

CHAPTER 41

HIGHWAY OCCUPANCY PERMITS

Authority

N.J.S.A. 27:1A-5, 27:1A-6 and 27:1A-7.

Source and Effective Date

R.2003 d.129, effective March 17, 2003.
See: 34 N.J.R. 3753(a), 35 N.J.R. 1435(a).

Chapter Expiration Date

Chapter 41, Highway Occupancy Permits, expires on March 17, 2008.

Chapter Historical Note

Chapter 41, Permits, was adopted and became effective prior to September 1, 1969. Subchapter 12, Banners or Decorations on State Highway Right-of-Way, was adopted as R.1972 d.33, effective February 23, 1972. See: 3 N.J.R. 274(a), 4 N.J.R. 53(b).

Subchapter 16, Permits Allowing Use or Occupancy of State-Owned Railroad Property, was adopted as R.1979 d.331, effective August 20, 1979. See: 11 N.J.R. 156(b), 11 N.J.R. 523(a).

Subchapter 16, Permits Allowing Use or Occupancy of State-Owned Railroad Property, was recodified as N.J.A.C. 16:71 by R.1981 d.103, effective March 16, 1981. See: 13 N.J.R. 108(b), 13 N.J.R. 244(d).

Pursuant to Executive Order No. 66 (1978), Chapter 41, Permits, was readopted as R.1987 d.347, effective July 28, 1987. See: 19 N.J.R. 1074(b), 19 N.J.R. 1653(b).

Subchapter 8, Outdoor Advertising on Limited Access Highways and Nonlimited Access Highways, was repealed by R.1992 d.206, effective May 4, 1992. See: 24 N.J.R. 695(a), 24 N.J.R. 1807(a).

Pursuant to Executive Order No. 66 (1978), Chapter 41, Permits, was readopted as R.1992 d.301, effective September 8, 1992. See: 24 N.J.R. 2237(a), 24 N.J.R. 3097(b).

Pursuant to Executive Order No. 66 (1978), Chapter 41, Permits, was readopted as R.1997 d.355, effective August 8, 1997. As a part of R.1997 d.355, effective September 2, 1997, Subchapter 2, Permits for Driveways (Access); Subchapter 7, Street Intersection; Subchapter 11, Railroad Grade Crossings; and Appendix A, were repealed. See: 29 N.J.R. 2789(b), 29 N.J.R. 3851(c).

Chapter 41, Highway Occupancy Permits, was readopted as R.2003 d.80, effective January 21, 2003. See: 34 N.J.R. 3169(a), 35 N.J.R. 1146(b).

Chapter 41, Highway Occupancy Permits, was repealed and Chapter 41, Highway Occupancy Permits, was adopted as new rules by R.2003 d.129, effective March 17, 2003. See: Source and Effective Date.

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SUBCHAPTER 1. SCOPE

16:41-1.1 Scope of permits

(a) A person shall obtain a highway occupancy permit from the appropriate Regional Maintenance Engineer before performing the activities listed in (a)1 through 3 below. If a person wants to undertake more than one of the activities listed in (a)1 through 3 below, a person shall make one application for a single permit for the combination of activities.

1. Initiating any activity over, under, or within any portion of State highway rights-of-way or property under the jurisdiction of the Department;
2. Initiating any activity which may interfere with the free and safe movement of normal highway traffic on a State highway; or
3. Initiating any activity that will affect any portion of State highway rights-of-way or property under the jurisdiction of the Department.

(b) A person performing any activity within any portion of State highway rights-of-way or property under the jurisdiction of the Department that does not require a new permit shall notify the Regional Maintenance Office of the region in which the majority of the activity is to take place.

(c) This chapter does not apply to Charitable Solicitation Permits. These permits are covered under N.J.A.C. 16:40, Charitable solicitation on roadways.

16:41-1.2 Source of permits

(a) Applicants shall direct requests for permits, except for wireless communications site survey permits, to the Regional Maintenance Engineer at the Regional Maintenance Office in the region in which the majority of the activity is to take place. The map at the chapter Appendix, incorporated herein by reference, shows the boundaries of each region. The addresses and telephone numbers of the Regional Maintenance Offices are:

1. For the Northern Region:

New Jersey Department of Transportation
200 Stierli Court
Mount Arlington, NJ 07856-1322
(973) 770-5140
(973) 770-5000 (Emergency only)

2. For the Central Region:

New Jersey Department of Transportation
100 Daniels Way
Freehold, NJ 07728-2670
(732) 308-4106
(732) 308-4086 (Emergency only)

3. For the Southern Region:

New Jersey Department of Transportation
1 Executive Campus
Cherry Hill, NJ 08002-4123
(856) 486-6688
(856) 222-2098 (Emergency only)

(b) Applicants shall direct requests for wireless communications site survey permits to the following address:

Wireless Communications Unit
New Jersey Department of Transportation
1035 Parkway Avenue
PO Box 600
Trenton, NJ 08625-0600
(609) 530-3875

16:41-1.3 Department functions for wireless communication site survey permits

(a) The Wireless Communications Unit for wireless communication site survey permits shall perform those functions this chapter designates for performance by a Regional Maintenance Office for highway occupancy permits.

(b) The supervisor of the Wireless Communications Unit for wireless communication site survey permits shall perform the functions this chapter designates for performance by a Regional Maintenance Engineer for highway occupancy permits.

SUBCHAPTER 2. DEFINITIONS

16:41-2.1 Definitions

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

“Access permit” means a permit issued pursuant to N.J.A.C. 16:47, as amended and supplemented.

“Application” means a document submitted to the Department to initiate the permit process.

“Applicant” means a private party or entity, municipality, county, or any public agency applying for a permit.

“Banner” means a strip of material without rigid support that is painted or printed with text or graphics.

“Carrier” means a wireless communications company licensed by the Federal Communications Commission to operate in New Jersey.

“Commissioner” means the Commissioner of the New Jersey Department of Transportation or such persons as the Commissioner may designate.

“Complete application” means an application satisfying Department form and content requirements set forth in this chapter, thereby making it acceptable for Department review.

“Day” means calendar day, unless otherwise specified.

“Decorations” means an ornament, other than a banner.

“Department” means the New Jersey Department of Transportation.

“Design standards” means standards for design based on one or more of the following:

1. “New Jersey Department of Transportation Design Manual—Roadway,” 2001, as amended and supplemented, incorporated herein by reference, available from the Bureau of Quality Management Services, New Jersey Department of Transportation, 1035 Parkway Avenue, PO Box 600, Trenton, NJ 08625-0600.

2. "New Jersey Department of Transportation Design Manual Bridges and Structures," 1998, as amended and supplemented, incorporated herein by reference, available from the Bureau of Quality Management Services, New Jersey Department of Transportation, 1035 Parkway Avenue, PO Box 600, Trenton, NJ 08625-0600.

3. "A Policy on Design Standards Interstate System," 1991, as amended and supplemented, incorporated herein by reference, available from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol St., NW, Washington, DC 20001.

4. The most current edition of "Supplemental Specifications SI-89 ELECT and standard details," as amended and supplemented, incorporated herein by reference, available from the Bureau of Quality Management Services, New Jersey Department of Transportation, 1035 Parkway Avenue, PO Box 600, Trenton, NJ 08625-0600.

5. "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD), 2001, as amended and supplemented, incorporated herein by reference, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

6. "New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction," 2001, as amended and supplemented, incorporated herein by reference, available from the Bureau of Quality Management Services, New Jersey Department of Transportation, 1035 Parkway Avenue, PO Box 600, Trenton, NJ 08625-0600.

7. "A Policy on Geometric Design of Highways and Streets," 2001, as amended and supplemented, incorporated herein by reference, available from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol St., NW, Washington, DC 20001.

8. N.J.A.C. 16:25, Utility accommodation, as amended and supplemented.

9. "New Jersey Department of Transportation Sample Plans," 2001, as amended and supplemented, incorporated herein by reference, available from the Bureau of Quality Management Services, New Jersey Department of Transportation, 1035 Parkway Avenue, PO Box 600, Trenton, NJ 08625-0600.

10. "New Jersey Department of Transportation Standard Roadway Construction/Traffic Control/Bridge Construction Details," 2001, as amended and supplemented, incorporated herein by reference, available from the Bureau of Quality Management Services, New Jersey Department of Transportation, 1035 Parkway Avenue, PO Box 600, Trenton, NJ 08625-0600.

"Expiration" means the formal termination of a permit.

"Extended lot line" means a line, radial or perpendicular to the highway centerline, at each end of the frontage, extending from the rights-of-way line to the curbline.

"Freeway" means a multi-lane, divided highway having a minimum of two lanes in each direction and limited access.

"Highway" means a public rights-of-way, whether open or improved or not, including all existing factors of improvements.

"Highway occupancy permit" or "permit" means any permit issued under this chapter.

"Maintenance" means continuous work required to hold component factors covered by a permit against deterioration due to wear and tear and thus to preserve the general character of the original component factors without alteration.

"Private utility" means a utility owned and operated by private citizens or concerns.

"Public utility" shall have the meaning established at N.J.S.A. 48:2-13, as amended and supplemented, incorporated herein by reference, and N.J.S.A. 48:5A-15, as amended and supplemented, incorporated herein by reference.

"Repair" means limited or minor replacement of one or more component factors covered by a permit that may be required because of storm or other cause to restore a condition requiring only maintenance.

"Rights-of-way" means State highway property and property rights, including easements, owned and controlled by the Department.

"Right-of-way line" means the outer edge of State highway property, separating highway property from the abutting lots owned by others.

"Shoulder" means the portion of the roadway that lies between the edge of the traveled way and curbline, excluding auxiliary lanes.

"Sidewalk area" means that portion of the right-of-way that lies between the curbline and right-of-way line, regardless of whether a sidewalk exists.

"State highway" means a road owned, taken over, controlled, built, or maintained by the Department.

"State highway system" means the network of State highways.

"Traveled way" means the portion of the roadway provided for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

“Utility” means a privately, publicly or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system which directly or indirectly serves the public.

“Waiver” means the Department’s intentional relinquishment of its right to wholly enforce provisions of this chapter. Waivers may either reduce or eliminate requirements.

SUBCHAPTER 3. GENERAL PROVISIONS

16:41-3.1 General restrictions

(a) The Department shall not assume any cost involved in the activities authorized by a highway occupancy permit, unless the permittee is under contract to the Department and working on Department rights-of-way or property under the jurisdiction of the Department at the written request of the Department.

(b) No person shall use any part of State highway rights-of-way or property under the jurisdiction of the Department for any private purpose or uses associated with private purposes. The sidewalk area shall be kept clear of buildings, sales exhibits, signs, parking areas, service equipment, vehicles, and appurtenances.

(c) No person shall erect advertising signs or devices on or overhanging State highway rights-of-way or property under the jurisdiction of the Department. No person shall use State highway rights-of-way or property under the jurisdiction of the Department for the display of merchandise. The Department shall not authorize the erection and maintenance on public property of signs other than those that regulate, direct, or warn, or as otherwise allowed by State law.

(d) No person shall place, maintain, or display upon or in view of any State highway, any unauthorized traffic sign, device, or other contrivance, that purports to be or is an imitation of, or of such a nature as to be mistaken for, an official traffic sign, that attempts to direct the movement of traffic, or that hides from view or interferes with the effectiveness of any official sign. No public authority shall permit any traffic sign, or any traffic signal bearing thereon or on its support, any commercial advertising on a State highway.

(e) A permittee, in the conduct of activity authorized by a permit, shall conduct the activity in a manner that does not interfere with any Department structure or facility, on, over, or under the State highway, or with any concurrent activity being done as part of a highway improvement project, unless the permit authorizes the interference.

(f) When a permittee is to fill a lot adjacent to the highway to the highway grade, the Department may require the permittee to make provision, at the permittee’s own expense, for disposition of highway drainage by installing pipes of adequate size and material, inlets, catch basins, manholes, headwalls, and ditches as may be necessary to protect the Department’s drainage rights. The permittee shall avoid interference with drainage installations and shall not disturb the existing cross-section and drainage of highways. The permittee shall not interrupt the longitudinal flow of water along the curblineline, and shall make adequate provision for all transverse, lateral, and longitudinal drainage affected by the permittee’s construction.

(g) The Department shall not permit openings in newly constructed or resurfaced State highways for a period of five years after the construction or resurfacing, without the consent of the Commissioner, as documented in a waiver pursuant to N.J.S.A. 27:7-26 and N.J.A.C. 16:41-8.

(h) The Department shall not authorize activity within the limits of State highway rights-of-way or property under the jurisdiction of the Department that would adversely affect the stability, appearance, or designed function of the State highway itself or of its component or auxiliary structures.

(i) The permittee shall locate all lighting, sprinklers, heaters, landscape ties, and other equipment for roadside establishments off State highway rights-of-way or property under the jurisdiction of the Department. The Department shall not be responsible for maintenance or replacement of any such appurtenances within State highway rights-of-way or property under the jurisdiction of the Department.

(j) With respect to utility-related permits, the permittee shall execute such Highway Permits Agreements as may be required by the Department.

16:41-3.2 Inspection, material, and workmanship

(a) Activity within State highway rights-of-way or property under the jurisdiction of the Department is subject to inspection and approval by the Department. Construction, as far as is practicable, shall conform in quality and appearance to similar Department construction. Material shall conform to the “Standard Specifications for Road and Bridge Construction,” unless otherwise specified in the permit. If the Department’s inspector determines that the permittee is providing insufficient traffic protection or that some other deficiency exists, the Department’s inspector shall prohibit the permittee from conducting further activity until the permittee corrects the deficiency.

(b) The Department may assign an inspector, whose time and expenses shall be charged to the permittee, when any of the following occur:

(c) If the applicant proposes to interrupt the flow of traffic or to restrict the available pavement width at any time, then the proposed hours and days of the activity, and the holiday activity shall be included in the traffic control plan. A temporary traffic control plan for each stage of construction may be required, at the discretion of the Department.

(d) Prior to submitting any application for any activity within the Pinelands area, the applicant shall give notice to the Pinelands Commission pursuant to N.J.A.C. 7:50-4.83, as amended and supplemented. The application submitted to the Department shall indicate that the applicant has complied with the requirements of N.J.A.C. 7:50-4.81, as amended and supplemented.

(e) If the applicant proposes to disturb more than 5,000 square feet of the surface area of land, documentation of compliance with the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., as amended and supplemented, and N.J.A.C. 2:90, as amended and supplemented, shall be included with the application.

(f) If the applicant proposes an activity within an Agricultural Development Area, as defined in N.J.A.C. 2:76-1.2, as amended and supplemented, documentation of compliance with N.J.A.C. 2:76, as amended and supplemented, shall be included with the application.

<u>Type of permit application</u>	<u>Proposed permit signed by:</u>
Drainage Facilities	Applicant
Landscaping, Tree Trimming, Vegetation Control and Unclassified Landscaping	Applicant
Bridge Attachments	Applicant
Pedestrian Overpass or Underpass	Applicant
Grading	Applicant
Guiderail	Applicant
Test Holes or Borings	Applicant
Monitoring Wells	Applicant
Crosswalks	Local governing body
Telephones	Applicant
Bus Shelters or Benches	Registered motor carrier or local governing body
Banners, Decorations or Temporary Announcements or Guide Signs	Applicant
Parades or Gatherings	Local governing body
Temporary Use	Applicant
Detours off State Highways or Vice Versa	Local governing body
Lane or Shoulder Closings on State Highways	Applicant
Automatic Traffic Counting Procedures	Applicant
Wireless Communication Site Survey	Carrier
Railroad Grade Crossings	Railroad or its designated contractor
Miscellaneous	Applicant

* For longitudinal underground fiber optic installations, a public utility shall sign the proposed permit.

(b) Only the permanent owner and operator of a utility facility shall be eligible to receive a utility permit from the Department. The Department shall not issue utility permits to the party, company, or contractor performing the installation or construction work, and shall not issue utility permits to the temporary agent or engineer handling preparation of the permit application for the permanent owner.

(c) If the signatory is signing other than in an individual capacity, the applicant shall submit with the signed proposed permit an appropriate resolution authorizing the individual to sign on behalf of the permittee.

(d) Under unusual or emergency conditions, the Regional Maintenance Engineer may issue oral approvals for activity to be covered by a subsequently issued permit (see N.J.A.C. 16:41-1.2(a) for appropriate telephone numbers). Unusual or emergency conditions shall exist when, in the determination of the Regional Maintenance Engineer, issuance of the oral approval is necessary to protect against an imminent threat to public health, safety, welfare, life, limb, or property. If the Regional Maintenance Engineer grants oral approval, the applicant shall submit an application as outlined in this chapter within five working days of the date the Regional Maintenance Engineer grants the oral approval.

SUBCHAPTER 6. PERMIT ISSUANCE AND CONDITIONS

16:41-6.1 Permit issuance process

(a) The Regional Maintenance Office shall issue proposed permits authorizing activity on State highway rights-of-way or property under the jurisdiction of the Department, if the application complies with the requirements of this chapter. The applicant shall have the proposed permit signed by the entity listed in the following table that is applicable to the permit type. The signature shall indicate the signatory's acceptance of the terms and conditions of the proposed permit. If the applicant does not return the signed proposed permit and the permit fee to the Regional Maintenance Office within 30 days of the Department's transmittal to the applicant, the Department shall consider the application to have been withdrawn. If the applicant returns the permit fee and the proposed permit signed by the applicable signatory as indicated in the table below to the Regional Maintenance Office within 30 days of the Department's transmittal, then the Department shall execute the permit within 10 days of its receipt by the Department.

<u>Type of permit application</u>	<u>Proposed permit signed by:</u>
Utility Openings	Utility*
Poles	Utility
Curb, Sidewalk or Handicapped Ramp	Applicant

16:41-6.2 Permit conditions for all highway occupancy permits

(a) The permittee shall complete the activity according to the terms and conditions of the permit.

(b) The permittee shall ensure that a copy of the permit is available for review at the activity site.

(c) The conditions of the permit are binding upon all successors in interest.

(d) A permit executed by the Department affords the permittee the right to construct, maintain, repair, and use the specified features within State highway rights-of-way or property under the jurisdiction of the Department under the terms and conditions of the permit, except that a utility opening permit does not authorize repair. Approval of an application does not accord the applicant any of these rights. Maintenance or repairs that interfere with traffic require a "lane or shoulder closings on State highways" permit. Maintenance or repairs that involve excavation require a "utility openings" permit or a "drainage facilities" permit.

(e) The Department may impose those site-specific terms and conditions it deems necessary, convenient or desirable when issuing permits.

(f) Every permit shall contain an expiration date, as set forth below:

Type of Permit	Permit Term in Years
Utility Openings	2
Poles	2
Curb, Sidewalk or Handicapped Ramp	1
Drainage Facilities	1
Landscaping, Tree Trimming, Vegetation Control and Unclassified Landscaping	2
Bridge Attachments	1
Pedestrian Overpass or Underpass	1
Grading	1
Guiderail	1
Test Holes or Borings	1
Monitoring Wells	1
Crosswalks	1
Telephones	1

Type of Permit	Permit Term in Years
Bus Shelters or Benches	1
Banners, Decorations or Temporary Announcement or Guide Signs	1
Parades or Gatherings	1
Temporary Use	1
Detours off State Highways or Vice Versa	1
Lane or Shoulder Closings on State Highways	1
Automatic Traffic Counting Procedures	1
Wireless Communication Site Survey	1
Railroad Grade Crossings	1
Miscellaneous	See Permit

(g) The permittee shall notify the Regional Maintenance Office at least 72 hours before starting the activity. The permittee shall complete the activity in an expeditious and safe manner. In the preactivity notification, the permittee shall designate an individual available at all times to replace or repair traffic control devices. The permittee shall provide the name and phone number of this individual to the Regional Maintenance Engineer.

(h) At least one week before starting the activity, the permittee shall send a letter specifying the starting date of the activity and a copy of the permit to the municipal clerk in each municipality where the permit authorizes the activity.

(i) All permits shall contain provisions for indemnification of the State, and its agents, servants, and employees. Permit forms with these provisions shall be available upon request from the Regional Maintenance Office.

16:41-6.3 Permit conditions for some highway occupancy permits

(a) Permit conditions for some highway occupancy permits are as follows:

Type of Permit	Applicable subsections of N.J.A.C. 16:41-6.3																	
	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)
Utility Openings	x		x	x			x	x		x	x							
Poles	x							x			x	x						
Curb, Sidewalk or Handicapped Ramp	x			*	x	x	x			x	x			x				
Drainage Facilities	x			*	x	x	x			x	x			x				
Landscaping, Tree Trimming, Vegetation Control and Unclassified Landscaping	*	x		*			x			x	x							
Bridge Attachments						x	x			x	x							
Pedestrian Overpass or Underpass	x			*	x	x	x			x	x							
Grading	*			*	x	x	x			x	x							
Guiderail	x					x	x			x	x							
Test Holes or Borings	x		x	*		x	x					x						
Monitoring Wells	x		x	*		x	x			x	x				x			
Crosswalks							x			x	x							
Telephones	*						x			x	x							
Bus Shelters or Benches	*						x			x	x							
Banners, Decorations or Temporary Announcement or Guide Signs										x	x							
Parades or Gatherings																		
Temporary Use	*			*		x	x			x	x	x						
Detours off State Highways or Vice Versa						x	x			x	x			x				
Lane or Shoulder Closings on State Highways						x	x			x	x							
Automatic Traffic Counting Procedures										x	x							

Type of Permit	Applicable subsections of N.J.A.C. 16:41-6.3																	
	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)
Wireless Communications Site Survey						x			x		x							
Miscellaneous	*			*			*				*							

x = This provision applies to all permits of this type.

* = This provision applies to some permits of this type and will be included as a condition of those permits.

(b) A highway occupancy permit is not valid until the permittee supplies the confirmation number obtained from the One-Call Damage Prevention System to the Regional Maintenance Office, in accordance with N.J.S.A. 48:2-83. The permittee shall provide this confirmation number at least 72 hours before starting the activity.

(c) Ground cover shall not exceed 12 inches (300 millimeters) in height at full maturity within the sidewalk area. Plantings shall not interfere with sight distance.

(d) The permittee shall provide the Regional Maintenance Office with copies of any other agency approvals required for activity within ultimate, proposed Department rights-of-way or property under the jurisdiction of the Department.

(e) The Department may require security in the form of a bond, check, or money order in an amount sufficient to guarantee or insure restoration of the area disturbed by the permittee, depending upon the extent of the activity and the Department's past experience with the applicant or permittee.

1. If the Department requires security, the permittee shall provide it, in the required form, to the Regional Maintenance Engineer along with the permit fee.

2. If it becomes necessary for the Department to effect repairs because of the failure of the permittee to do so, the Department shall deduct the full cost of the repairs from the amount of the security. If the amount of the security is less than the cost of the repairs performed by the Department or its contractor, the Department shall bill the permittee for the balance due. If the permittee does not pay the full amount due within 30 days of billing, the Department may initiate legal action.

(f) Certain highway occupancy permits are associated with the property and not with the permittee. If the permittee sells the property, the permittee shall provide the purchaser with a copy of the permit. The Department shall not be responsible for advising purchasers of such permits or the conditions contained therein.

(g) If, after issuance of a permit by the Department, a permittee is barred or prevented, directly or indirectly, from proceeding with the activity by a legal action instituted by any State agency, political subdivision, or any other individual or party or by a directive or order issued by any State agency, political subdivision, or court of competent jurisdiction, the period of time prescribed in this chapter for the

activity shall be tolled during the pendency of said legal action, directive, or order.

1. The permittee shall notify the Regional Maintenance Office in writing and include its supporting documentation within 30 days of any action that may trigger this provision.

2. If the activity has already commenced, the permittee shall contact the Regional Maintenance Office immediately to ensure that the cessation of activity does not create a hazard.

3. The permittee shall restore any disturbed area at a time and in a manner prescribed by the Department or the Department may do so at the permittee's expense.

4. The remaining activity time shall again begin to run from the date on which the legal directive or order or other legal impediment to continuation of the activity is removed.

5. The permittee shall notify the Regional Maintenance Office in writing within 30 days of the date of removal of the legal impediment to continuation of the activity.

6. The Department reserves the right to reevaluate the permit conditions if the tolling time extends beyond two years from the date the Department executes the permit.

(h) After the permittee completes the activity within State highway rights-of-way or property under the jurisdiction of the Department and meets all conditions of the permit, the permittee shall notify the Regional Maintenance Office, in writing. Within 30 days of its receipt of the notice, or as otherwise specified in the permit, the Regional Maintenance Office shall notify the permittee if any corrective action is required by the permittee.

(i) The following provisions apply to railroad grade crossing permits and utility opening permits, except fiber optic, as indicated in the table at (a) above.

1. There shall be no open cut transverse pavement trenches within freeway rights-of-ways. If any additional facilities are required to cross under freeway pavement, the permittee shall use trenchless technology methods from outside the no-access limits of the freeway.

2. When a highway is newly paved, or paved for improvement, the Department shall not permit openings in the highway for a period of five years thereafter, without the consent of the Commissioner, as documented

in a waiver pursuant to N.J.S.A. 27:7-26. The Department may extend the period of this restriction indefinitely if the traffic volume on the highway is high.

3. The Department, either in conjunction with its construction projects or in conjunction with projects advanced by others, may modify or revoke a utility opening permit. The Department shall provide an affected utility opening permit holder with at least 30 days notice of the Department's intention to revoke the permit. Any appeal shall be addressed pursuant to N.J.A.C. 16:41-6.12(b).

4. The permittee shall remove and replace slabs of concrete that are less than 18 inches wide.

5. The permittee shall restore the surface to a smooth and sound condition that shall meet or exceed pre-existing and surrounding conditions.

(j) The carrier shall notify the Wireless Communications Unit before undertaking any activity for each site covered by the permit at the address indicated in N.J.A.C. 16:41-1.2(b).

(k) The permittee shall be responsible for maintaining the facilities in good repair. Failure to do so shall be a violation of the permit. The permittee shall provide a one-year maintenance bond, the amount of which shall depend upon the value of the activity.

(l) The permittee shall make repairs to facilities that the Department deems necessary to prevent any hazard to the public, interference with traffic, or damage to highway property. Such repairs shall be made as promptly as reasonably possible after the Department notifies the permittee of the need for repairs. A failure to make the designated repairs shall be a violation of the permit.

(m) The permittee shall remove the activity before the expiration of a temporary use permit. The permit shall establish the date for removal. The permit shall also address the restoration of the State highway rights-of-way or property under the jurisdiction of the Department.

(n) The following provisions apply to detours as indicated in the table at (a) above:

1. The permittee shall be responsible for the cost of all maintenance and repairs to the roads over which the traffic diversion takes place;

2. The permittee shall bear the expense of providing and maintaining approved signs, and other safety devices necessary to protect the traveling public throughout the time the detour is in use; and

3. All traffic handling shall be subject to the supervision and control of a representative of the Regional Maintenance Engineer working in cooperation with local police officials, whose expression of ability and willingness to handle traffic proposed to be diverted shall be a permit condition. The Department may require the permittee to retain full-time uniformed traffic directors, depending upon the traffic conditions particular to the activity location and the availability of local police support.

(o) Curb, sidewalk or handicapped ramp permits and drainage facilities permits are subject to the applicable provisions of N.J.A.C. 16:38.

(p) The permittee shall provide any environmental test reports and results obtained pursuant to the permit to the Department's Bureau of Environmental Services.

(q) Longitudinal installation of overhead lines on the highway rights-of-way shall be limited to single wooden pole type construction. Single wooden pole type construction means that no pole shall be closer than 10 feet to any other pole.

(r) The permittee shall complete pole replacement within 90 calendar days of installation of the new pole, including removal of the pole being replaced.

(s) The following requirements apply to utility opening permits when a utility opening permit is for the longitudinal installation of an underground fiber optic facility, as indicated in the table at (a) above:

1. The permittee shall bundle ducts to form one compact facility;

2. The maximum width of the installation trench shall be 24 inches, but the facility shall not occupy over 12 inches. The permittee shall embed the facility within No. 8 stone;

3. The minimum depth of cover of the facility shall be 54 inches. If there is a conflict with an intersecting utility facility at this depth, the permittee shall install the fiber optic facility deeper to go under the other utility. If the other utility extends deeper than 24 inches below the fiber optic facility, the fiber optic facility may go over the other utility and shall be protected with concrete encasement as approved by the Department, but at no location will the encasement be within 24 inches of the surface;

4. There shall be a protective layer over the facility. The applicant shall cover the facility:

i. To within 30 inches of the surface with Permeable Flowable Fill (Controlled Low Strength Material). Orange pigmentation is encouraged, but not required; or

ii. With a cap of poured or pre-cast concrete that is four inches thick and 24 inches wide directly above the fiber optic facility. The trench backfill material shall consist of Soil Aggregate Designations I-1, I-2, I-3, I-11 or I-13 placed and compacted in accordance with the NJDOT Standard Specifications to within 30 inches of the surface.

5. The permittee shall install a continuous plastic ribbon marking tape on the Permeable Flowable Fill directly above the fiber optic facility or on the trench backfill material directly above the fiber optic facility.

6. At the top 30 inches from the surface, the permittee shall:

i. With respect to flexible pavement, replace the Hot Mix Asphalt (HMA) with HMA Base Course, Mix I-2 or Superpave HMA 19M64 Base Course in the same thickness as the existing bituminous courses, and replace the subbase with Dense Graded Aggregate Base Course (DGABC) in the same thickness as the existing subbase. One year after the initial placement, the permittee shall remove the upper two inches of the HMA wider than the trench width by milling and shall replace it with two inches of HMA Surface Course, Mix I-4 or Superpave HMA 12.5H64 Surface Course. The Department shall determine the width of milling based on the relationship between the trench and the travel lanes. During the year waiting period, the permittee shall maintain the trench area in good condition, as determined by the Department. In those instances where, through past resurfacings, the bituminous material thickness exceeds 14 inches, the replaced HMA, Mix I-2 need not exceed a maximum thickness of 14 inches. The DGABC below the bituminous layer shall be 16 inches thick even if the existing subbase layer is thicker than 16 inches;

ii. With respect to composite pavement:

(1) Replace the existing HMA pavement with HMA Base Course, Mix I-2 or Superpave HMA 19M64 in the same thickness, replace the existing concrete pavement with jointed, reinforced Portland Cement Concrete Base Course in the same thickness, and replace the existing subbase with DGABC in the same thickness. One year after the initial placement, the permittee shall remove the upper two inches of HMA wider than the trench width by milling and shall replace it with two inches of HMA Surface Course, Mix I-4 or Superpave HMA 12.5H6 Surface Course. The Department shall determine the width of milling based on the relationship between the trench and the travel lanes. During the year waiting period, the permittee shall maintain the trench area in good condition, as determined by the Department;

(2) In those instances where, through past resurfacings, the bituminous material thickness exceeds eight inches, the replaced HMA Base Course, Mix I-2 need not exceed a maximum thickness of eight inches. The concrete base course below the HMA courses shall be 12 inches thick. The DGABC below the concrete pavement need not exceed 16 inches thick even if the existing subbase layer is thicker than 16 inches.

(3) The permittee may elect to substitute an equal thickness of HMA Base Course, Mix I-2 or Superpave HMA 19M64 Base Course for Portland Cement Concrete Base Course in composite sections only if a Maintenance Bond is provided against settlement, deformation or cracking of the surface for a three-year period following final acceptance of the construction work.

iii. With respect to Portland Cement concrete pavement, replace existing concrete surface course with the

same thickness of jointed reinforced Concrete Surface Course. Replace the existing subbase with the same thickness subbase designation I-3 in accordance with NJDOT Standard Specifications.

iv. With respect to a berm or sidewalk, replace in-kind including re-establishing the grass.

7. The permittee shall restore the surface to a smooth and sound condition that shall meet or exceed pre-existing and surrounding conditions, as set forth in N.J.A.C. 16:25-9.

8. The fiber optic facility shall be detectable by standard locating equipment operated on the surface.

9. The minimum lateral proximity to a parallel utility facility (including the State's fiber optic ducts) shall be 18 inches.

10. The permittee shall construct manholes or hand holes so that the longest dimension is parallel to the roadway and not within the roadway.

11. The Department discourages but may authorize the location of a fiber optic facility in the shoulder of the roadway near the gutter line, based upon consideration of the practicability of other alternatives, the relative hardship to the applicant, the applicant's long-term economic and financial stability, and the public interest in the grant or denial of the application, and subject to the provisions of N.J.S.A. 27:7-26, as amended and supplemented, and N.J.A.C. 16:41-3.1(g), as amended and supplemented.

12. The number of ducts shall not exceed four one and one-fourth inch ducts, unless a waiver has been granted by the Department in accordance with N.J.A.C. 16:25-2.3. In exchange for the waiver on installations one-half mile long or longer, the Department shall require that the each fiber optic company donate the use of one duct (one and one-fourth inch nominal size with associated manholes) to the Department for State use. When more than one company occupies the same trench, they may elect to donate the use of either one duct each or one duct jointly. The permittee shall maintain the donated duct and associated hand holes in good repair. The facilities within the duct and hand hole shall be the responsibility of the State. The permittee shall not begin construction until the Department receives formal documentation from the permittee indicating the permittee's commitment to donate the duct use.

13. The permittee shall design and construct the fiber optic facility to avoid future relocations within the limits of all projects listed in the Department's then-existing five-year Capital Construction Program. The Department shall waive this requirement if the permittee executes an agreement to absorb all relocation or accommodation costs resulting from the construction of any project listed in the then-existing five-year Capital Construction Program. The permittee shall not undertake construction within the limits of such a project until the permittee and the Utility and Railroad Engineering Unit of the Department execute a written agreement regarding the payment of future relocation costs.

14. The permittee shall provide the Department with as-built plans based on the New Jersey Plane Coordinate system with offsets shown from existing physical features. The plans shall record the vertical and horizontal location of the fiber optic facility for each change in grade or alignment. In no case shall more than 100 feet separate the locations where the vertical and horizontal data are recorded. The as-built plans shall show the horizontal and vertical locations of manholes or hand holes. The permittee shall submit four prints and one reproducible of the as-built plans within one month of completion of construction.

16:41-6.4 Movement or relocation of highway facilities

(a) When a permit requires the Department's movement or relocation of highway facilities, the Department shall prepare a cost estimate. The applicant shall provide a check or money order in the amount of the cost estimate to the Regional Maintenance Engineer along with the permit fee. The Department shall not execute the permit until the applicant has provided the check or money order.

(b) When the Department has completed the movement or relocation, the Department shall deduct the full cost of the activity from the amount of the check or money order. If the amount of the check or money order is less than the cost of the activity performed by the Department, the Department shall bill the permittee for the balance due. If the permittee does not pay the balance due within 30 days of billing, the Department may initiate legal action. If the amount of the check or money order is more than the cost of the activity performed by the Department, the Department shall refund the difference.

16:41-6.5 Bonds

Permittees who own facilities within Department rights-of-way requiring numerous permits over an extended period may execute a bond for single restoration and maintenance highway occupancy permits instead of paying the bond required by N.J.A.C. 16:41-6.3(e) and (k). The Bureau of Maintenance shall hold the bond.

16:41-6.6 Agreements

(a) The Department may require an agreement as a condition of a permit, when the Department, in its sole discretion, determines that this condition is necessary, convenient, or desirable. The Regional Maintenance Office shall notify the applicant of such a determination. When the Regional Maintenance Office issues the permit, execution of the agreement shall be one of the conditions. The permit applicant shall perform no activity within Department rights-of-way or property under the jurisdiction of the Department before the execution of the agreement. If the applicant does not respond to the Department's correspondence regarding the agreement within 90 days of the correspondence, the permit expires.

(b) The Department shall estimate Department costs for administration and inspection. The permittee shall be responsible for the payment of actual Department costs.

16:41-6.7 Permit expiration

In addition to expiring at the conclusion of the fixed time periods set forth in N.J.A.C. 16:41-6.2(f), a permit may expire pursuant to N.J.A.C. 16:41-6.8.

16:41-6.8 Permit violations

(a) When the Department becomes aware that a permit condition has been violated, it shall notify the permittee, in writing, that the permittee has 30 days within which to remedy the violation.

1. Failure to remedy the violation within the specified time limit shall cause expiration of the permit.

2. The Department shall provide written notice of the effective date of the expiration and may seek the civil penalties provided for in N.J.S.A. 27:7-41.1 or other available remedies.

3. The penalties shall commence on the day following the date of expiration.

4. The Department may remedy the violation and shall deduct the full cost of such work from the amount of any bond, check, or money order held by the Department.

5. If the amount of the guarantee is less than the cost of the repairs performed for the Department, the Department shall bill the permittee for the balance due.

6. If the permittee does not pay the balance due within 30 days of billing, the Department may initiate legal action.

(b) When the Department determines that an emergent situation exists that results from a permit condition violation, the Department shall notify the permittee.

1. The permittee shall make emergency repairs within 24 hours, or as otherwise directed by the Department.

2. If the permittee fails to make the designated repairs within the specified time limit, the permit shall expire and the Department may either remedy the violation or terminate the activity and shall deduct the full cost of any work done from the amount of any bond, check or money order held by the Department.

3. If the amount of the guarantee is less than the cost of the repairs performed for the Department, the Department shall bill the permittee for the balance due.

4. If the permittee does not pay the balance due within 30 days of billing, the Department may initiate legal action.

(c) If the permittee disagrees with the Department's determination that a violation exists, the permittee may appeal pursuant to N.J.A.C. 16:41-6.12.

16:41-6.9 Permit revocations or modifications

The Department may revoke or modify any permit after the Commissioner determines that the conditions that existed at the time the Department executed the permit have changed.

16:41-6.10 Permit extensions

(a) If a permittee starts activity authorized by a permit within the permit time established at N.J.A.C. 16:41-6.2(f), but cannot complete the activity within the allotted time, the permittee shall request an extension of time in writing from the appropriate Regional Maintenance Office and shall submit the required extension fee identified at N.J.A.C. 16:41-7.1 in the form of a check or money order. The Department may approve one, one-year extension, except for "Temporary Use" permits, which cannot be extended.

(b) Permits for monitoring wells may be extended more than once, when required by the Department of Environmental Protection.

16:41-6.11 Acceptance of permit

The start or performance of any activity under a permit shall constitute full understanding and acceptance of, and agreement with, the terms and conditions of the permit and shall represent the express intention and obligation of the permittee to comply therewith.

16:41-6.12 Appeal process

(a) The appeal process for highway occupancy applications and permits, except for utility opening applications and permits and wireless communication site survey applications and permits, is as follows:

1. The applicant or permittee shall submit a written request for reconsideration to the Regional Maintenance Engineer within 30 days of a notice from the Department. The request shall include reasons for the appeal.
2. Within 10 days of receipt of the reconsideration request, the Regional Maintenance Engineer shall schedule a meeting with the appellant that shall take place within 30 days thereafter. The meeting will provide the appellant with an opportunity to present additional information in furtherance of the appeal.
3. The Regional Maintenance Engineer shall render a decision in writing within 15 days of the meeting and shall so notify the appellant. If the appellant does not agree with the decision of the Regional Maintenance Engineer, the appellant may submit a further appeal to the Executive Director for Regional Operations within 15 days.

4. The Executive Director for Regional Operations shall schedule an informal hearing within 10 days of receipt of the appeal. The Executive Director for Regional Operations shall conduct the hearing. At the hearing, the appellant shall have an opportunity to present additional information.

5. In reaching the final agency decision, the Executive Director for Regional Operations shall consider all of the information previously provided and the additional information presented at the hearing, as well as the criteria set forth in these rules and the public's right and interest in a safe and efficient highway system. The Executive Director for Regional Operations shall render the final agency decision, with reasons, within 10 days of the informal hearing and shall so notify the appellant in writing.

(b) The appeal process for utility opening applications and permits is as follows:

1. The applicant or permittee shall submit a written request for reconsideration to the Regional Maintenance Engineer within 30 days of a notice from the Department. The request shall include reasons for the appeal.
2. Within 10 days of receipt of the reconsideration request, the Regional Maintenance Engineer shall schedule a meeting with the appellant that shall take place within 30 days thereafter and will provide the appellant with an opportunity to present additional information in furtherance of the appeal.
3. The Regional Maintenance Engineer shall render a decision in writing within 15 days of the meeting and shall so notify the appellant. If the appellant does not agree with the decision of the Regional Maintenance Engineer, the appellant may submit a further appeal to the Manager of the Utility and Railroad Engineering Unit within 15 days.
4. The Manager of the Utility and Railroad Engineering Unit shall schedule an informal hearing within 10 days of receipt of the appeal. The Manager of the Utility and Railroad Engineering Unit shall conduct the hearing. At the hearing, the appellant shall have an opportunity to present additional information.

5. In reaching the final agency decision, the Manager of the Utility and Railroad Engineering Unit shall consider all of the information previously provided and the additional information presented at the hearing, as well as the criteria set forth in these rules and the public's right and interest in a safe and efficient highway system. The Manager of the Utility and Railroad Engineering Unit shall render the final agency decision, with reasons, within 10 days of the informal hearing and shall so notify the appellant in writing.

(c) The appeal process for wireless communication site survey applications and permits is as follows:

1. The applicant or permittee shall submit a written request for reconsideration to the Supervisor of the Wireless Communications Unit within 30 days of a notice from the Department. The request shall include reasons for the appeal.

2. Within 10 days of receipt of the reconsideration request, the Supervisor of the Wireless Communications Unit shall schedule a meeting with the appellant that shall take place within 30 days thereafter. The meeting shall provide the appellant with an opportunity to present additional information in furtherance of the appeal.

3. The Supervisor of the Wireless Communications Unit shall render a decision in writing within 15 days of the meeting and shall so notify the appellant. If the appellant does not agree with the decision of the Supervisor of the Wireless Communications Unit, the appellant may submit a further appeal to the Manager of the Office of Major Access Permits within 15 days.

4. The Manager of the Office of Major Access Permits shall schedule an informal hearing within 10 days of receipt of the appeal. The Manager of the Office of Major Access Permits shall conduct the hearing. At the hearing, the appellant shall have an opportunity to present additional information.

5. In reaching the final agency decision, the Manager of the Office of Major Access Permits shall consider all of the information previously provided and the additional information presented at the hearing, as well as the criteria set forth in these rules and the public's right and interest in a safe and efficient highway system. The Manager of the Office of Major Access Permits shall render the final agency decision, with reasons, within 10 days of the informal hearing and shall so notify the appellant in writing.

SUBCHAPTER 7. FEES

16:41-7.1 Fees

(a) When an applicant proposes to undertake activities that are associated with different types of permits, the applicant shall pay the application and permit fees applicable to each activity.

(b) Anyone under contract to the Department and working on Department rights-of-way or on property under the jurisdiction of the Department at the written request of the Department shall not be assessed an application or permit fee for any required permit.

(c) Fees for applications, permits, and renewals are set forth below and are non-refundable. Fees shall be in the form of a check or money order made payable to the Department. The Department shall not accept cash. The applicant shall submit the application fee with the application. The applicant shall not submit the permit fee until the applicant returns the signed proposed permit to the Regional Maintenance Office. The Department shall not execute a proposed permit until the applicant has submitted the proper fee for the permit and the applicable entity identified at N.J.A.C. 16:41-6.2 has signed the proposed permit.

Type	Number	Unit	Application	Permit	Extension
Utility Openings within border areas	Up to 10	Square feet (SF)	\$10.00	\$10.00	\$10.00
	Greater than 10 up to 200	SF	\$10.00	\$30.00	\$30.00
	Greater than 200	SF	\$35.00	\$30.00 for first 200 SF plus \$5.00 for each additional 400 SF	\$30.00 for first 200 SF plus \$5.00 for each additional 400 SF
Utility Openings within the shoulder or main traveled way	Up to 10	SF	\$15.00	\$35.00	\$35.00
	Greater than 10 up to 200	SF	\$15.00	\$100.00	\$100.00
	Greater than 200	SF	\$120.00	\$100.00 for first 200 SF plus \$20.00 for each additional 400 SF	\$100.00 for first 200 SF plus \$20.00 for each additional 400 SF
Poles or pole appurtenances	1 to 3	Unit	\$10.00	\$5.00	\$5.00
	4 to 10	Unit	\$15.00	\$50.00	\$50.00
	Greater than 10	Unit	\$30.00	\$50.00 for first 10 plus \$5.00 for each additional	\$50.00 for first 10 plus \$5.00 for each additional
Curb, Handicapped Ramp (Fee and permit requirement not applicable if installation is a condition of an access permit at the time of construction)	Each	Unit	\$1.00	\$1.00	\$1.00
Sidewalk (Fee and permit requirement not applicable if installation is a condition of an access permit at the time of construction)	Each	Unit	\$1.00	\$10.00 for each 50 LF or portion thereof	\$10.00 for each 50 LF or portion thereof
Drainage Facilities: Pipe	Up to 100	SF	\$20.00	\$35.00	\$35.00

<u>Type</u>	<u>Number</u> Greater than 100	<u>Unit</u> SF	<u>Application</u> \$70.00	<u>Permit</u> \$35.00 for first 100, plus \$35.00 for each additional 200 or fraction thereof \$10.00	<u>Extension</u> \$35.00 for first 100, plus \$35.00 for each additional 200 or fraction thereof \$10.00
Drainage Facilities: Standard manhole or inlet installation, conversion, or relocation	Each	Unit	\$2.00		
Landscaping, Tree Trim, Vegetation Control and Unclassified Landscaping (fee and permit requirement not applicable if the landscaping is a restoration condition under another permit) Or	Each	Region	\$5.00 annually per region	\$300.00 annually per region	\$300.00 annually per region
Bridge Attachments	Each	Tree trimming or removal Unit	\$2.00 per tree \$50.00	\$10.00 per tree \$50.00 plus \$3.00 per linear foot (LF) over 16 LF of item to be attached to bridge regardless of number of supports	\$10.00 per tree \$50.00 plus \$3.00 per LF over 16 LF of item to be attached to bridge regardless of number of supports
Pedestrian Overpass or Underpass	Each	Unit	\$150.00	\$2,000	\$2,000
Grading (excavation or fill)	Each	Unit	\$15.00	\$25.00	\$25.00
Guiderail	Each	Unit	\$10.00	\$2.00 per LF	\$2.00 per LF
Test Holes or Borings	Each	Unit	\$10.00	\$10.00	\$10.00
Monitoring Wells	Each	Unit	\$10.00	\$10.00	\$10.00
Crosswalks	Each	Unit	\$1.00	\$1.00	\$1.00
Telephones	Each	Unit	\$5.00	\$25.00	\$25.00
Bus Shelters or Benches	Each	Unit	\$1.00	\$5.00 per bus shelter; \$0.50 per bench	\$5.00 per bus shelter; \$0.50 per bench
Banners, Decorations or Temporary Announcement or Guide Signs	Each	Unit	\$1.00	For municipalities, \$1.00 per sign up to 14 days; for all others, \$10.00 per sign up to 14 days	For municipalities, \$1.00 per sign up to 14 days; for all others, \$10.00 per sign up to 14 days
Parades or Gatherings	Each	Unit	\$1.00	\$1.00 if municipally sponsored; \$10.00 all others	Not applicable
Temporary Use			\$50.00	\$200.00 per month	Not applicable: see N.J.A.C. 16:41-6.10
Detours off State Highways or Vice Versa	Each	Unit	\$15.00	\$25.00 per day or part thereof	\$25.00 per day or part thereof
Lane or Shoulder Closings on State Highways	Each	Unit	\$15.00	\$25.00 per day or part thereof	\$25.00 per day or part thereof
Automatic Traffic Counting Procedures	Each	Unit	\$50.00	\$200.00 per month	\$200.00 per month
Wireless Communications Site Survey	Annual	Unit	\$300.00	\$100.00	\$100.00
Miscellaneous		Unit	\$300.00	\$100.00	\$100.00

SUBCHAPTER 8. WAIVERS

16:41-8.1 Waivers

(a) The Department shall not grant waivers or other relief from design standards or other provisions of this chapter unless the waiver can be granted without substantial detriment to the safety and operation of the highway and without substantially impairing the intent and purpose of this chapter. Only the Commissioner, not a designee, may grant waivers from fees, but the Department shall have authority to waive application requirements or other requirements for applicants.

(b) If an applicant wishes to seek a waiver, the applicant shall submitted a completed Department form MT-159,

request for waiver, as an attachment to the permit application. The request for waiver shall state reasons why a waiver is appropriate and include documentation to support the waiver.

(c) If the Commissioner grants a waiver, the Department shall incorporate the waiver approval and any associated conditions into the proposed permit.

(d) Possible bases for waiver requests include, but are not limited to:

1. Existing substandard conditions;
2. Existing social, economic or environmental constraints;
3. Unique character of the area;

4. Unreasonableness of strict application of the requirements of this chapter under particular circumstances;

5. Conflict between the requirements of this chapter and the requirements of:

i. The Pinelands Commission or the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.;

ii. CAFRA;

iii. The Freshwater Wetlands Act, N.J.S.A. 13:9B-1 et seq.;

iv. The Stream Encroachment Act, N.J.S.A. 58:16A-50 et seq.;

v. The Federal Flood Hazard Zone Regulations;

vi. The Delaware River Basin Commission;

vii. The Delaware and Raritan Canal Commission;

viii. The New Jersey Meadowlands Commission;

ix. The Board of Public Utilities;

x. Utility industry standards;

xi. The Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and N.J.A.C. 2:90, as amended and supplemented; and

xii. The State Agriculture Development Committee, N.J.A.C. 2:76; and

6. Municipal, county or other approving agency imposition of conditions beyond the control of the applicant. If this occurs during the Department application process and the applicant provides documentation of these conditions, the Department shall not require a new application and fees as specified in N.J.A.C. 16:41-7.

(e) The grant of a waiver of a particular standard or requirement shall apply only to the specific location requested. It shall not constitute an approval of an application.

APPENDIX

