

**7:7A-2.10 Hearings and appeals**

The applicant or other affected party, if aggrieved by the Department's decision on a exemption request, may request a hearing on this decision pursuant to N.J.A.C. 7:7A-12.7.

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

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

### SUBCHAPTER 3. GENERAL STANDARDS FOR GRANTING INDIVIDUAL FRESHWATER WETLANDS AND OPEN WATER FILL PERMITS

**7:7A-3.1 Requirements for granting individual freshwater wetland and open water fill permits**

(a) The Department shall issue a freshwater wetlands or open water fill permit only if it finds that there is no practicable alternative to the proposed activity.

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

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

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

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

**7:7A-3.2 Requirements for water-dependent activities**

(a) The Department shall issue a freshwater wetlands or open water fill permit only if the proposed project meets the criteria at N.J.A.C. 7:7A-3.1 above and it finds that the regulated activity is water-dependent or requires access to freshwater wetlands or State open waters as a central element of its basic function, and has no practicable alternative which would:

1. Not involve a freshwater wetland or State open water; or

2. Involve a freshwater wetland or State open water, but would have a less adverse impact on the aquatic ecosystem; and

3. Not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal.

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

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

Recodified from 3.1; added references to State open water.

**Case Notes**

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

**7:7A-3.3 Requirements for non-water dependent activities**

(a) The Department shall issue a freshwater wetlands or open water fill permit for a non-water dependent activity only if it finds that the regulated activity has no practicable alternative which would:

1. Not involve a freshwater wetland or State open water; or

2. Involve a freshwater wetland or State open water but would have a less adverse impact on the aquatic ecosystem; and

3. Not have other significant adverse environmental consequences, that is, would not merely substitute other significant environmental consequences for those attendant on the original proposal.

(b) For special aquatic sites as defined in N.J.A.C. 7:7A-1.4 and all freshwater wetlands, it shall be a rebuttable presumption that there is a practicable alternative to any nonwater-dependent regulated activity, which alternative does not involve a freshwater wetland or State open water, and that such an alternative to any regulated activity would have less of an impact on the aquatic ecosystem.

(c) In order to rebut the presumption established in (b) above, an applicant for a freshwater wetlands or open water fill permit must demonstrate all of the following:

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

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

(d) In order to rebut the presumption established in (c) above, an applicant for a freshwater wetlands permit must demonstrate all of the following:

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

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

3. That the basic project purpose cannot reasonably be accomplished by any alternative designs that would

avoid, or result in less, adverse impact on an aquatic ecosystem and;

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

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

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

Recodified from 3.2; added references to State open water.

#### Case Notes

No permit required for modification or widening of access road. Griffith v. DEPE, 94 N.J.A.R.2d (EPE) 205.

### 7:7A-3.4 Non-water dependent activities in freshwater wetlands of exceptional resource value or in trout production waters

(a) In order to rebut the presumption established for non-water dependent activities (see N.J.A.C. 7:7A-3.3(b)) when the activity will take place in wetlands of exceptional resource value or in trout production waters, an applicant, in addition to complying with the provisions of N.J.A.C. 7:7A-3.3, shall also demonstrate either:

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

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

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

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

Recodified from 3.3; added references to trout production waters.

### 7:7A-3.5 Standard requirements for all regulated activities in freshwater wetlands and State open waters

(a) In addition to the other requirements set forth in this subchapter, the Department shall issue a permit for a regulated activity only if the activity:

1. Will result in a minimum feasible alteration or impairment of the aquatic ecosystem including existing contour, vegetation, fish and wildlife resources, and aquatic circulation of the freshwater wetland and hydrologic patterns of the watershed;

2. Will not jeopardize present or documented habitat or the continued existence of a local population of a threatened or endangered species listed pursuant to "The Endangered and Nongame Species Conservation Act," N.J.S.A. 23:2A-1 et seq., or those identified pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531 et al., as defined at N.J.A.C. 7:7A-1.4;

3. Will not result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the United States Department of the Interior or the Secretary of the United States Department of Commerce, as appropriate, to be a critical habitat under the "Endangered Species Act of 1973", (16 U.S.C. §§ 1531 et seq.);

4. Will not cause or contribute to a violation of any applicable State water quality standard;

5. Will not cause or contribute to a violation of any applicable toxic effluent standard or prohibition imposed pursuant to New Jersey's "Water Pollution Control Act", N.J.S.A. 58:10A-1 et seq.;

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

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

8. After assumption of the Federal 404 program, the project will not adversely affect properties which are listed or are eligible for listing on the National Register of Historic Places. If the permittee, before or during the course of authorized work, encounters a probable historic property that has not been listed or determined eligible for listing on the National Register, but which may be eligible for listing in the National Register, the permittee shall immediately notify the Department and proceed as directed by the Department;

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

10. Is otherwise lawful; and

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

i. The public interest in preservation of natural resources and the interest of the property owners in reasonable economic development;

ii. The relative extent of the public and private need for the proposed regulated activity;

iii. Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods, to accomplish the purpose of the proposed regulated activity;

iv. The extent and permanence of the beneficial or detrimental effects which the proposed regulated activity may have on the public and private uses for which the property is suited;

v. The quality and resource value classification pursuant to N.J.A.C. 7:7A-2.5 of the wetland which may be affected and the amount of freshwater wetlands to be disturbed;

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

vii. The ecological value of the freshwater wetlands and probable individual and cumulative impacts of the project on public health and fish and wildlife. For the purposes of this specific subsection, project shall mean the use and configuration of all buildings, pavements, roadways, storage areas and structures, and the extent of all activities associated with the proposal.

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

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

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

#### Case Notes

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

## SUBCHAPTER 4. (RESERVED)

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

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

Subchapter 4 was entitled "General Standards for Granting an Open Water Fill Permit".

## SUBCHAPTER 5. EMERGENCY PERMITS

### 7:7A-5.1 Emergency permits

(a) The Department may issue a temporary emergency freshwater wetlands, open water fill permit, or transition area waiver for a regulated activity only if:

1. An unacceptable threat to life, severe loss of property, or severe environmental degradation will occur if an emergency permit is not granted; and

2. The anticipated threat or loss may occur before a permit or waiver can be issued or modified under the procedures otherwise required by the Act, this chapter, and other applicable State laws.

(b) The emergency permit shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for non-emergency regulated activities including mitigation when required by either N.J.A.C. 7:7A-9 or 13 and shall:

1. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days; and

2. Require mitigation pursuant to N.J.A.C. 7:7A-14 of the freshwater wetland, State open waters, or transition area within this 90 day period, except that if more than 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration only.

(c) The emergency permit may be issued orally or in writing, except that if it is issued orally, an authorization letter shall be issued within five days thereof.

(d) Notice of the issuance of the emergency permit shall be published and public comments received, in accordance with the provisions of 40 C.F.R. 124.10 and 124.11, and of the Federal Act and applicable State law, provided that this notification shall be mailed no later than 10 days after issuance of the emergency permit.

(e) The emergency permit may be terminated at any time without prior hearing upon a determination by the Department that this action is appropriate to protect human health or the environment.

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

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

N.J.A.C. cross references to requirements added.

### 7:7A-5.2 Obtaining an emergency permit

(a) A person in need of an emergency permit shall inform the Administrator of the Element by telephone as to the extent of work to be performed, the reason for the emergency, and the location of the project. This information shall be presented to the Department in writing within two days following the telephone request.

(b) After the State assumes the Federal 404 program, upon receiving the request for an emergency permit for a major discharge, the Administrator will notify the Regional Administrator prior to the issuance of an emergency permit and will send a copy of the written permit upon issuance.

(c) If verbal approval is given by the Administrator the emergency work may be started. Department staff shall be kept informed by telephone (at least once per week) regarding the situation at the site. The Department will offer guidance and instructions in performing the work.

(d) If verbal approval is not given, the Department may issue a written emergency approval at any time within 15 days of the initial request.

(e) Within 15 days of the granting of an emergency approval which has been obtained and complied with in accordance with the Department's instructions, a complete freshwater wetlands, open water fill permit, or transition area waiver application with appropriate fees and "as built"

drawings shall be submitted to the Department for review. After public notice and opportunity for comment pursuant to N.J.A.C. 7:7A-12.4 and 12.1(a), and 11.1(a), a freshwater wetlands, or open water fill permit, or a transition area waiver shall be issued by the Department for the activities covered by the emergency approval. This permit may contain conditions necessary to compensate for any adverse impacts to the freshwater wetlands, State open waters, or transition areas resulting from the emergency permit or the activity. If required by either N.J.A.C. 7:7A-9 or 13, mitigation shall be provided pursuant to N.J.A.C. 7:7A-14.

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

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

New (b) added, recodified existing (b)-(d) as (c)-(e).

## SUBCHAPTER 6. TRANSITION AREAS

### Source and Effective Date

R.1989 d.362, effective July 3, 1989.

See: 21 N.J.R. 596(a), 21 N.J.R. 1858(a).

### Subchapter Historical Note

Subchapter 6, Transition Areas, became effective on July 3, 1989, as R.1989 d.362. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

### 7:7A-6.1 General provisions

(a) A transition area serves as:

1. An ecological transition zone from uplands to freshwater wetlands which is an integral portion of the freshwater wetlands ecosystem, providing temporary refuge for freshwater wetlands fauna during high water episodes, critical habitat for animals dependent upon but not resident in freshwater wetlands, and slight variations of freshwater wetland boundaries over time due to hydrologic or climatologic effects; and

2. A sediment and storm water control zone to reduce the impacts of development upon freshwater wetlands and freshwater wetlands species.

(b) Acts or acts of omission in a transition area that adversely affect a transition area's ability to serve as any of the areas described below at (b)1 to 7 shall be deemed inconsistent with the provisions of (a) above and with N.J.S.A. 13:9B-16a:

1. A temporary refuge for freshwater wetlands fauna during high water episodes;

2. A habitat area for activities such as breeding, spawning, nesting and wintering for migrating, endangered, commercially and recreationally important wildlife;

3. An area to accommodate slight variations in freshwater wetland boundaries over time due to hydrologic or climatologic effects;

4. A remediation and filtration area to remove and store nutrients, sediments, petrochemicals, pesticides, debris and other pollutants as they move from the upland towards the freshwater wetlands;

5. A buffer area to keep human activities at a distance from freshwater wetlands, thus reducing the impact of noise, traffic, and other direct and indirect human impacts on freshwater wetlands species;

6. A corridor area which facilitates the movement of wildlife to and from freshwater wetlands and from and to uplands, streams and other waterways; and

7. A sediment and storm water control area to reduce the adverse effects of development or disturbance upon freshwater wetlands, flora and fauna, and nearby waterways.

(c) A transition area is required adjacent to freshwater wetlands of exceptional resource value and of intermediate resource value as classified in N.J.A.C. 7:7A-2.5. A transition area is not required adjacent to freshwater wetlands of ordinary resource value as classified in N.J.A.C. 7:7A-2.5 or adjacent to State open waters as defined at N.J.A.C. 7:7A-1.4.

(d) The standard width of a transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet. This standard width shall only be modified through the issuance of a transition area waiver by the Department pursuant to the Act and this chapter. The types of transition area waivers are listed at N.J.A.C. 7:7A-7.1(c).

(e) The standard width of a transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet. This standard width shall only be modified through the issuance of a transition area waiver by the Department pursuant to the Act and this chapter.

(f) A person shall not engage in activities prohibited in a transition area as set forth at N.J.A.C. 7:7A-6.2 except pursuant to a transition area waiver issued by the Department pursuant to this chapter.

(g) A transition area shall be measured outward from a freshwater wetland boundary line on a horizontal scale perpendicular to the freshwater wetlands boundary line as shown in N.J.A.C. 7:7A-6, Appendix A, which is incorporated by reference in this chapter. The outside boundary line of a transition area shall parallel, that is, be equidistant from, the freshwater wetlands boundary line, unless a transition area waiver is approved under N.J.A.C. 7:7A-7.4 or N.J.A.C. 7:7A-7.5. The width of the transition area shall be measured as the minimum distance between the freshwater wetlands boundary and the outside transition area boundary.

(e) A person who requests a letter of interpretation and does not receive a response within the above deadlines may directly apply for a freshwater wetlands permit. In the event that a letter of interpretation is not issued within the deadlines imposed in this subchapter, the letter of interpretation fee will be applied to a permit application fee at the applicant's request.

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

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

Recodified from 8.7; new (a)-(c) added; existing (a) and (b) recodified as (d) and (e).

#### 7:7A-8.9 Cancellation and resubmission of applications

If an application is not complete for final review within 60 days of a request for additional information, the Department shall send a letter cancelling the application and requiring the application for a freshwater wetlands permit or transition area waiver. A new application will be required to reactivate the Department's review. If the applicant sends the Department a letter documenting good cause for not supplying the requested information within the 60 day period the Department will grant an automatic extension of thirty days. The Department will grant additional 30-day extensions upon receiving a written request for such extension from the applicant.

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

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

#### 7:7A-8.10 Hearings and appeal

(a) An applicant or other affected party may request an adjudicatory hearing to contest a decision on a letter of interpretation pursuant to this subchapter, by complying with the procedures set forth in (b), (c) and (d) below.

(b) Before requesting an adjudicatory hearing, the applicant or other affected party shall make a good faith effort to resolve any dispute arising during the letter of interpretation process with the project review officer.

(c) If the good faith efforts provided in (b) above do not resolve the dispute, the applicant or other affected party may submit a request for an adjudicatory hearing to the Department in writing at the following address:

Office of Legal Affairs  
Attention: Adjudicatory Hearing Request  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625-0402

(d) The applicant or other affected party shall submit the written request under (c) above within 30 days of the Department's decision or the date on which the decision is published in the DEPE Bulletin, whichever is later. Failure to submit the written request within the allotted time shall operate as a waiver of any right to an adjudicatory hearing.

1. Upon receipt of such a request, the Commissioner may refer the matter to the Office of Administrative Law, which shall assign an administrative law judge to conduct a hearing on the matter in the form of a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

2. Within 45 days of receipt of the administrative law judge's decision, the Commissioner shall affirm, reject, or modify the decision.

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

New Rule, R.1993 d.159, effective April 19, 1993.

See: 24 N.J.R. 912(b), 25 N.J.R. 1755(b).

### SUBCHAPTER 9. GENERAL PERMITS

#### 7:7A-9.1 General standards for issuing Statewide general permits

(a) This section details the process for the issuance of new Statewide General permits and the readoption of previously issued Statewide General permits (except for Statewide general permits numbers 6 and 7). The remaining sections in this subchapter detail the process for authorizing various activities under the issued Statewide general permits. Before issuing or reissuing a Statewide general permit, the Department will propose a draft Statewide general permit in the form of a rule proposal pursuant to the New Jersey Administrative Procedure Act. N.J.S.A. 52:14B-1 et seq. In addition to these public notice and comment procedures, the Department will send a copy of the draft general permit to USEPA, and will issue a public notice meeting the requirements of N.J.A.C. 7:7A-11.1(a).

(b) The Department may issue Statewide general permits only if all of the following conditions are met:

1. The activities meet the limitations specified in (c)1 below;

2. After conducting an environmental analysis, the Department determines that the regulated activities will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and will cause only minor impacts on freshwater wetlands and State open waters;

3. After determining that the activity will be in conformance with the purposes of the Act, and will not violate the Federal Act; and

4. After providing public notice and opportunity for a public hearing.

(c) In addition to the conditions in N.J.A.C. 7:7A-13.1, N.J.A.C. 7:7A-9.3, and the applicable requirements of N.J.A.C. 7:7A-13.2, each general permit shall contain limitations as follows:

1. A specific description of the type(s) of activities which are authorized, including limitations for any single operation, to ensure that the requirements of (a) above are satisfied. At a minimum, these limitations shall include:

- i. The maximum quantity of material that may be discharged;
- ii. The type(s) of material that may be discharged;
- iii. The depth of fill permitted;
- iv. The maximum extent to which an area may be modified; and
- v. The size and type of structure that may be constructed.

2. A precise description of the geographic area to which the general permit applies, including, when appropriate, limitations on the type(s) of water(s) or wetlands where operations may be conducted, to ensure that the requirements of (a) above are satisfied.

(d) The Department may modify a general permit issued pursuant to this subchapter by adding special conditions applicable to a particular project or activity which must be met in order to qualify for authorization under the general permit.

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

(f) The Department shall review each general permit a minimum of every five years. This review shall include public notice and opportunity for public hearing. Upon this review the Department shall either modify, reissue or revoke all general permits.

(g) If a general permit is not modified or reissued within five years of publication in the New Jersey Register, it shall automatically expire.

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

Repealed and replaced (a) and (b), deleted (e) and recodified (f)-(h) as (e)-(g).

#### Case Notes

Freshwater wetlands permit denied; not an isolated site. *Middle-town Board of Education v. Department of Environmental Protection*, 94 N.J.A.R.2d (EPE) 147.

Wetlands natural drainage flow was associated with a surface water tributary system; freshwater wetlands permit denied. *Stavros v. DEPE*, 94 N.J.A.R.2d (EPE) 23.

#### 7:7A-9.2 Statewide General Permit Authorization

(a) The following activities in freshwater wetlands and State open waters may be authorized under the following Statewide General Permits provided the activity is in compliance with specific conditions contained in the Statewide General Permit and with the provisions in (b) below and the standards and conditions for all Statewide General Permits in N.J.A.C. 7:7A-9.3 and provided the activities are in compliance with the Act, this chapter, and the Federal Act:

1. The repair, rehabilitation, replacement, maintenance or reconstruction of any previously authorized, currently serviceable structure, fill, roadway, public utility, active irrigation or drainage ditch, or stormwater management facility lawfully existing prior to July 1, 1988 or permitted under the Act, provided such activities do not deviate from plans of the original activity and further provided that the previously authorized structure, fill, roadway, utility, ditch or facility has not been and will not be put to uses differing from those specified in any permit authorizing its original construction. Minor deviations due to changes in materials or construction techniques and which are necessary to make repairs, rehabilitation or replacements are allowed provided such changes do not result in disturbance of additional freshwater wetlands or State open waters upon completion of the activity;

2. Discharge of material for backfill or bedding for utility lines, provided there is no change in preconstruction elevation and bottom contours. Excess material must be removed to an upland disposal area. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. The activities allowed by this Statewide General Permit shall comply with the following conditions:

- i. The activity encompasses no more than one acre of wetlands;
- ii. The width of the area of disturbance within the right-of-way for the project is no more than 20 feet;
- iii. The project is not located in a wetland of exceptional resource value;
- iv. The upper-most 18 inches of any excavation is backfilled with the original soil material if feasible and otherwise with suitable material. The excavation must be backfilled to the preexisting elevation;



- v. The area above the excavation is replanted in accordance with applicable BMPs with native, indigenous wetland species; and
  - vi. The activity is designed so as not to interfere with the natural hydraulic characteristics of the wetland and watershed;
3. Discharge of return water from an upland, contained, dredged material disposal area provided the State has issued a site specific or generic certification (Water Quality Certificate) under section 401 of the Federal Act. The dredging itself may also require State and Federal permits;
4. All regulated activities, including work, discharges, and the construction or placement of structures, which are undertaken, authorized or otherwise expressly approved in writing by the Department for the investigation, clean-up or removal of hazardous substances as defined by or pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or pollutants, as defined by the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., provided the following conditions are met.
- i. If the proposed cleanup activity is to take place in an exceptional resource value wetland, the Statewide General Permit authorization shall be issued only if the Department finds that there are no practicable alternatives to the investigation, cleanup and removal of the hazardous substances or pollutants that would involve less or no disturbance or destruction of wetlands or State open waters.
  - ii. Mitigation shall be performed according to the procedures for mitigation at N.J.A.C. 7:7A-14 for all disturbance or destruction of freshwater wetlands or State open waters caused by a cleanup authorized under this general permit. The mitigation plan may be incorporated as part of the document by which the Department approves the cleanup or it may be submitted as part of the Statewide General Permit authorization application. The Statewide General Permit authorization will not be issued until the mitigation plan is submitted and approved by the Element according to the standards at N.J.A.C. 7:7A-14.
5. Minor work or temporary structures required for the removal for non-historic wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This Statewide General Permit does not authorize maintenance dredging, stream cleaning, shoal removal, or river bank snagging.
6. Regulated activities in freshwater wetlands (applicants should be advised that these wetlands may not qualify for filling under Nationwide permit number 26 in areas below NGVD elevation 10) or State open waters which are not part of a surface water tributary system discharging into an inland lake or pond, or a river or stream, provided:
- i. The activity would not result in the loss or substantial modification of more than one acre of freshwater wetland or State open waters;
  - ii. The activity will not take place in a wetland of exceptional resource value as defined in N.J.A.C. 7:7A-2.5(a)1 nor in State open waters defined as a special aquatic site; and
  - iii. The activity will not take place in wetlands designated as priority wetlands by the USEPA.
7. Regulated activities in ditches of human construction or swales provided:
- i. They are located in headwater areas;
  - ii. They are not exceptional resource value wetlands;
  - iii. They are not designated a priority wetlands by the USEPA;
  - iv. The activity would not result in the loss or substantial modification of more than one acre of wetlands or State open waters; and
  - v. The proposed activity will not result in a disruption of a surface water connection and the isolation of adjacent wetlands or State open waters.
8. The construction of additions or appurtenant improvements to be constructed within 100 feet of residential dwellings lawfully existing prior to July 1, 1988, provided that the improvements or additions require less than a cumulative surface area of 750 square feet of fill and disturbance.
9. The construction of State or Federally funded roads which:
- i. Were planned and developed in accordance with the "National Environmental Policy Act of 1969", the Federal Act, and Executive Order Number 53 (approved November 21, 1983); and
  - ii. Were the subject of an application made prior to July 1, 1988 to and were subsequently approved by the United States Army Corps of Engineers for an individual or general permit under the Federal Act, provided that:
- (1) Upon expiration of a permit, any application for a renewal or modification thereof shall be made to the Department; and
  - (2) The Department shall not require transition areas as a condition of the renewal or modification of the permit.
10. Minor road crossing fills and expansion of existing road crossing fills including attendant features, both temporary and permanent, that are part of a single and complete project for crossing a freshwater wetland or State open water, provided that:

i. The crossing is bridged, culverted or otherwise designed to prevent the restriction of, and to withstand, expected high flows;

ii. The disturbance of any freshwater wetlands does not extend more than 50 feet on either side of the ordinary high water mark of State open waters. Where no State open waters are present, the total length of the disturbance or modification of freshwater wetlands caused by the crossing shall be no greater than 100 feet. The 50 or 100 foot crossing length limit does not apply to widening of existing roadways;

iii. The total area of freshwater wetlands and/or State open waters disturbed or modified does not exceed 0.25 acres;

iv. The total fill (gross) to be placed, per crossing, in State open waters does not exceed 200 cubic yards of fill below the top of bank or high water mark;

v. The crossing is designed to minimize disturbance and other detrimental effects upon freshwater wetland or State open waters through the use of best management practices including, but not limited to:

(1) Minimizing cartway, shoulder widths and side slopes of the roadway;

(2) Stabilizing all disturbed areas in accordance with the Standards for Soil Erosion and Sediment Control;

(3) Using suitable, clean, non-toxic fill material; and

(4) Designing the crossing so as not to impede fish passage, when a watercourse is present, by maintaining the existing gradient and bottom contours of the watercourse; using open arch or box culverts; and using single large open arches or culverts to span the watercourse.

11. Construction of stormwater outfall structures and associated stormwater conveyance structures such as pipes, headwalls, rip-rap and other energy dissipation structures, provided the following conditions are met:

i. The structures are designed to minimize the area of freshwater wetlands or State open waters disturbance;

ii. The limit of disturbance or modification of freshwater wetlands or State open waters for any conveyance structures does not exceed 20 feet in width;

iii. The total area of freshwater wetlands or State open waters disturbed or modified does not exceed 0.25 acres;

iv. The facility is designed in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey, promulgated by the New Jersey State Soil Conservation Committee, Division of Rural Resources, New Jersey Department of Agriculture. If applicable, the facility shall be designed in accordance with a soil erosion and sediment control plan approved by the appropriate Soil Conservation District. If no plan is required the applicant shall certify to the Department that the proposed facility is in accordance with the standards for Soil Erosion and Sediment Control;

v. All stormwater which is discharged into a freshwater wetland or State open water from an outfall constructed under this Statewide general permit is first filtered or otherwise treated outside of the freshwater wetland or State open water, to minimize sediment, pollutants, and any other detrimental effects upon the freshwater wetland or State open water. Detention basins, contour terraces and grassed swales are examples of pre-discharge treatment techniques which may be required by the Department. This Statewide General Permit does not authorize placement of detention facilities in freshwater wetlands or State open waters. The Department will take into consideration whether the outfall is part of a Regional Stormwater Management Plan already approved by the Department;

vi. The total amount of rip-rap or any other material used for energy dissipation at the end of the headwall placed in the freshwater wetland or State open water does not exceed 10 cubic yards per outfall structure;

vii. Excavated areas for the placement of conveyance pipes shall be returned to the pre-existing elevation using the original topsoil to backfill from a depth of 18 inches to the original grade and revegetated with indigenous wetland species (indigenous includes species found on a particular site as well as those found in a particular physiographic region of the State);

viii. Pipes used for stormwater conveyance through the wetlands shall be properly sealed with anti-seep collars at a spacing sufficient to prevent drainage of the surrounding wetlands and designed not to exceed the pre-existing elevation;

ix. If a detention basin is being proposed as the method of pre-treatment for water quality, routing calculations shall show that the basin has been designed for the one-year storm event according to the Stormwater Management Regulations (N.J.A.C. 7:8) and all subsequent amendments thereto; and

x. If a swale is being proposed to convey stormwater through the wetlands, profiles from the outlet to the receiving water body, cross-sections, and design support information shall show that the proposed swale will not result in drainage of the wetlands. Swales in wetlands will only be permitted where onsite conditions prohibit the construction of a buried pipe to convey stormwater to the outfall.



12. Surveying activities such as soil borings and the cutting of vegetation for narrow (three to five feet in width) survey lines. Survey lines of less than three feet in width shall not require Department authorization. Soil borings dug by hand, using non-mechanized means, no greater than three feet in diameter or in depth, shall not require Department authorization pursuant to N.J.A.C. 7:7A-2.3(c).

13. Dredging activities in wetland for lake maintenance or restoration provided:

i. The lake is lowered in accordance with a lake lowering permit approval by the Division of Fish, Game and Wildlife;

ii. The lake remains lowered for the minimal amount of time necessary to accomplish the desired maintenance activities;

iii. Documentation (documentation may include aerial photography, original construction plans, core borings, etc.) shows that the area to be dredged will be confined to the original configuration and bottom contours of the lake;

iv. The total wetlands area to be disturbed for access is no more than 0.25 acre. Temporary effects on adjacent wetlands due to the draw down of the lake to perform maintenance activities are not included in the acreage calculation;

v. The Department may require sediment sampling and laboratory analysis if the project site is known or suspected to be contaminated with toxic substances. The results of representative samples shall indicate that the soil materials to be removed are non-contaminated;

vi. There is no detrimental effect to spawning of resident or downstream fish populations;

vii. If located in exceptional resource value wetlands, the activity will not negatively impact the documented threatened or endangered species or its habitat;

viii. No spoil material will be deposited and no dewatering will occur in freshwater wetlands, open waters or other environmentally sensitive areas; and

ix. Dredging for a specific lake will not be authorized more than once every five years.

14. Placement of water level recording devices, water quality monitoring and testing devices, and similar scientific devices, and the drilling of monitoring wells.

15. Mosquito control water management activities conducted by a county mosquito control agency, or Federal agency on Federal land, provided:

i. Best management practices are employed including, but not limited to, shallow swales no more than three feet wide, and low sills no more than three feet wide;

ii. Disturbance of vegetation is minimized;

iii. Only light equipment is used;

iv. Excavated spoils are removed or spread evenly in a shallow layer no more than three inches deep on-site;

v. The existing hydrologic condition of the hydric soils is maintained (that is, excessive drainage is not permitted);

vi. The activities do not take place in exceptional resource value freshwater wetlands; and

vii. The county mosquito control agency or Federal agency submits individual, site-specific project proposals to the Administrator of the State Office of Mosquito Control Coordination, and the Administrator determines that the project is necessary to control a documented mosquito problem to existing residents. After approval by the Administrator, the project shall then be submitted to the Department for Statewide General Permit review in accordance with the requirements of this chapter.

16. Fish and wildlife management activities which do not involve the discharge of more than 10 cubic yards of clean fill, carried out in publicly owned or controlled wildlife management areas, parks or reserves. These activities include, but are not limited to:

i. The placement of artificial nesting structures, nesting islands, observation blinds, sign posts, or fencing;

ii. The clearing, burning or removal of vegetation to increase habitat diversity or to control nuisance flora (when carried out in accordance with an approved wildlife management plan); and

iii. The blocking or filling of human-made drainage ditches for the purpose of restoring previously existing wetland conditions.

17. Trail and/or boardwalk construction on publicly owned or controlled park land, wildlife management areas or reserves, in freshwater wetlands or State open waters, provided:

i. The width of the trail or boardwalk does not exceed six feet, except for barrier free trails or boardwalks designed in accordance with the Barrier Free Subcode of the Standard Uniform Construction Code, N.J.A.C. 5:23-7. This general permit does not authorize construction of restrooms, gazebos, rain shelters, or any covered or enclosed structure;

ii. Natural materials such as wood chips or wooden planks are used to the maximum extent practicable;

iii. The project does not interfere with the natural hydrology of the area; and

iv. The project does not encroach upon or adversely affect the habitat of any threatened or endangered species.

18. The repair, rehabilitation, replacement, maintenance or reconstruction as required by the Dam Safety Standards (N.J.A.C. 7:20-1), of any previously authorized, currently serviceable dam structure, as defined at N.J.A.C. 7:20-1.2, including appurtenant structures, lawfully existing prior to July 1, 1988 or permitted under the Act, provided that the previously authorized structure has not been put to uses differing from those specified in any permit authorizing its original construction. Minor deviations due to changes in materials or construction techniques and which are necessary to make repairs, rehabilitation, replacement, maintenance or reconstruction are allowed provided that:

i. The activity is conducted in accordance with a Dam Permit issued pursuant to N.J.A.C. 7:20-1;

ii. The activity results in the filling of no more than one acre of wetlands or State open waters;

iii. If located in exceptional resource value wetlands, the activity will not negatively impact the documented threatened or endangered species or its habitat;

iv. The activity is designed to minimize disturbance and other detrimental effects upon freshwater wetlands or State open waters through the use of best management practices including, but not limited to:

(1) Stabilizing all disturbed areas; and

(2) Using suitable, clean, non-toxic fill material; and

v. The activity will not increase the normal water surface elevation. The normal water surface elevation is the historic level as of the date of completed dam construction and inundation.

19. The construction of public or private recreational and fishing docks, or piers on pilings, cantilevered or floating, and public boat ramps that meet the following criteria:

i. The following criteria shall be met for the construction of docks and piers:

(1) There shall be a maximum of one dock per lot;

(2) If located in exceptional resource value wetlands, the activity will not have a negative impact on a documented threatened or endangered species or its habitat;

(3) The proposed activity does not fill or disturb more than 0.10 acres of wetlands or State open waters. This limitation includes the area shaded directly under the dock;

(4) The width of the dock or pier does not exceed six feet, will be constructed perpendicular to the shoreline, where feasible, and the maximum allowable length will be the minimum length necessary to reach deep water from the shoreline for launching. However, structures shall be constructed a minimum of 50-feet outside of any authorized navigation channel and shall not hinder navigation. The 50 foot limitation does not apply to construction of docks or piers in human-made lagoons;

(5) Space between horizontal planking is no less than 0.25 inches and the width of horizontal planking is no more than four inches; and

(6) The height of the dock or pier above the ground surface shall be no less than four feet.

ii. The following criteria shall be met for the construction of a boat ramp:

(1) It shall be demonstrated that there is no feasible onsite alternative location that will involve less or no disturbance of wetlands;

(2) The boat ramp shall be constructed of concrete or natural materials such as crushed stone or shells and placed at a location requiring the minimum feasible cut or fill;

(3) The proposed activity does not fill or disturb more than 0.10 acres of wetlands or State open waters; and

(4) If located in exceptional resource value wetlands, the activity will not impact a documented threatened or endangered species or its habitat.

20. The placement of gabions, rip-rap, geo-textiles, or other binding mat material for the purpose of bank stabilization activities in State open waters provided:

i. The bank stabilization activity is less than 150 feet in length;

ii. The activity is required by and designed in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey, N.J.S.A. 4:24-42;

iii. The activity is limited to an average of less than one cubic yard of rip-rap per running foot placed along the bank within State open waters;

iv. The material to be placed is the minimum necessary for erosion protection according to the 1982 Standards for Soil Erosion and Sediment Control in New Jersey;

v. No material is placed in any location or in any manner so as to impair surface water flow into or out of any wetland area;

vi. Only suitable, clean, non-toxic fill material is used;

vii. The activity is a single and complete project, not associated with any other construction activity. For example, this activity cannot be used at the same location as a minor road crossing or a stormwater outfall structure; and

viii. The activity will not violate the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 or implementing rules at N.J.A.C. 7:13-1.

21. The construction or installation of new above ground utility lines including the installation of wood poles, steel poles, lattice towers, conductors, guy anchors, and pad mount transformers for the transport of electrical energy, telephone or telegraph messages, radio or television communication, or the discharge of fill to provide access to these new lines. The activities allowed by this Statewide General Permit shall comply with the following conditions:

i. The construction of the line (which constitutes a single and complete project of independent utility) including installation of structures, placement of fill for access and the clearing and maintenance of vegetation which would alter the character of the freshwater wetland, including the clearing of trees disturbs no more than one acre of wetlands or State open waters;

ii. The limits of clearing for construction is no more than 60 feet wide;

iii. The area to be maintained including vegetative clearing and maintenance of fill as a permanent right-of-way is a maximum of 20 feet in width;

iv. If located in exceptional resource value wetlands, the activity will not negatively impact associated water quality or the documented threatened or endangered species or its habitat;

v. When practicable, installation is done from outside wetland areas. If installation requires encroachment in wetlands, the activity shall be performed when the ground is frozen or extremely dry; otherwise only matting or track equipment shall be used. Matting will remain in place for no more than five days to the maximum extent practical;

vi. After completion the area used to gain access to the installation location is replanted as required in accordance with applicable BMPs with indigenous wetland species; and

vii. The activity is designed so as not to interfere with the natural hydraulic characteristics of the wetland and watershed.

22. (Reserved)

23. (Reserved)

24. The placement of bulkheads adjacent to human-made lagoons provided that:

i. The bulkhead is to be placed between two lawfully existing bulkheads which are not more than 75 feet apart;

ii. The connecting bulkhead shall not extend waterward of a straight line connecting the ends of the existing bulkheads;

iii. The width of wetlands on the subject lot, adjacent to the lagoon does not exceed an average of five feet;

iv. The total area of wetlands to be filled or disturbed does not exceed 375 square feet; and

v. The activities will not take place in a wetland of exceptional resource value as defined in N.J.A.C. 7:7A-2.5(b) or in a State open water defined as a special aquatic site (in 40 CFR 230.1).

25. The repair or alteration of malfunctioning individual subsurface sewage disposal systems provided:

i. There is no expansion or change in the use of the building or facility which will result in an increase in the volume of sanitary sewage;

ii. Alterations made to correct a malfunctioning system shall meet the requirements of N.J.A.C. 7:9A-3.3(c) and shall be undertaken only at the authorization of the administrative authority (the board of health having jurisdiction or its authorized agent acting on its behalf);

iii. It is demonstrated to the administrative authority that there is no alternative location onsite available with a seasonally high water table deeper than 1.5 feet from the existing ground surface which can support a properly functioning subsurface sewage disposal system; and

iv. The total wetland area to be affected by the repair or alteration does not exceed 0.25 acres.

(b) The Department may require an application for an Individual permit if the Department finds that additional permit conditions would not be sufficient, or that special circumstances make this action necessary to ensure compliance with the Act, this chapter, any permit or order issued pursuant thereto, or the Federal Act. In addition, when the regulated activity(ies) of a project exceed either the individual limits allowed under the issued Statewide general permits or the cumulative limit of stacked Statewide general permits, then the impacts of the entire project shall require an Individual Permit and will be reviewed under the standards at N.J.A.C. 7:7A-3.

(c) Under no circumstances shall a project's impacts be segmented and a portion of the project submitted for review under Statewide general permits while the remainder of the project is submitted for review under an Individual Permit.

Amended by R.1989 d.373, effective July 17, 1989.

See: 20 N.J.R. 1327(a), 21 N.J.R. 2024(a).

Added eight new Statewide General Permits, (a)10-17.

Amended by R.1990 d.446, effective September 4, 1990.

See: 22 N.J.R. 278(a), 22 N.J.R. 2753(a).

Expedited review process provided at (a)4 for hazardous waste remediation activities.

Public Notice: Request for public comments and public hearings.

See: 24 N.J.R. 975(a).

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

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

Changes initiated to create a program that is as stringent as that of the U.S. Army Corps of Engineers under the Clean Water Act (33 U.S.C. 1251 et seq.) in order to secure the assumption of the permit jurisdiction.

Public Notice: Notice of action on adoption of statewide general permits pursuant to Freshwater Wetlands Protection Act.

See: 24 N.J.R. 2252(a).

#### Case Notes

Magnitude of wetland disturbance had to be determined on basis of total length of proposed roadway regardless of property boundaries. Zimmer v. Department of Environmental Protection. 93 N.J.A.R.2d (EPE) 199.

Property owner not entitled to permit sought to build residences on subdivided island lots. McCoy v. Department of Environmental Protection, 93 N.J.A.R.2d (EPE) 1.

Wetland was suitable habitat for endangered species even though none had been sighted on wetland; exceptional resource value. Rossi v. Division of Coastal Resources, 92 N.J.A.R.2d (EPE) 244.

Headwater wetlands not "swale"; no permit could be issued for filling wetlands. Dykeman v. New Jersey Department of Environmental Protection, 92 N.J.A.R.2d (EPE) 217.

Developer was not entitled to Freshwater Wetlands General Permit Number 6 in order to construct parking deck; however, developer could be entitled to Statewide General Permit Number 7 to refill ditch. Mall at IV Group v. Department of Environmental Protection, 92 N.J.A.R.2d (EPE) 195.

Developers not authorized to fill fresh water wetlands pursuant to terms and conditions of statewide general permit. Zaloom v. Division of Coastal Resources. 92 N.J.A.R.2d (EPE) 50.

#### 7:7A-9.3 Standards and Conditions for all Statewide General Permit Authorizations

(a) All regulated activities authorized under Statewide General Permits listed in N.J.A.C. 7:7A-9.2 are subject to the specific conditions listed under each permit. In order to be authorized to conduct activities under these general permits, persons must comply with the standard conditions set forth at (b) below, as well as the conditions at N.J.A.C. 7:7A-13.1 and 13.2, the procedures in N.J.A.C. 7:7A-9.4 and mitigation pursuant to N.J.A.C. 7:7A-14 where specified must be followed.

(b) The following standards must be met in order for a regulated activity to be authorized under the Statewide General Permits identified in N.J.A.C. 7:7A-9:

1. The request for authorization to fill or modify wetlands or State open waters is associated with a proposed project or construction activity and is not solely being requested for the purpose of eliminating a natural resource in order to avoid future regulation. For the purposes of this specific subsection, project shall mean the use and configuration of all buildings, pavements, roadways, storage areas and structures, and the extent of all activities associated with the proposal;

2. The regulated activity shall not occur in the proximity of a public water supply intake;

3. The regulated activity shall not jeopardize a threatened or endangered species and the activity shall not destroy, jeopardize, or adversely modify the historic or documented habitat of such species;

4. The activity will not occur in a component of either the Federal or State Wild and Scenic River System; nor in a river officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system while the river is in an official study status; and

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

(c) The following conditions shall be met in order for a regulated activity to be authorized under the Statewide General Permits identified in N.J.A.C. 7:7A-9:

1. Any discharge of dredged or fill material shall consist of suitable material free from toxic pollutants (see section 307 of the Federal Act) in toxic amounts;

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

3. In order to protect the fishery resources and/or the spawning of the downstream resident fish population, any activity within or adjacent to a stream channel which may introduce sediment into the stream or cause the stream to become turbid is prohibited during the time frames listed below or any subsequent updates to this listing as provided by the New Jersey Division of Fish, Game and Wildlife. The total restriction period will not exceed six months:

#### Timing restrictions:

Stream Classification	Dates of Restriction
Trout Production	
general brook/brown	September 15-March 15
rainbow trout	February 1-April 30
Trout Maintenance	March 15-June 15
Trout Stocked	March 15-June 15
Anadromous	

American Shad—For the Delaware River upstream of the Delaware Memorial Bridge, and for tidal Rancocas and Raccoon Creeks

April 1-June 30 and  
September 1-November 30