terms and conditions as are deemed proper. The request for stay of issuance of the permit shall be made within 21 days of the issuance of the decision of the Commissioner on the permit application.

(f) Where a request for a hearing on appeal has been granted, the request shall be referred to the Office of Administrative Law for the holding of a fact finding hearing pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), after which the decision on appeal shall be rendered by the Commissioner within the time frame specified in N.J.S.A. 52:14B-10.

(g) 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).

Amended by R.1980 d.75, effective February 14, 1980.

See: 11 N.J.R. 432(b), 12 N.J.R. 113(d).

Amended by R.1980 d.312, effective July 11, 1980.

See: 12 N.J.R. 178(b), 12 N.J.R. 462(d).

Amended by R.1989 d.436, effective August 21, 1989.

See: 21 N.J.R. 819(a), 21 N.J.R. 2530(c).

In (b), "treatment works approval for the construction, ... of sanitary sewage collection systems" replaced "sanitary sewer approval".

Administrative correction and change to (b).

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

Amended by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

In (a) substituted "Land Use Regulation Program on a coastal permit" for "Division of Coastal Resources"; added a new (b); recodified existing (b) to (e) as (c) to (f); and added (g).

Case Notes

Hearing granted upon request of petitioner allegedly aggrieved by issuance of Waterfront Development Permit. *Concerned Citizens of North Camden v. Dept. of Corrections*, 6 N.J.A.R. 140 (1983).

7:1C-1.10 Other State statutes, rules and regulations

The powers, duties and functions vested in the Department under the provisions of the act or these regulations shall not be construed to limit in any manner the powers, duties and function vested therein under any other provisions of law, except as specifically set forth in these regulations.

7:1C-1.11 Severability

If any section, subsection, provision, clause or portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Chapter shall not be affected thereby.

7:1C-1.12 Related regulations

(a) This subchapter does not supersede or preempt specific rules and regulations establishing procedures for the individual construction permit programs administered by appropriate agencies within the Department, unless the context so requires or specific provisions so prescribe. In order to assist applicants in the use of this subchapter and the specific programmatic rules and regulations, this section sets forth the provisions in the programmatic rules which are in addition to or supersede this subchapter.

(b) For a stream encroachment permit, reference should be made to the following:

1. For the pre-application conferences, the requirements of N.J.A.C. 7:13-4.3 are in addition to 7:1C-1.3; and

2. For application information, the requirements of N.J.A.C. 7:13-4.1 are in addition to N.J.A.C. 7:1C-1.4.

(c) The requirements of this subchapter concerning appeals from the Department's decisions on treatment works approvals for the construction, change, improvement, alteration or extension of sanitary sewage collection and treatment systems supersedes N.J.A.C. 7:14A.

Amended by R.1989 d.436, effective August 21, 1989.

See: 21 N.J.R. 819(a), 21 N.J.R. 2530(c).

Recodified from 7:1C-1.14 and amended by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

Deleted former (b) and recodified (c) and (d) as (b) and (c). Prior text at 7:1C-1.12, Implementation of these rules and regulations, repealed.

7:1C-1.13 (Reserved)

R.1981 d.48, effective February 6, 1981.

See: 12 N.J.R. 455(a), 13 N.J.R. 128(b).

Amended by R.1989 d.436, effective August 21, 1989.

See: 21 N.J.R. 819(a), 21 N.J.R. 2530(c).

Repealed by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).

Section was "Over-the-Counter Processing".

7:1C-1.14 (Reserved)

Recodified as 7:1C-1.12 by R.1995 d.356, effective July 3, 1995.

See: 27 N.J.R. 998(a), 27 N.J.R. 2599(a).