

7. Any development that has an existing, valid CAFRA permit dated prior to July 19, 1994 provided that construction, as defined at N.J.A.C. 7:7-2.1(c)1iii, begins prior to the expiration date of the permit and continues with no cumulative lapses in construction activity of more than one year.

8. The expansion of an existing, functional amusement pier, provided such expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent, and provided such expansion is located in the area beyond 150 feet landward of the mean high water line, beach or dune, whichever is most landward.

(d) Any exemption based upon on-site construction, as defined at N.J.A.C. 7:7-2.1(c)1iii on or before September 19, 1973 expired on July 19, 1997.

(e) A development shall no longer be exempt from the requirement of obtaining a CAFRA permit if significant changes are made to the development which would void the approvals listed at (c)1 and 2 above, or which would result in additional impacts to Special Areas, as defined at N.J.A.C. 7:7E-3, which additional impacts are greater than the impacts associated with the originally exempt development.

(f) Development that is exempt from CAFRA requires no certification or approval from the Department, except as may be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this subchapter.

1. For an exemption pursuant to (c)1 and 2 above, the following shall be submitted:

i. A folded copy of the approved site plan or subdivision plan, a copy of the resolution approving the site plan or subdivision, or a copy of the building permit and approved plan and soil conservation district approval where required;

ii. In the event that the final municipal building or construction permit expired and the permit was renewed or a new permit was obtained for the same project, the development will remain exempt provided construction began by July 18, 1997. To make such a determination, the Department will require documentation that the new permit authorized exactly the same construction as the original permit, such as a copy of the original building permit with approved plan and soil conservation district approval where required and a copy of the new building permit with approved plan depicting the exact development as the original;

iii. The fee specified at N.J.A.C. 7:7-10.4(e); and

iv. A completed LURP application form.

2. For an exemption pursuant to (c)3, 4, and 5 above, the following shall be submitted:

i. Plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing;

(1) For exemptions based on fire, storm, natural hazard or Act of God, the site plans submitted shall also indicate all preexisting structures to be rebuilt.

ii. Photographs of the site;

iii. The fee specified at 7:7-10.4(e); and

iv. A completed LURP application form.

3. For an exemption pursuant to (c)8 above, the following shall be submitted:

i. A description of the location of the amusement pier including county, municipality, lot(s) and block(s);

ii. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;

iii. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;

iv. Photographs of the site;

v. The fee specified at N.J.A.C. 7:7-10.4(e); and

vi. A completed LURP application form.

Amended by R.1986 d.461, effective November 17, 1986.

See: 18 N.J.R. 1772(a), 18 N.J.R. 2326(a).

(b)4viii added.

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

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

Substantially amended.

Amended by R.1988 d.136, effective March 21, 1988.

See: 19 N.J.R. 807(a), 20 N.J.R. 643(b).

(b)6 substantially amended.

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

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

Petition for Rulemaking.

See: 27 N.J.R. 769(a), 27 N.J.R. 1696(b).

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

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

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

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

Rewrote the section.

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

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

In (f), amended the N.J.A.C. references in 1iii, 2iii, and 3v.

Amended by R.2006 d.142, effective April 17, 2006.

See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

In (b)8ii, substituted "September 19" for "September 1" and deleted "(the effective date of CAFRA)".

Case Notes

New Jersey Department of Environmental Protection's broad scope of authority under the New Jersey Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Coastal Permit Program Rules, N.J.A.C. 7:7-1.1 et seq., and the Coastal Zone Management Rules, N.J.A.C. 7:7E-1.1 et seq., included jurisdiction to review fees proposed by a private beach club for the public's use of its beach. *Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc.*, 185 N.J. 40, 879 A.2d 112, 2005 N.J. LEXIS 932 (2005).

Department of Environmental Protection's asserted jurisdiction over development in upland areas of a coastal region was preempted by a Coastal Area Facility Review Act exemption. Last Chance Development Partnership v. Kean, 232 N.J.Super. 115, 556 A.2d 796 (A.D.1989) certification granted 117 N.J. 135, 564 A.2d 860, affirmed 119 N.J. 425, 575 A.2d 427.

Proposed paved parking lot of more than three acres in coastal area constituted "public facility" and "road, airport, or highway construction" under Act and project was therefore subject to review. In Re: DEP Reg. N.J.A.C. 7:7-2.1(b)1.iii, 214 N.J.Super. 579, 520 A.2d 794 (App.Div.1987) certification denied 107 N.J. 134, 526 A.2d 199 (1988).

CAFRA definition of "facilities" includes cabanas. State, Dept. of Environmental Protection v. Stavola, 206 N.J.Super. 213, 502 A.2d 63 (App.Div.1985) reversed 103 N.J. 425, 511 A.2d 622 (1986).

7:7-2.2 Wetlands

(a) Wetlands permits are required for all activities in coastal wetlands delineated and mapped pursuant to the Wetlands Act of 1970 including, but not limited to:

1. The cultivation and harvesting of naturally occurring agricultural or horticultural products. This provision shall not apply to the continued production of commercial salt hay or other agricultural crops on lands utilized for these purposes on or before April 13, 1972;
2. The excavation of an individual mooring slip;
3. The maintenance or repair of bridges, roads, highways, railroad beds or the facilities of any utility or municipality. This provision shall not apply to emergency repairs necessitated by a natural disaster or a sudden and unexpected mechanical, electrical or structural failure. Written notification of such repairs shall be provided to the Program within seven days after their initiation;
4. The construction of catwalks, piers, docks, landings, footbridges and observation decks;
5. The installation of utilities;
6. Excavation of boat channels and mooring basins;
7. The construction of impoundments;
8. The construction of sea walls;
9. The diversion or appropriative use of water;
10. The use of pesticides, except those applied to the skin or clothing for personal use;
11. Driving or causing to pass over or upon wetlands, any mechanical conveyance which may alter or impair the natural contour of the wetlands or the natural vegetation; and
12. Filling, excavation or the construction of any structure.

(b) The following activities are prohibited on regulated wetlands:

1. Placing, depositing or dumping any solid waste, garbage, refuse, trash, rubbish or debris;
2. Dumping or discharging treated or untreated domestic sewage or industrial wastes, either solid or liquid;
3. Applying any pesticide on areas containing significant stands of high vigor *Spartina alterniflora* (Saltmarsh cordgrass), *Zizania aquatica* (Wildrice), *Typha* sp. (Cattail), and *Scirpus americanus* (common threesquare) as shown generally on wetlands maps;
4. The storage or disposal of pesticides;
5. The application of persistent pesticides.

(c) The Wetlands Order promulgated by the Commissioner of Environmental Protection in April 1972, any amendments thereto, and these rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the following wetlands maps:

1. Middlesex County:

574-2082
574-2088
581-2082
581-2088
581-2100
581-2106
581-2112
581-2118
588-2076
588-2082
588-2106
588-2112
588-2118
595-2070
595-2076
595-2082
595-2088
595-2094
595-2106
602-2064
602-2070
602-2076
602-2082
602-2088
602-2094
602-2100
602-2106
609-2094
609-2100
609-2106

2. Monmouth County:

455-2160
455-2166
462-2160
462-2166
462-2172
462-2154
469-2160
469-2172
469-2178
476-2166
476-2172
476-2178
483-2172
490-2166

490-2172
490-2178
497-2166
497-2172
518-2184
532-2178
539-2154
539-2160
539-2166

539-2172
539-2178
539-2184
539-2190
546-2154
546-2160
546-2172
546-2178

ii. The lot is served by a municipal sewer system; and

iii. A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

(g) Except as provided in (g)1 below, public access shall be provided in accordance with the public trust rights rule, N.J.A.C. 7:7E-8.11. Additional requirements may be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).

1. In accordance with N.J.A.C. 7:7E-8.11(f)6, the Department shall not require public access for the development under this coastal general permit provided no beach and dune maintenance activities are proposed and the site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay or their shores. This provision does not apply to the Hudson River Waterfront Area at N.J.A.C. 7:7E-3.48.

(h) The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material.

(i) Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site.

(j) For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations.

(k) (Reserved)

(l) For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed.

(m) Development under the coastal general permit shall comply with the following setbacks:

1. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

2. On an oceanfront site with existing or proposed shore protection structures, the single family home or du-

plex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

3. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If the single family home or duplex and/or accessory structures cannot be located at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction in a form approved by the Department is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (m)1 above;

(n) This coastal general permit does not authorize any activities regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

(o) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
 - i. The mean and spring high water lines of the tidal waters at or in proximity to the site;
 - ii. Existing features at the site including topography and structures, and the limits of wetlands, dune areas, beach areas, flood hazard areas, coastal bluffs and vegetation;
 - iii. Existing roads and utilities immediately adjacent to the site;
 - iv. All existing and proposed development, including all structures, public accessways, grading, clearing and limits of disturbance; and
 - v. The limits and depth of all proposed excavation within 25 feet of the bluff crest; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed development complies with (a) through (n) above, including supplemental documents as appropriate, such as maps or surveys.

New Rule, R.2000 d.428, effective October 16, 2000.
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).
Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (d)1, inserted "whichever is most landward," following "at (d)1ii below," in the introductory paragraph; in (e), rewrote the introductory paragraph and added i and ii.

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (c), inserted "7:7E-3.25, Flood hazard areas, 7:7E-3.26, Riparian zones,"; and reserved (j).

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

In the introductory paragraph of (e) and (m)3, substituted "(m)1" for "(l)1"; added (g); recodified former (g) through (n) as (h) through (o); in (o)1iv; inserted "existing and" and "public accessways,"; and in (o)2, substituted "(n)" for "(m)".

Case Notes

In interpreting the regulatory definitions of a dune under N.J.A.C. 7:7E-3.16(a) and a primary frontal dune under N.J.A.C. 7:7-7.8(d)1ii, the waterward and landward slopes of a primary frontal dune must abruptly incline and decline respectively compared with the rest of the subject property or with the other properties in the area immediately adjacent to the subject property. *Seigel v. N.J. Dep't of Env'tl. Prot.*, 395 N.J. Super. 604, 930 A.2d 461, 2007 N.J. Super. LEXIS 291 (App.Div. 2007).

Reviewing court interpreting the regulatory definitions of a dune under N.J.A.C. 7:7E-3.16(a) and a primary frontal dune under N.J.A.C. 7:7-7.8(d)1ii held that the Department of Environmental Protection (DEP) improperly denied a landowner's application to build an ocean-front home as the subject property was not a dune; the DEP's interpretation of the regulatory language also resulted in a fundamental unfairness to petitioner, whose surrounding neighbors had constructed similar homes on their adjacent properties. *Seigel v. N.J. Dep't of Env'tl. Prot.*, 395 N.J. Super. 604, 930 A.2d 461, 2007 N.J. Super. LEXIS 291 (App.Div. 2007).

7:7-7.9 Coastal general permit for the expansion, or reconstruction (with or without expansion), of a single family home or duplex

(a) This coastal general permit authorizes the expansion, or reconstruction (with or without expansion), of a legally constructed, habitable single family home or duplex and/or accessory development (such as garages, sheds, pools, drive-ways, grading, excavation and clearing, excluding shore protection structures), provided the single family home or duplex and accessory structures are located landward of the mean high water line, and provided the single family home or duplex is not located on a bulkheaded lagoon lot.

(b) Development under this coastal general permit shall not result in development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8.

(c) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.25, Flood hazard areas, 7:7E-3.26, Riparian zones, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland buffers, and 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats;

(d) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (d)1 through 4 below:

1. Development that is located on the landward slope of a secondary or tertiary dune described at (d)1ii below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following conditions:

i. The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

ii. The cross-sectional area of the primary frontal dune waterward of the proposed development, as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this subparagraph, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

iii. The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7E-3.19, Erosion Hazard Areas and the information in the Department's Geographical Information System (GIS) database as found in the Historical Shorelines coverage 1836-1986; and

iv. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures;

2. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

i. The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal Flood Insurance Rate Map;

ii. The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

iii. The road, seawall or bulkhead is functional and is currently maintained by a public entity;

iv. The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;

ii. Existing features at the site including topography and structures, and the limits of wetlands, dune areas, beach areas, flood hazard areas, coastal bluffs and vegetation;

iii. Existing roads and utilities immediately adjacent to the site;

iv. All existing and proposed development, including all structures, public accessways, grading, clearing and limits of disturbance; and

v. The limits and depth of all proposed excavation within 25 feet of the bluff crest; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed development complies with (a) through (n) above, including supplemental documents as appropriate, such as maps or surveys.

New Rule. R.2000 d.428, effective October 16, 2000.

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

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

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

In (d)1, "whichever is most landward." following "at (d)iii below," in the introductory paragraph: in (c), rewrote the introductory paragraph and added 1 and 2.

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (c), inserted "7:7E-3.25. Flood hazard areas, 7:7E-3.26. Riparian zones.": and reserved (j).

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

In the introductory paragraph of (c) and (n)3, substituted "(m)1" for "(l)1"; added (g); recodified former (g) through (n) as (h) through (o); in (o)iv, inserted "existing and" and "public accessways.": and in (o)2, substituted "(n)" for "(m)".

Case Notes

Reviewing court interpreting the regulatory definitions of a dune under N.J.A.C. 7:7E-3.16(a) and a primary frontal dune under N.J.A.C. 7:7-7.8(d)iii held that the Department of Environmental Protection (DEP) improperly denied a landowner's application to build an ocean-front home as the subject property was not a dune; the DEP's interpretation of the regulatory language also resulted in a fundamental unfairness to petitioner, whose surrounding neighbors had constructed similar homes on their adjacent properties. *Seigel v. N.J. Dep't of Env'tl. Prot.*, 395 N.J. Super. 604, 930 A.2d 461, 2007 N.J. Super. LEXIS 291 (App.Div. 2007).

7:7-7.10 Coastal general permit for construction of a bulkhead and placement of associated fill on a manmade lagoon

(a) This coastal general permit authorizes the construction of a bulkhead on a lot located on a substantially developed manmade lagoon, provided that the bulkhead complies with the following:

1. The site is located on a substantially developed manmade lagoon as defined at N.J.A.C. 7:7-1.3;

2. The bulkhead shall be located at or above the spring high water line unless it is between two existing legally constructed bulkheads not more than 75 feet apart. In such

cases, the connecting bulkhead shall not extend waterward of a straight line connecting the ends of the existing bulkheads;

3. There shall be no disturbance to wetlands during construction;

4. The bulkhead is located inshore of any wetlands;

5. A minimum 10-foot return shall be constructed at each end of the bulkhead unless it is tied into an existing adjacent bulkhead;

6. Clean fill from an upland source shall be used for backfill; and

7. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11. Additional requirements may be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean and spring high water lines of the tidal waters at the site;

ii. Existing features at the site, including structures and the upper and lower limits of wetlands and beach areas;

iii. Bulkheads or other retaining structures on adjacent properties;

iv. All proposed structures including deadmen, tie backs, and returns; and

v. All existing and proposed public accessways to tidal waterways and their shores on the site; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed bulkhead complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

New Rule. R.2000 d.428, effective October 16, 2000.

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

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

In (a)5, substituted "10-foot" for "10 foot" and deleted "and" from the end; in (a)6, substituted "and" for a period at the end; added (a)7; in (b)1iii, deleted "and" from the end; and added (b)iv.

7:7-7.11 Coastal general permit for the construction of a revetment at a single family home or duplex lot

(a) This coastal general permit authorizes the construction of a revetment, as defined at N.J.A.C. 7:7-1.3, at a single family home or duplex lot that is not part of a larger development owned or controlled by the same property owner and which

has an eroding shoreline along any shore other than the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. (The coastal general permit for the construction of gabions at a single family home is found at N.J.A.C. 7:7-7.12.)

(b) Construction of the revetment shall comply with the following:

1. The revetment slope shall not be steeper than one vertical to two horizontal;
2. The placement of rip rap in the waterway shall be limited to that necessary to protect the shoreline;
3. Fill material placed to achieve the required slope shall be:
 - i. Added only to the upland;
 - ii. Free of large stones; and
 - iii. Firmly compacted before revetment construction begins;
4. Filter fabric (or graded stone filter) shall be installed to prevent loss of slope materials through voids in the revetment material;
5. Revetment stones shall be angular and blocky, not rounded;
6. The toe of the revetment shall be located at least three feet below existing grade to prevent undercutting;
7. Weight of individual stone shall be determined by a design engineer based on wave height range for the site;
8. Placement of a revetment in dunes or wetlands is prohibited. Any wetlands disturbed by the construction activities shall be restored to pre-construction conditions; and
9. The revetment shall be placed in such a way as to not result in instability of a coastal bluff or cause erosion of adjacent properties or offshore areas.

(c) Except as provided in (c)1 below, public access shall be provided in accordance with the Public trust rights rule, N.J.A.C. 7:7E-8.11. Additional requirements may be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).

1. In accordance with N.J.A.C. 7:7E-8.11(f)6, the Department shall not require public access for the development under this coastal general permit provided no beach and dune maintenance activities are proposed and the site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay or their shores. This provision does not apply to the Hudson River Waterfront Area at N.J.A.C. 7:7E-3.48.

(d) In addition to the application and additional information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site(s) plan showing the following:
 - i. The mean high, mean low and spring high water lines of the tidal waters at the site;
 - ii. Existing features at the site including topography and structures;
 - iii. The upper and lower limits of wetlands, beach, dune, and coastal bluff areas at the site and on adjacent waterfront properties;
 - iv. Bulkheads or other retaining structures on adjacent properties;
 - v. The proposed location of the revetment and limit of disturbance; and
 - vi. Cross sections of the proposed revetment in relationship to mean high, mean low water, and spring high water lines; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed revetment complies with (a) through (c) above, including supplemental documents as appropriate, such as maps or surveys.

New Rule, R.2000 d.428, effective October 16, 2000.

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

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Added new (c); recodified former (c) as (d); and in (d)2, substituted "through (c)" for "and (b)".

7:7-7.12 Coastal general permit for the construction of gabions at a single family/duplex lot

(a) This coastal general permit authorizes the construction of gabions, as defined at N.J.A.C. 7:7-1.3, at a single family home or duplex lot that is not part of a larger development owned or controlled by the same property owner and which has an eroding shoreline along any shore other than the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. (The coastal general permit for the construction of revetments at a single family home is found at N.J.A.C. 7:7-7.11.)

(b) The design and construction of the gabions shall comply with the following:

1. The gabions shall be laid along the face of the shore such that the waterward slope of the gabions, as measured along the face of the gabions, shall be no steeper than one vertical to two horizontal. However, if the steepness and height of the slope of the non-storm shoreline profile preclude construction of a sloped gabion system, then the waterward slope of a step faced gabion system, as measured along a line connecting the gabions shall be no steeper than one vertical to one horizontal;
2. The placement of the gabions in the waterway shall be limited to that necessary to protect the shore;

1. A violator does not pay a civil administrative penalty imposed pursuant to a final order within 30 days of the date that payment is due; or

2. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department within 30 days of the date that payment is due.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.5 or 8.6 according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:7-8.5(g)4, 8.6(g)5 or 8.8(h)6;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.5(f)1i or 8.6(g)3, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

4. Any other terms or conditions acceptable to the Department.

7:7-8.4 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 13:19-1 et seq., the violator shall submit the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the

violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being contested, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:7-8.5 Civil administrative penalties for failure to obtain a permit for regulated activities pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.A.C. 7:7-2.1.

(b) Each violation of N.J.A.C. 7:7-2.1 shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section, the Department shall identify the civil administrative base penalty within the table in (e) below by determining the number of points pursuant to (d) below. The civil administrative penalty shall be the amount within the table in (e) below, unless adjusted pursuant to (f) and/or (g) below.

(d) The Department shall determine the number of points assigned to each violation by summing the points according to (d)1 through 3 below.

1. Conduct of violator:

Minor	1 point
Moderate	2 points
Major	3 points

i. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

ii. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

iii. Minor shall include any other conduct not included in (d)1i or ii above.

2. Area of disturbance in square feet (sf):

Less than or equal to 270 sf	1 point
271 sf to 5,000 sf	2 points
5,001 sf to 10,000 sf	3 points
10,001 sf to 20,000 sf	4 points
Greater than 20,000 sf	5 points

The Department shall determine the area of disturbance as that area which was actually disturbed as a result of the violation.

3. Unauthorized activity conducted in special area or resources:

Each special area or resource involved—1 point

The Department shall assess one point for each special area or resource, as defined in N.J.A.C. 7:7E-3, in which the unauthorized activity occurred.

(e) The table of civil administrative base penalties is as follows:

Points	Base Penalty
1-3	\$ 500
4	\$ 1,000
5	\$ 5,000
6	\$10,000
7	\$15,000
8	\$20,000
9	\$25,000

(f) The Department shall adjust the amount of the base penalty assessed pursuant to (e) above based upon the mitigating penalty component as calculated in (f)1i or ii below, if applicable.

1. The Department shall multiply the base penalty dollar amount by the multiplier for either of the applicable mitigating factors in (f)1i or ii below to obtain the mitigating penalty component. Where neither mitigating factor in (f)1i or ii below applies, the civil administrative penalty shall be the civil administrative base penalty determined pursuant to (e) above, unless adjusted pursuant to (g) below.

Mitigating Factor	Multiplier
i. Where the nature, timing and effectiveness of any measures taken by the violator to remove the unauthorized development and to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of violation from the Department; or	0.50

ii. Where a complete application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained for the unauthorized development without the need of any modification, mitigation or restoration. 0.50

2. To obtain the civil administrative penalty, the Department shall subtract the mitigating penalty component calculated pursuant to (f)1 above, where applicable, from the base penalty.

(g) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (e) or, where applicable, (f) above based upon any or all of the factors listed in (g)1 through 4 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 25 percent of the penalty pursuant to (e) above, or more than the statutory limit.

1. The compliance history of the violator;
2. The frequency with which any violation of N.J.S.A. 13:19-1 et seq., rules, permit or order occurred;
3. The deterrent effect of the penalty; and/or
4. Any other mitigating, extenuating or aggravating circumstances.

7:7-8.6 Civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA) other than failure to obtain a permit for regulated activities

(a) The Department may, in its discretion, assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., other than those violations addressed under N.J.A.C. 7:7-8.5. The Department shall assess penalties under this section in lieu of N.J.A.C. 7:7-8.5 when N.J.A.C. 7:7-8.5 is not applicable to the violation.

(b) Each violation of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) The Department may assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (g) below.