Technical Manual For

Land Use Regulation Program
Bureau of Inland Regulation
Bureau of Coastal Regulation
Freshwater Wetlands Permits

Jim Florio, Governor
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US Department of Commerce
NOAA Coastal Services Center Library
2234 South Hobson Avenue
Charleston, SC 29405-2413

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New Jersey Department of Environmental Protection and Energy

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Mission Statement

New Jersey Department of Environmental Protection and Energy

The mission of the New Jersey Department of Environmental Protection and Energy is to conserve, protect, enhance, restore and manage our environment for present and future generations. We strive to prevent pollution; ensure the efficient use of safe, environmentally sound and reliable energy resources; provide opportunities for recreation and enjoyment of natural and historic resources; and promote a healthy and sustainable ecosystem.

Guiding Principles

We are guided by these principles in accomplishing our mission:

- To consistently apply and vigorously enforce environmental laws and standards in a fair, timely and predictable manner.
- To be accountable, accessible and helpful to the public.
- To provide clear, prompt and fair guidance and decisions.
- To increase understanding of environmental and energy concerns through effective communication and education.
- To establish regulations and standards consistent with law and public policy and active public dialogue.
- To base our standards, decisions and activities on sound science.
- To promote energy conservation, pollution prevention and consideration of the cumulative impacts of activities in our actions and those of individuals, business and governments throughout the state.
- To maintain a work environment that attracts and retains dedicated, talented people; fully develops and challenges individual abilities; and encourages innovation and teamwork.
- To adhere to the highest standards of personal and professional conduct.

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Prologue

This manual has been produced by the Department of Environmental Protection and Energy (DEPE) to make the permit process less complicated and time-consuming for you. This manual is one of a series of technical manuals produced by DEPE under the requirements of the Environmental Management Accountability Plan (P.L. 1991, Chapter 422) with the goal of making the permit application process more consistent and predictable. In each technical manual, you will find summaries and explanations of policies that may not be fully described or explained in environmental laws or regulations. In addition, the manuals contain guidance on how the Department defines other standards, such as "state-of-the-art" control technologies or "best management practices."

Unless otherwise required by federal or state law, the policies and procedures contained in a technical manual on the date an application is filed will be binding on both the DEPE and the applicant. The technical manuals may be updated every six months or whenever a regulatory change requires revisions. Any revision made to a technical manual will have no effect upon a permit application that was submitted to the department prior to adoption of the revision. This is a technical manual prepared pursuant to N.J.S.A. 13:1D-111 to 1D-113. Because it by necessity condenses and summarizes statutes, regulations, and other documents, it may not always precisely reflect all the requirements set forth in same. In the case of any inconsistency between this technical manual and any statutes, regulations, or policy determinations based upon same, the requirements of the statutes, regulations, or policy determinations shall prevail. Accordingly, this technical manual should not be used as a substitute for a thorough analysis of the law and the facts as they apply to any specific project or proposal. The State of New Jersey, including its Department of Environmental Protection and Energy and all agents and employees thereof, hereby disclaims any warranties (express or implied) and any legal liability for the accuracy, completeness, or usefulness of any of the information set forth in this technical manual.

In addition to the information contained in this manual, the Department endorses the environmental management hierarchy which establishes an order of preference, placing multi - media pollution prevention first, followed by recycling, reuse, treatment and finally, disposal options. Therefore, pollution prevention is the first and preferred practice in environmental management as defined in the 1991 New Jersey Pollution Prevention Act (N.J.S.A. 13:1d-35 et seq). Pollution prevention practices reduce the demand for and the generation of hazardous substances prior to treatment, control, storage, or recycling. This reduction is typically attained through process modifications, product reformulations, improved operation and maintenance, raw material substitution and in-process recycling.

The Department considers the term "state-of-the-art" to include a process whereby the applicant considers the environmental management hierarchy in an effort to encourage pollution prevention. The Department believes that the applicant has primary control over consideration and implementation of pollution prevention options while the Department retains control over allowable release limits based on treatment and control requirements. This division of responsibility is designed to encourage the applicant to implement pollution prevention measures before exploring treatment and control options under Department review.

Only after pollution prevention options are determined to be infeasible should control options be considered. Therefore, it is the Department's policy that "state-of-the-art" reflects a demonstration of the applicant's having sequentially considered the environmental management hierarchy.

DEPE welcomes suggestions for improving its technical manuals. Please direct your comments to Geoffrey Cromarty, Office of Permit Information and Assistance, NJDEPE, CN423, Trenton, NJ, 08625.

You may request additional copies of this manual by sending a check or money order, made payable to the Treasurer, State of New Jersey for $13.50 (this includes first class mailing by the U.S. Postal Service) to:

Map Sales & Publications Office
Bureau of Revenue
CN 417
Trenton, NJ 08625

Also, for information about other technical manuals offered by the Department, contact either the Office of Permit Information and Assistance at (609)292-3600 or the Bureau of Revenue at (609)777-1039.

As stated previously, these manuals may be updated every six months or whenever a regulatory change requires it. Therefore, if the publication date of the manual is more than six months old or if you are aware of a regulatory change, you should contact the Maps and Publications Office for a copy of the appropriate revision.

Notice: This manual contains forms and applications that are provided as a convenience to the applicant. These forms are included for illustrative purposes only, are not subject to the limitation of N.J.S.A. 13:1D-112(b), and may be updated as often as necessary. Prior to submitting any forms to the Department, an applicant should contact the appropriate bureau or make certain that he or she is using the most up-to-date version.

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SECTION: A-1

FRESHWATER WETLANDS PROTECTION ACT RULES

Freshwater Wetlands Protection Act Rules N.J.A.C. 7:7A

As amended to March 16, 1992

Land Use Regulation Element
New Jersey Department of
Environmental Protection & Energy
CN 401, Trenton, NJ 08625

(609) 292-1235

For Official Version See
New Jersey Administrative Code
at 7:7A

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SUBCHAPTER 1. GENERAL INFORMATION

7:7A-1.1 Scope and authority

This chapter constitutes the rules governing the implementation of the Freshwater Wetlands Protection Act, P.L. 1987, c.156. The provisions of any State law, rule or regulation to the contrary notwithstanding, the alteration or disturbance in and around freshwater wetland areas in the State, and the discharge of dredged or fill material into State open waters are subject to this chapter and the Act.

7:7A-1.2 Construction

This chapter shall be liberally construed to allow the Department to implement fully its statutory functions pursuant to the Act and to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

7:7A-1.3 Forms and information

Any forms, fees or other information required to be submitted by this chapter shall be obtained from and returned to the Land Use Regulation Element , New Jersey Department of Environmental Protection and Energy, CN 401, Trenton, New Jersey, 08625. Courier and hand deliveries may be delivered to 5 Station Plaza, 501 East State Street, Trenton, New Jersey. Other sources of information referred to in this chapter are available from the Office of Maps and Publications located at 428 East State Street, Trenton, New Jersey 08625.

7:7A-1.4 Definitions

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

"Acid producing deposits" means those geologic deposits containing iron sulfide minerals (pyrite or marcasite) which oxidize upon exposure to oxygen from the air or from surface waters to produce sulfuric acid.

"Act" means the Freshwater Wetlands Protection Act, P.L. 1987, c.156.

"Administrator" means the Administrator of the Land Use Regulation Element.

"Applicant" means a person who submits an application for a permit, waiver, or any other Department decision pursuant to N.J.A.C. 7:7A-1.

"Application for development" means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or N.J.S.A. 40:55D-36.

"Agency of the State" means each of the principal departments in the executive branch of the State Government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments.

"Aquatic ecosystem" means waters of the United States, including wetlands, that serve as habitat for interrelated and interacting communities and populations of plants and animals.

"Bank" means the Wetlands Mitigation Bank established pursuant to section 14 of the Act.

"Best Management Practices" (BMP's) means methods, measures, designs, performance standards, maintenance procedures, and other management practices which prevent or reduce adverse impacts upon or pollution of freshwater wetlands, State open waters, and adjacent aquatic habitats, which facilitate compliance with the Federal Section 404(b)(1) guidelines (40 C.F.R. Part 230), New Jersey Department of Environmental Protection and Energy Flood Hazard Area Regulations (N.J.A.C. 7:13), 1982 Standards for Soil Erosion and Sediment Control in New Jersey, Storm Water Management Regulations (N.J.A.C. 7:8), and effluent limitations or prohibitions under Section 307(a) of the Federal Act and New Jersey Department of Environmental Protection and Energy Surface Water Quality Standards (N.J.A.C. 7:9-4). Examples include practices found at 33 C.F.R. 330.6, 40 C.F.R. 233.35(a)6, the Department's Technical Manual for Stream Encroachment, and "A Manual of Freshwater Wetland Management Practices for Mosquito Control in New Jersey". The manuals included in this definition is only a partial listing, interested parties should contact the Department the most up to date list.

"Clean Water Act", "Federal Act", or "CWA" means the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 (33 U.S.C. §§1251 et seq.) and any amendments and supplements thereto, and the regulations adopted pursuant thereto.

"Climax habitat" means a mature, well developed natural ecological community. See N.J.A.C. 7:7A-14.

"Commissioner" means the Commissioner of the Department of Environmental Protection and Energy.

"Compelling public need" means that based on specific facts, the proposed regulated activity will serve an essential health or safety need of the municipality in which the proposed regulated activity is located, that the public health and safety benefit from the proposed use and that the proposed use is required to serve existing needs of the residents of the state, and that there is no other means available to meet the established public need. See N.J.A.C. 7:7A-3.4(a)1.

"Contiguous" means adjacent properties, even if they are separated by human-made barriers or structures or legal boundaries.

"Council" means the Wetlands Mitigation Council established pursuant to Section 14 of the Act.

"Critical habitat for fauna or flora" means,

1. For fauna, areas which serve an essential role in maintaining commercially and recreationally important wildlife, particularly for wintering, breeding, spawning and migrating activities;

2. For flora, areas supporting rare or unique plant species or uncommon vegetational communities in New Jersey.

"Cultivating" means physical methods of soil treatment employed within established farming, ranching and silviculture lands upon planted farm, ranch or forest crops to aid and improve their growth, quality or yield.

"Degraded wetland" means a wetland in which there is impaired surface water flow or groundwater hydrology, or excessive drainage; a wetland which has been partially filled or excavated, contaminated with hazardous substances, or which has an ecological value substantially less than that of undisturbed wetlands in the region.

"Delegable waters" means all waters of the United States, as defined at N.J.A.C. 7:7A-1.4, within the legal boundaries of the State that will be regulated by the Department as part of the Federal 404 program with the exception of:

1. Those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark including adjacent wetlands. In those waters over which the Department does not assume jurisdiction under the 404

program, the Department will retain jurisdiction under State law, and both State and federal requirements will apply.

2. Specific bodies of water over which the Department will not assume 404 program jurisdiction include, but are not limited to:

i. The entire length of the Delaware River within the State of New Jersey;

ii. Waters of the United States under the jurisdiction of the Hackensack Meadowlands Development Commission; and

iii. Greenwood Lake.

"Department" means the Department of Environmental Protection and Energy.

"Destruction of plant life which would alter the character of a freshwater wetland including the cutting of trees" means:

1. The physical removal of existing wetland vegetation; or

2. Causing the loss of life of vegetation by the application of herbicides or by other means which cause mortality to the established vegetative community.

"Detention basin" means an impoundment area made by constructing an embankment, or excavating a pit, or both, for the purpose of temporarily storing stormwater.

"Discharge of dredged material" means any addition of dredged material into State open waters or freshwater wetlands. The term includes the addition of dredged material into State open waters or freshwater wetlands and the runoff or overflow from a contained land or water dredge material disposal area. Discharges of pollutants into State open waters resulting from the subsequent onshore processing of dredged material are not included within this term and are subject to the New Jersey Pollutant Discharge Elimination System N.J.S.A. 58:10A-1 et seq. program even though the extraction and deposit of such material may also require an open water fill permit or a 404 permit from the U.S. Army Corps of Engineers or a Water Quality Certification.

"Discharge of fill material" means the addition of "fill material" into State open waters or freshwater wetlands. The term includes but is not limited to the following activities:

1. Placement of fill that is necessary for the

construction of any structure;

2. The building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction;

3. Site-development fill for recreational, industrial, commercial, residential, and other uses;

4. Causeways or road fills;

5. Dams and dikes;

6. Artificial islands;

7. Property protection or reclamation devices, or both, such as riprap, groins, seawalls, breakwaters, and revetments;

8. Beach nourishment;

9. Levees;

10. Fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and

11. Artificial reefs.

"Disturbance of the water level or water table" a term used to define regulated activity in N.J.A.C. 7:7A-2.3(a)2, means the alteration of the existing elevation of groundwater or surface water, regardless of duration of such alteration, by:

1. Adding or impounding a sufficient quantity of stormwater or water from other sources to modify the existing vegetation, values or functions of the wetland; and

2. Draining, ditching or otherwise causing the depletion of the existing groundwater or surface water levels such that the activity would modify the existing vegetation, values or functions of the wetland.

"Ditch" means a linear topographic depression with bed and banks of human construction which conveys water to or from a site. This does not include channelized or redirected natural water courses.

"Documented habitat for threatened or endangered species" shall mean areas for which:

1. There is recorded evidence of past use by a threatened or endangered species of flora or fauna for

breeding, resting or feeding. Evidence of past use by a species may include, but is not limited to, sightings of the species, or of its sign (for example, skin, scat, shell, track, nest, herbarium records, etc.), as well as identification of its call; and

2. The Department makes the finding that the area remains suitable for use by the specific documented threatened or endangered species during the normal period(s) the species would use the habitat.

"Drainage" means active or passive methods for changing the hydrologic conditions of wetlands or State open water such as lowering groundwater or surface water levels through pumping, ditching, or otherwise altering water flow patterns.

"Dredging" means removal of wetlands or State open water soils or sediments through use of mechanical, hydraulic, or pneumatic tools or other means.

"Dredged material" means material that is excavated or dredged from waters of the United States.

"Dumping" means the discharge, placement or abandonment of solid, semi-solid or liquid materials.

"Element" means the Land Use Regulation Element.

"Environmental commission" means a municipal advisory body created pursuant to P.L. 1968, c.245 (N.J.S.A. 40:56A-1 et seq.).

"EPA priority wetlands" means wetlands which are designated as priority wetlands by EPA. The "Priority Wetlands List for the State of New Jersey" is available from the Office of Maps and Publications listed at N.J.A.C. 7:7A-1.3.

"Equal ecological value" means functional equivalency, including similar wildlife habitat, similar vegetative species coverage and density, equivalent flood water storage capacity, and equivalency of any other values or functions specific to a particular wetland.

"Established, ongoing farming, ranching or silviculture operations" means activities on areas subject to a farming, ranching or silviculture use as of June 30, 1988. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has

lain idle so long that modifications to the hydrological regime are necessary to resume operations.

"Excavation" means to dig or remove soil, rocks, etc., resulting in a change in site elevation.

"Federal 404 program" means the program regulating the discharge of dredged or fill materials pursuant to Section 404 of the Federal Act.

"Fill" means the deposition of material (for example, soil, sand, earth, rock, concrete, pavement, solid material of any kind, etc.) into an area which changes the resultant elevation in relation to surface water or groundwater level. "Fill" also means the material deposited.

"FW" means the general surface water classification applied to fresh waters in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4, and subsequent amendments thereto.

"FW1" means those fresh waters that originate in and are wholly within Federal or State parks, forests, fish and wildlife lands, and other special holdings, that are to be maintained in their natural state of quality (set aside for posterity, and not subjected to any wastewater discharges of human origin), as designated in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4, and subsequent amendments thereto.

"FW2" means the general surface water classification applied in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4, and subsequent amendments thereto, to those fresh waters that are not designated as FW1 or Pinelands Waters.

"Freshwater wetland" or wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; provided, however, that the Department, in designating a wetland, shall use the three-parameter approach (that is, hydrology, soils and vegetation) enumerated in the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands" , and any subsequent amendments thereto incorporated herein by reference. These include tidally influenced wetlands which are not defined as coastal wetlands pursuant to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

"Freshwater wetlands permit" means a permit to engage in a regulated activity in a freshwater wetland issued

pursuant to the Act and this chapter.

"Harvesting" means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads or other engineering practices such as drainage which would alter the existing character of the farm, forest or ranch land.

"Head waters" means the point on a non-tidal stream above which the average annual flow is less than five cubic feet per second. The Department may estimate this point from available data by using area annual precipitation, area drainage basin maps, and the average annual runoff coefficient, or by similar means. For streams that are dry for long periods of the year, the Department may establish headwaters as that point of the stream where flow of five cubic feet per second is exceeded 50 percent of the time.

"Hydric soils" means a soil that in its undrained condition is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation. These soils may be on New Jersey's Official List of Hydric Soils developed by the United States Department of Agriculture Soil Conservation Service and the United States Fish and Wildlife Service National Wetlands Inventory, in "The Wetlands of New Jersey" 1985, published by the United States Fish and Wildlife Service or in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands and amendments thereto. Alluvial land, as mapped by soil surveys, or other soils exhibiting hydric characteristics identified through field investigation as described in Part III, field indicators and other available information of the "Federal Manual" may also be considered a hydric soil for the purposes of wetland classification. Also, wet phase of somewhat poorly drained soils not on New Jersey's Official List of Hydric Soils may also, on occasion, be associated with a wetland and therefore for the purposes of this Act shall be considered a hydric soil.

"Hydrophyte" means plant life adapted to growth and reproduction under periodically saturated root zone conditions during at least a portion of the growing season. A listing of these plants can be found in the "National List of Plant Species that Occur in Wetlands: 1988-New Jersey" and amendments thereto, compiled by the USFWS, United States Army Corp of Engineers (Corps), USEPA and the United States Soil Conservation Service.

"Individual permit" means a permit issued pursuant to

"Intermittent stream" means surface water drainage channels with definite bed and banks in which there is not a permanent flow of water. Most intermittent streams are shown on Soil Conservation Service county soil surveys.

"Isolated wetlands or isolated State open waters" means a freshwater wetland or State open water which is not connected to a surface water tributary system discharging into a lake, pond, river, stream or other surface water feature. The term "connected to" includes all surface water connections whether regulated or not, as well as connections by way of stormwater or drainage pipes. "Connected to" does not include a groundwater connection nor does it include overland flow unless there is evidence of scouring or erosion.

"Lake, pond, or reservoir" means any impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water.

"Letters of interpretation" are letters issued by the Department for the purpose of indicating the presence or absence of wetlands, State open waters, or transition areas (see N.J.A.C. 7:7A-8); for the purpose of verifying or delineating the boundaries of freshwater wetlands, State open waters, transition areas; or to obtain a wetland resource value classification.

"Linear development" means land uses such as roads, drives, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, the basic function of which is to connect two points. Linear development shall not mean residential, commercial, office, or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

"Major discharge" means:

1. Discharges of dredged or fill material into areas identified by the Department, in consultation with USEPA, the Corps and the USFWS, which could have the following impacts:

i. Significant adverse effects on freshwater wetlands or State open waters which are unique for a particular geographic region;

ii. Significant reductions in the ecological, commercial, or recreational values of more than five acres

of a freshwater wetland or State open water; or

iii. Affects to a federally listed or proposed endangered or threatened species;

2. Wetland fills involving more than 10,000 cubic yards of material.

"Maximum extent practicable" means to the maximum extent after weighing, evaluating and interpreting alternatives to protect the ecological integrity of a wetland or State open water.

"Mitigation" means activities carried out pursuant to N.J.A.C. 7:7A-14 in order to compensate for freshwater wetlands or State open waters loss or disturbance caused by regulated activities.

"Offsite" means the area not onsite.

"Onsite" means the area located within the legal boundary of the property or properties on which the regulated activity or activities are proposed, are occurring, or have occurred, as set forth in the deed for that area, plus any contiguous land owned by the same person as set forth in the deed or deeds for that contiguous land, as these boundaries existed on July 1, 1988 or on the date of submission of the application if lots and blocks were merged subsequent to July 1, 1988.

"Open water fill permit" means the type of New Jersey Pollution Discharge Elimination System permit issued pursuant to this chapter and N.J.S.A. 58:10A-1 et seq., which governs the discharge of dredged or fill material into State open waters.

"Ordinary high water mark" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

"Permit" means an approval to engage in a regulated activity in a freshwater wetland, or State open water, issued pursuant to the Act and this chapter.

"Person" means an individual, corporation, partnership, association, the Federal government, the State, municipality, commission or political subdivision of the State or any interstate body.

"Pilings" means timber, metal, concrete or other

similar structures driven, dropped, poured, or placed to support a vertical load.

"Placing of obstructions" means to deposit, construct, install or otherwise situate any obstacle which will affect the values or functions of a freshwater wetland.

"Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade, plowing, discing, harrowing, and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of spoil, rock, sand, or other surficial materials in a manner which changes any area of wetlands to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing will never involve a discharge of material.

"Practicable alternative" means other choices available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and may require 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

"Preliminary approval" means the conferral of certain rights pursuant to N.J.S.A. 40:55D-46,48 and 49 prior to final approval after specific elements of a development plan have been agreed upon by the planning board and the applicant.

"Property" means the area contained within the legal boundary as defined by municipal block and lot, or right-of-way description as set forth in the deed for that area.

"Public hearing" means an administrative non-adversarial type hearing before a representative or representatives of the Department providing the opportunity for public comment, but does not include cross-examination.

"Redevelopment" means the construction of structures or improvements on or below impervious surfaces such as buildings, asphalt, concrete, and other materials which will not allow infiltration of liquids, legally existing in the transition area prior to July 1, 1989.

"Regulated activity" means any of the activities

defined at N.J.A.C. 7:7A-2.3.

"Seeding" means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

"Significant adverse impact" shall be deemed to exist where it is determined that a modification of a wetland will negatively affect the ecological integrity of the wetland and its biotic components. Such modifications may include, but are not limited to:

1. An alteration of the water table or hydrologic patterns in the wetland or its subwatershed;

2. An increase in erosion resulting in increased sedimentation in the wetland or State open water;

3. A change in the natural chemistry of the ground or surface water in the wetland;

4. A loss of wetland habitat;

5. A reduction in wetland habitat diversity;

6. A change in wetlands species composition; or

7. A significant disturbance of areas used by indigenous and migratory wildlife for breeding, nesting, or feeding.

"Silviculture" means the planting, cultivating and harvesting by cutting or digging, of Christmas trees or nursery stock. After harvesting, new seedings are replanted for a future crop. For the purposes of this Chapter, "siliviculture" does not include foresty activities such as the production of lumber products or firewood.

"Special aquatic site" means any site described in subpart E of the 404(b)(1) guidelines (40 C.F.R. 230 et seq., or any amendments thereto), with the exception of freshwater wetlands which, for the purposes of this chapter shall not be considered special aquatic sites.

"State Forester" means the chief forester employed by the Department.

"State open waters" means those waters of the United States within the boundary of the State or subject to its jurisdiction that are not wetlands as defined in this section.

"Swale" means a linear topographic depression, either

naturally occurring or of human construction, which drains less than 50 acres. Swales are wetland features meeting the three parameter approach, do not have distinguishable bed and banks and are not intermittent streams. A swale can not be within a larger wetland complex, nor is it an undulation in the boundary of a wetland complex. A swale is a natural or human-made feature, which has formed or was constructed in uplands to convey surface water runoff from the surrounding upland areas. The definition of swales generally does not include wetland features over 50 feet in width at the widest point which are considered by the Department to be independent wetland features.

"Threatened or endangered species" shall be those species identified 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. and subsequent amendments thereto.

"Tidal waters" means fresh or saline waters under tidal influence, up to the head of the tide.

"Transition area waiver" means a waiver issued by the Department to engage in any of the prohibited activities enumerated at N.J.A.C. 7:7A-6.2(a) in a transition area issued by the Department pursuant to the Act and this chapter. A transition area waiver may be issued by the Department in the transition area adjacent to either a freshwater wetlands of exceptional or intermediate resource value and may take one of the following forms:

1. Transition area waiver, Reduction. This waiver may be approved on the basis of a finding of no substantial impact or if the waiver is necessary to avoid an extraordinary or substantial hardship as defined at N.J.A.C. 7:7A-7.2(g) or 7.3(f) respectively. The waiver would result in a reduction in the standard width of a transition area without requiring an expansion of the remaining transition area for compensation;

2. Transition area waiver, Special Activities. This waiver may be issued to approve the partial elimination of the standard transition area, without requiring an expansion of the remaining transition area for compensation for the special activities set forth below:

i. Stormwater management facilities as defined at N.J.A.C. 7:7A-7.4(b)1;

ii. Linear development as defined at N.J.A.C. 7:7A-1.4;

iii. Activities permitted under the specific Statewide general permits listed at N.J.A.C. 7:7A-7.4(e). The

Statewide general permits themselves are set forth at N.J.A.C. 7:7A-9.2(a); or

iv. Activities defined as redevelopment pursuant to N.J.A.C. 7:7A-7.4(f); or

3. Transition area waiver, Averaging Plan. This waiver may be issued to approve a plan to modify the overall shape of the standard transition area without reducing the total square footage of the standard transition area.

"Trout production waters" (TP) means water designated in the Department's Surface Water Quality Standards N.J.A.C. 7:9-4, for use by trout for spawning or nursery purposes during their first summer.

"USEPA" (EPA) means the United States Environmental Protection Agency.

"USFWS" means the United States Department of the Interior, Fish and Wildlife Service.

"USGS" means the United States Geologic Survey.

"Water-dependent uses" means development that cannot physically function without direct access to the body of water along which it is proposed. Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location.

"Watershed" means the smallest drainage area of a specific creek, stream, river, pond, lake or other surface water body within which a particular site is located.

"Waters of the United States" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), wetlands, mudflats, sandflats, sloughs, wet meadows, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

i. Which are or could be used by interstate or

foreign travelers for recreational or other purposes;

ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

iii. Which are used or could be used for industrial purposes by industries in interstate commerce;

iv. Which are or would be used as habitat by birds protected by Migratory Bird Treaties;

v. Which are or would be used as habitat by other migratory birds which cross state lines;

vi. Which are or would be used as habitat for endangered and threatened species; or

vii. Which are used to irrigate crops sold in interstate commerce:

4. All impoundments of waters otherwise defined as waters of the United States under the definition;

5. Tributaries of waters identified in paragraphs 1 through 4 of this definition;

6. The territorial seas;

7. Wetlands adjacent to waters identified in paragraphs 1 through 6 of this definition other than those that are themselves wetlands.

The following waters are generally not considered "waters of the United States". However, the right is reserved to determine on a case by case basis, if particular watercourses or waterbodies are "waters of the United States":

1. Non-tidal drainage and irrigation ditches excavated on dry land;

2. Artificially irrigated areas which would revert to upland if the irrigation ceased;

3. Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;

4. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons;

5. Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the above definition of "waters of the United States";

6. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds); and

7. Erosional channels less than two feet wide and six inches deep in upland areas resulting from poor soil management practices.

"Water Quality Certification (WQC)" is the determination that the Department shall make pursuant to Section 401 of the Federal Act and N.J.S.A. 58:10A-1 et seq. in the evaluation of a proposed activity which requires a Federal license or permit.

7:7A-1.5 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

7:7A-1.6 Other statutes and regulations

(a) The powers, duties and functions vested in the Department under the provisions of the Act or this chapter shall not be construed to limit in any manner the powers, duties and functions vested therein under any other provisions of law except as specifically set forth in this chapter.

(b) The Act, on and subsequent to July 1, 1988, shall supersede any law or ordinance enacted prior to July 1, 1988 by any municipality, county, or political subdivision thereof, regulating freshwater wetlands except to the extent that such law or ordinance regulates or requires a transition area. Local laws and ordinances governing transition areas shall remain in effect until July 1, 1989, at which time the transition area provisions of the Act shall supersede such local laws and ordinances. With the exception of political subdivisions under the jurisdiction of the Pinelands Commission, no municipality, county, or

political subdivision thereof shall enact, after July 1, 1987, any law, ordinance, or rule or regulation requiring a transition area adjacent to a freshwater wetland.

(c) This section shall not, however, preclude municipal advice to the Department concerning letters of interpretation pursuant to N.J.A.C. 7:7A-8.5.

(d) This chapter shall not preempt pre-existing State regulatory programs which affect regulated activities in freshwater wetlands, including but not limited to Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and State approved municipal water quality management plans. These programs will continue to regulate based on the concerns covered by their respective enabling statutes and rules, and may, through such regulation, have some impact on projects in freshwater wetlands. However, except pursuant to (e) below, those programs will not use freshwater wetlands concerns as a basis for regulation, and any such regulation by these programs of projects in freshwater wetlands will be limited to that based on other (for example, flood danger) concerns.

(e) If a proposed project does not involve a freshwater wetland or State open water, does not constitute a regulated activity, or is otherwise exempt from the provisions of the Act and this chapter, the final decision on the application shall be based solely on the requirements of other applicable permit programs. For projects exempted under the Act and this chapter's wetlands requirements under N.J.A.C. 7:7A-2.7(d) or (g), the final decision on the application will be based on the requirements of other applicable permit programs as they existed on June 30, 1988.

7:7A-1.7 Effective and operative dates

This chapter with the exception of N.J.A.C. 7:7A-6 and 7 became effective June 6, 1988, and became operative on July 1, 1988. N.J.A.C. 7:7A-6 and 7 became operative on July 1, 1989.

SUBCHAPTER 2. APPLICABILITY

7:7A-2.1 Jurisdiction

(a) This chapter shall apply to all regulated activities within the State of New Jersey, except as specifically provided in this chapter. This chapter shall also apply to any discharge of dredged or fill material into State open waters which are not freshwater wetlands.

(b) A person proposing to engage in a regulated activity in a wetland shall apply to the Department for a

Statewide general permit authorization or an Individual freshwater wetlands permit, and a person proposing to discharge dredged or fill material into State open waters shall apply to the Department for a Statewide general permit authorization or an Individual open water fill permit. The discharge of dredged or fill material in a State open water or wetland may also need a stream encroachment permit pursuant to the Flood Hazard Area Control Act N.J.S.A 58:16A-50 et seq. or a Water Quality Certification.

(c) An agency of the State proposing to engage in a regulated activity shall apply to the Department for a freshwater wetlands permit but shall not be required to pay a fee therefor. An agency of the State proposing to discharge dredged or fill material into State open waters shall apply for an open water fill permit, but shall not be required to pay a fee therefor.

(d) Where a proposed project requires more than one permit from the Element, the Element will require the submittal of only one application, but that application shall comply with the requirements of each applicable permit program including all fee requirements. This provision does not preclude an applicant from submitting separate applications if the timing or magnitude of a project requires it.

(e) Where a proposed project requires more than one permit from the Element, applicants are strongly encouraged to apply for all required permits at one time. In most cases this will allow the Department to issue joint permits.

7:7A-2.2 Subchapters which apply to freshwater wetlands permits or open water fill permits.

(a) Any person proposing to engage in a regulated activity in a freshwater wetlands or State open water shall comply with the provisions of subchapters 1 (General information), 2 (Applicability), 3 (General standards for granting individual freshwater wetlands and open water fill permits), 5 (Emergency permits), 6 (Transition areas), 7 (Transition area waivers), 8 (Letters of Interpretation), 9 (General permits), 10 (Pre-application conferences), 11 (Application procedure), 12 (Review of applications), 13 (Permit contents), 14 (Mitigation), 15 (Enforcement), and 16 (Fees) of this chapter.

7:7A-2.3 Regulated activities

(a) The following activities in a freshwater wetland are regulated pursuant to the Act and are subject to the requirements of this chapter as set forth in N.J.A.C. 7:7A-2.2:

1. The removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind;

2. The drainage or disturbance of the water level or water table;

3. The dumping, discharging or filling with any materials;

4. The driving of pilings;

5. The placing of obstructions; or

6. The destruction of plant life which would alter the character of a freshwater wetland, including the cutting of trees except the approved harvesting of forest products pursuant to N.J.A.C. 7:7A-2.7(b).

(b) The term "regulated activity" shall also mean the discharge of dredged or fill material into State open waters.

(c) For the purposes of this Chapter the following activities are not considered to result in the alteration of the character of a freshwater wetland:

1. Surveying or wetlands investigation activities, for the purpose of establishing or reestablishing a boundary line or points, which use only hand held equipment and do not involve the use of motorized vehicles to either clear vegetation or extract soil borings. The clearing of vegetation along the survey line or around the survey points shall not exceed three feet in width or diameter respectively and shall not be kept clear or maintained once the survey or delineation is completed; and

2. The placement of temporary structures (those not requiring permanent foundations nor the deposition of fill material) not to exceed 32 square feet for the purposes of observing or harvesting fish or wildlife. These activities include the construction of observation or waterfowl blinds and the placement of traps.

7:7A-2.4 Designation of freshwater wetlands

(a) The designation of freshwater wetlands shall be based upon the three-parameter approach (that is, hydrology, soils and vegetation) enumerated in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" , and any subsequent amendments thereto.

(b) The three-parameter approach is a methodology for determining, in a consistent and repeatable manner, the presence of wetlands and the boundaries of wetlands. It requires careful consideration of such factors as vegetative species composition, saturated soil conditions, depth to seasonal high water table and the presence or absence of hydrologic indicators.

(c) To aid in determining the presence or absence of freshwater wetlands, the Department may refer to any of the following sources of information:

1. New Jersey Freshwater Wetlands maps (as they become available);

2. United States Department of Agriculture Soil Surveys;

3. United States Fish and Wildlife Service National Wetlands Inventory (NWI) Maps;

i. NWI maps shall be used to indicate the approximate location of some freshwater wetlands;

ii. NWI maps have been determined to be unreliable for the purposes of locating the actual wetlands boundary;

4. United States Geologic Survey topographic maps;

5. Letters submitted by applicants containing site specific data;

6. Comments filed by municipal and county governments and interested citizens; and

7. Comments filed by State or Federal agencies.

(d) Vegetative species classified as hydrophytes and indicative of freshwater wetlands shall include but not be limited to those plants listed in "National List of Plant Species that Occur in Wetlands: 1988-New Jersey", compiled by the United States Fish and Wildlife Service in cooperation with the United States Army Corps of Engineers, USEPA, and the United States Soil Conservation Service, and any subsequent amendments thereto.

(e) The Department is developing functional, complete, and up-to-date composite freshwater wetlands maps and inventory at a scale of 1:12000 to provide guidance for freshwater wetlands general informational purposes. These maps do not supersede wetland delineations which have been accepted and approved by DEPE for a specific site. The Department will make appropriate sections of this map and inventory available on a periodic basis to the county clerk or register of deeds and mortgages in each county, as appropriate, and to the clerk of each municipality.

(f) When available, the up-to-date composite freshwater wetlands map and inventory shall be used to locate wetlands as definitively as is practicable, as an informational tool in advising the public of the approximate extent and location of wetlands, and in preparing some letters of interpretation. However, exact delineation of wetlands boundaries is required, and measurements shall be made in accordance with the three parameter approach.

7:7A-2.5 Classification of freshwater wetlands by resource value

(a) Freshwater wetlands shall be divided into three classifications based on resource value. The classification of a particular wetland shall be a factor in, among other things, considering alternatives to the proposed regulated activity, in determining the size of the transition area, and in assessing mitigation.

(b) Freshwater wetlands of exceptional resource value shall be freshwater wetlands which exhibit any of the following characteristics.

1. Those which discharge into FW-1 waters or FW-2 trout production (TP) waters or their tributaries; or

2. Those which are present habitats for threatened or endangered species, or those which are documented habitats for threatened or endangered species, and which remain suitable for breeding, resting, or feeding by these species during the normal period these species would use the habitat.

i. An applicant shall have the opportunity to request of the Department that a documented habitat not result in the classification of a freshwater wetland as a freshwater wetland of exceptional resource value if the applicant can demonstrate the long-term loss of one or more habitat requirements of the specific documented threatened or endangered species, including, but not limited to, wetlands size or overall habitat size, water quality, or vegetation density or diversity. Upon such a request, the Department shall review all available information, and shall make a

final classification of the wetland.

(c) Freshwater wetlands of ordinary value shall be freshwater wetlands which do not exhibit the characteristics enumerated in (b) above, and which are:

1. Isolated wetlands which are more than 50 percent surrounded by development and less than 5,000 square feet in size.

i. For the purposes of this subsection, "development" shall mean the following uses that were legally existing prior to July 1, 1988 or were permitted under the Act:

(1) Lawns;

(2) Maintained landscaping;

(3) Impervious surfaces;

(4) Active railroad rights-of way; and

(5) Gravelled or stoned parking/storage areas and roads;

ii. For the purposes of this subsection, development must occupy more than 50 percent of the area within 50 feet of the wetland boundary in order for the wetland to meet the criterion of more than 50 percent surrounded by development.

2. Drainage ditches;

3. Swales; or

4. Detention facilities.

(d) Freshwater wetlands of intermediate resource value shall be all freshwater wetlands not defined as exceptional or ordinary.

(e) The classification system established under this section shall not restrict the Department's authority to require the creation or restoration of freshwater wetlands pursuant to the provisions of N.J.A.C. 7:7A-14.

7:7A-2.6 Designation of State open waters

State open waters means those waters of the United States, as defined at N.J.A.C. 7:7A-1.4, within the boundary of the State or subject to its jurisdiction that are not wetlands as defined at N.J.A.C. 7:7A-1.4.

7:7A-2.7 Activities exempted from permit requirement

(a) The exemptions in (b) and (c) below shall not apply to any discharge of dredged or fill material into freshwater wetlands or State open water incidental to any activity which involves bringing an area of freshwater wetlands or State open waters into a use to which it was not previously subject, where the flow or circulation patterns of the freshwater wetlands or waters may be impaired, or the extent or values and functions of freshwater wetlands or State open waters is reduced.

(b) Subject to the limitations of this section, the following activities, when part of an established, ongoing farming, ranching or silviculture operation, on properties which have received or are eligible for a farmland assessment, are exempt from the requirement of a freshwater wetlands permit, open water fill or transition area permit:

1. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food and fiber, or soil and water conservation practices;

i. For the purposes of this paragraph "Minor drainage" means:

(1) The discharge of material incidental to connecting upland drainage facilities to adjacent wetlands, adequate to effect the removal of excess soil moisture from upland croplands;

(2) The discharge of material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters which are in established use for such agricultural and silvicultural wetlands crop production;

(3) The discharge of material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within existing impoundments which have been constructed in accordance with applicable requirements of the Federal Act and which are in established use for the production of rice, cranberries, or other wetland crop species; or

(4) The discharge of material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or

changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year of formation of such blockages in order to be eligible for exemption under this paragraph.

(5) Minor drainage in wetlands is limited to drainage within areas that are part of an established farming or silvicultural operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (for example, wetlands species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area. Any discharge of dredged or fill material into the wetlands or State open waters incidental to the construction of any such structure or waterway requires a freshwater wetlands or State open water permit, and will not be considered minor drainage.

2. Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches, provided that such facilities are for farming ranching or silvicultural purposes and do not constitute a change in use. Any spoil from pond construction or maintenance must be placed outside the freshwater wetlands unless it is needed for the structural or environmental integrity of the pond;

3. Construction or maintenance of farm roads or forest roads constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of freshwater wetlands and State open waters are not impaired and that any adverse effect on the aquatic environment will be minimized. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. Roads constructed for forestry and silviculture purposes shall be constructed using temporary mats whenever practicable. All roads employing the placement of fill shall be removed once the land use changes from forestry to another use.

(c) Normal harvesting of forest products in accordance with a forest management plan approved by the State Forester is exempt from the requirement of a freshwater wetlands permit or open water fill permit, subject to the limitations of this section.

(d) Subject to the limitations of this section, the

following are exempt from the requirement of the Act until the State assumes the Federal 404 program. These activities may need Federal 404 permits and/or a WQC:

1. Projects for which preliminary site plan or subdivision applications have received formal preliminary approvals from local authorities pursuant to the "Municipal Land Use Law," N.J.S.A. 40:55D-1 et seq., prior to July 1, 1988 provided those approvals remain valid under the Municipal Land Use Law. This excludes approvals which were given prior to the August 1, 1976 effective date of the Municipal Land Use Law;

2. Projects for which preliminary site plan or subdivision applications as defined in N.J.S.A. 40:55D-1 et seq. have been submitted to the local authorities prior to June 8, 1987 and subsequently approved. If a project meets all criteria under this subsection to qualify for an exemption, except that the project has not yet received municipal approval, the Department will issue a letter certifying that the qualifying application was filed prior to June 8, 1987 and the project will receive an exemption upon receipt of preliminary approval from the municipality;

3. Projects for which permit applications have been approved and Individual permits have been issued by the United States Army Corps of Engineers prior to July 1, 1988, for projects which would otherwise be subject to State regulation on or after July 1, 1988. Such project shall be governed only by the Federal Act, and shall not be subject to any additional or inconsistent substantive requirements of the Act; provided, however that upon the expiration of a permit issued pursuant to the Federal Act any application for a renewal thereof shall be made to the appropriate regulatory agency;

(e) The activities listed in (d)1 and 2 above shall no longer be exempt from the requirement of a freshwater wetlands permit or open water fill permit if significant changes are made to the approved site or subdivision plan. A significant change will be deemed to have been made if, the change would void the preliminary approval. In addition, a significant change will be deemed to have been made if the change, while not voiding the approval, would require submittal to or approval of a new or amended application from the local authorities and

1. The change would result in a change in land use on the project site, for example from single family houses to multi-family units, or a golf course; or

2. The change in the project as approved by the local authorities, would result in more than a de minimus increase in impacts to freshwater wetlands, State open waters, or

transition areas.

(f) Projects for which preliminary site plan or subdivision applications have been approved prior to July 1, 1989 shall not require transition areas.

(g) Activities authorized under United States Army Corps of Engineers Nationwide Permits prior to July 1, 1988 shall not require a freshwater wetlands permit from the Department provided the property owner can demonstrate that a Nationwide Permit provided authorization for a particular site and use prior to July 1, 1988.

(h) If any discharge of dredged or fill material resulting from the activities exempted by this section contains any toxic pollutant listed under section 307 of the CWA, such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a freshwater wetlands or open water fill permit.

(i) If the USEPA's regulations providing for the delegation to the State of the Federal wetlands program conducted pursuant to section 404 of the Federal Act require a permit for any of the activities exempted by this section, the Department shall require a permit for those activities so identified by the USEPA upon assumption of the Federal program. The exemptions in (d) 1 and 2 and (f) above shall be void as of the date of assumption by the Department of the Federal 404 program unless all requisite permits or concurrences with Federal permits were received from the United States Army Corps of Engineers prior to July 1, 1988 and remain valid, in which case the exemption will still be valid. Upon expiration of a permit issued by the Federal Act any application for renewal shall be made to the appropriate regulatory agency. The Department shall not require the establishment of a transition area as a condition of any renewal of a permit issued pursuant to the Federal Act prior July 1, 1988.

7:7A-2.8 Geographic areas exempted from freshwater wetlands permit requirement

(a) Regulated activities in the following geographic areas shall not require a freshwater wetlands permit, State open water fill or transition area permit, but may require a Federal 404 permit. However, upon assumption of the 404 program, the discharge of dredged or fill material into Waters of the United States in the following areas may require a 404 permit or a Water Quality Certificate:

1. Areas under the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to N.J.S.A. 13:17-1 et seq.; and

2. Areas under the jurisdiction of the Pinelands Commission pursuant to N.J.S.A. 13:18A-1 et seq. In addition, the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction.

(b) Activities in tidally influenced wetlands which are defined as coastal wetlands pursuant to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. shall not require a freshwater wetlands or open water fill permit.

7:7A-2.9 Exemption letters

(a) A person may obtain a letter from the Department certifying that an activity is exempt from the Act and this chapter. The letter will be based on the information required by this section, and will be void if the information submitted is not complete and accurate, if the approval upon which it was based becomes invalid for any reason, or if the activity is not carried out as represented in the submittal(s) to the Department upon which the letter is based. This exemption will remain valid for the duration of the approval upon which it was based or until the State's assumption of the Federal 404 program, whichever comes first.

(b) To obtain an exemption letter, the following shall be submitted:

1. For a farming, silviculture or ranching exemption pursuant to N.J.A.C. 7:7A-2.7(a):

i. Certification of farmland assessment eligibility (The Department will accept a copy of the applicant's tax bill showing farmland assessment to document this requirement);

ii. A brief description of the activities, including the total area covered, the types of farming, silviculture, or ranching, best management practices currently employed or to be employed and the length of time the operation has been ongoing; and

iii. The fee specified in N.J.A.C. 7:7A-16.

2. For a forest products harvesting exemption pursuant to N.J.A.C. 7:7A-2.7(c):

i. A copy of a forest management plan approved by the State Forester which includes the size of the site, the length of time required to complete the project, and a brief description of the activities involved including the best management practices to be employed; and

ii. The fee specified in N.J.A.C. 7:7A-16.

3. For a preliminary local approval exemption pursuant to N.J.A.C 7:7A-2.7(d) and a transition area exemption pursuant to N.J.A.C 7:7A-2.7(f):

i. A folded copy of the preliminary local approval of the site plan or subdivision, including a copy of the site plan or subdivision itself and a copy of the resolution approving the site plan or subdivision;

ii. The fee specified in N.J.A.C. 7:7A-16.

4. For a site plan or subdivision application exemption pursuant to N.J.A.C. 7:7A-2.7(d)2:

i. A copy of all of the application materials submitted to the municipality, proof that the municipality received them, and proof from the municipality that the application was under continuous consideration from the time of submittal (prior to June 8, 1987) to eventual preliminary approval or to the date of application to the Department for a letter of exemption. For the purposes of this subsection, "continuous consideration" shall mean that the application was either on the municipal board's agenda or was continued with the applicant's and the board's consent from the time of submittal until such time that a decision was made. An application that was withdrawn, or which received a final denial and subsequently resubmitted is not considered to be under "continuous consideration";

ii. A folded copy of the approved preliminary site plan or subdivision plat and a copy of the resolution approving the site plan or subdivision;

(1) If a preliminary site plan or subdivision approval has not yet been received, the applicant shall submit a folded copy of the preliminary site plan or subdivision plat as submitted to the municipality prior to June 8, 1987, see N.J.A.C. 7:7A-2.7(d)2; and

iii. The fee specified in N.J.A.C. 7:7A-16.

5. For a Corps approved individual permit exemption pursuant to N.J.A.C. 7:7A-2.7(d)3:

i. A copy of the valid Corps permit;

ii. A folded copy of a site plan showing all activities authorized by the Individual permit; and

iii. The fee specified in N.J.A.C. 7:7A-16.

6. For an exemption letter under a Corps Nationwide

permit exemption pursuant to N.J.A.C. 7:7A-2.7(f),

i. A copy of the valid Corps Nationwide permit authorization issued prior to July 1, 1988, or a copy of all information submitted to the Corps requesting authorization under an issued Nationwide permit, proof that the information was received by the Corps prior to June 10, 1988, and received subsequent authorization;

(1) The Department may inspect the site to confirm that all of the activities included in the exemption request are authorized by the applicable nationwide permits.

ii. A folded copy of a site plan showing all activities authorized by the Nationwide permit and a statement regarding how each activity meets the criteria of the approved Nationwide permit; and

iii. The fee specified in N.J.A.C. 7:7A-16.

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.

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.

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.

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 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. 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.

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.

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 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.

SUBCHAPTER 4. RESERVED

SUBCHAPTER 5. EMERGENCY PERMITS

7:7A-5.1 Emergency permits

(a) The Department may issue a temporary emergency freshwater wetlands or, 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.

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.

SUBCHAPTER 6. TRANSITION AREAS

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 stormwater 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.

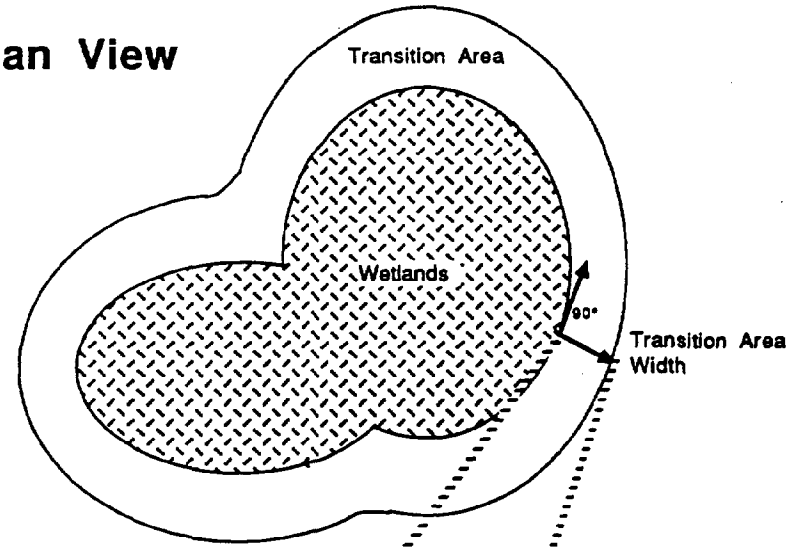
(f) A person shall not engage in activities prohibited in a transition area as set forth at N.J.A.C. 7:7A-6.2 except pursuant to a transition area waiver issued by the Department pursuant to this chapter.

(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

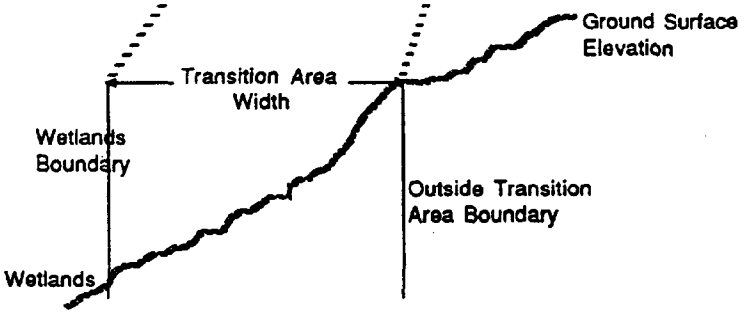
7:7A-6 Regulatory Appendix A

Example of a transition area adjacent to a freshwater wetland. Depicted are a plan and cross sectional view.

Plan View



Enlarged Cross Sectional View



boundary.

(h) The outside boundary of a transition area is determined solely by reference to the freshwater wetlands boundary and is in no way affected by property lines. Therefore, a property within 150 feet of a freshwater wetland may contain a transition area which arises from a freshwater wetlands on another property. Any property or piece of property encompassing the transition area of a freshwater wetland is subject to the Act and this chapter, notwithstanding that the freshwater wetland is located on another property.

7:7A-6.2 Prohibited activities in transition areas

(a) Except as provided in (b) and (c) below, a person shall not conduct the following prohibited activities in transition areas:

1. Removal, excavation, or disturbance of the soil;

2. Dumping or filling with any materials;

3. Erection of structures;

4. Placement of pavements; and

5. Destruction of plant life which would alter the existing pattern of vegetation.

(b) The following activities are not prohibited in transition areas, provided that the activities are performed in a manner that minimizes adverse effects to the transition area and adjacent freshwater wetlands:

1. Normal property maintenance;

i. For the purposes of this paragraph, "normal property maintenance" means activities required to maintain lawfully existing artificial and natural features, landscaping and gardening. These activities include:

(1) Mowing of existing field or lawn;

(2) Pruning of trees and shrubs;

(3) Selective cutting of trees;

(4) Replacement of existing non-native plants with either native or non-native species;

(5) Limited supplemental planting of non-native plant species that will not significantly change the character of the existing vegetational community of the transition area.

The creation of a lawn is not considered supplemental planting;

(6) Planting of native species, that is, plants naturally occurring in transition areas in the local region, (the county agricultural agent may be consulted to obtain information regarding these species);

(7) Continued cultivation of existing gardens and the development of new gardens no larger than one quarter acre in size; and

(8) Maintenance of artificial features including the repair, rehabilitation, replacement, maintenance or reconstruction of any previously authorized, currently serviceable structure, lawfully existing prior to July 1, 1989, or permitted under the Act and this chapter, provided such activities do not result in additional disturbance of the transition area upon completion of the activity. Minor deviations from the existing structure 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 transition area upon completion of the activity.

ii. Any activity which involves or causes the substantial alteration or change of the existing characteristics of a transition area shall not be considered normal property maintenance. Activities which involve or cause substantial alteration or change of the transition area include, but are not limited to, extensive removal or destruction of vegetation by clear-cutting, cutting, mowing, (except as described in (b)1i above), burning or application of herbicides, planting of ornamental plants or lawns for landscaping purposes (except as described in (b)1i above), regrading or significant changes in the existing surface contours and the placement of fill, pavement or other impervious surfaces.

2. Minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area;

i. For the purposes of this paragraph, "minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area," means activities which do not result in adverse environmental effects on the transition area or on the adjacent freshwater wetlands and which activities do not continue for a period of more than six months. Normal construction activities which would be minor and temporary disturbances include, but are not necessarily limited to, the placement of scaffolds or ladders, the removal of human-made debris by non-mechanized

means which does not destroy woody vegetation, the placement of temporary construction supports, and the placement of utility lines over or under a previously authorized, currently serviceable existing paved roadway.

3. The erection of temporary structures covering a combined total of 150 square feet or less of the transition area.

i. For the purposes of this paragraph, "temporary structures" means sheds or fences which do not have a foundation, or other structures that remain in the transition area for no more than a total of six months.

(c) Projects or activities which are exempt from the requirement of a freshwater wetlands permit pursuant to N.J.A.C. 7:7A-2.7(b), (c) and (d), shall also be exempt from transition area requirements. These transition area exemptions are subject to the same limitations as the corresponding freshwater wetlands permit exemptions. These limitations can be found at N.J.A.C. 7:7A-2.7.

(d) To confirm that an activity or project is exempt, an exemption letter may be requested from the Department through the procedures established for freshwater wetlands permit exemptions in N.J.A.C. 7:7A-2.9, including submittal of the fee specified at N.J.A.C. 7:7A-16.

7:7A-6.3 Determination of transition areas due to the presence of freshwater wetlands on adjacent property

(a) Any person engaging in prohibited activities in a transition area without Department approval shall be in violation of the Act and this chapter. A transition area may be located on a property even though the freshwater wetlands adjacent to that transition area are located on a different property (see N.J.A.C. 7:7A-6.1(h)).

(b) To determine whether a transition area is required on a parcel, where freshwater wetlands may exist on other nearby parcels, a person may follow the procedures at (c) below or follow those procedures at (b)1 through 6 below as applicable.

1. Locate any freshwater wetlands that may be within 150 feet of the subject parcel property lines and any freshwater wetlands that may be within 50 feet of the subject parcel property lines. If there are no freshwater wetlands on the subject parcel or on land within 150 feet of the subject parcel property line, no transition areas exist on the subject parcel.

2. If there are freshwater wetlands on neighboring land within 150 feet of the parcel boundary, determine if

they are classified as freshwater wetlands of ordinary resource value as specified in N.J.A.C. 7:7A-2.5. If a determination of classification by the Department is desired, a letter of interpretation classifying any freshwater wetlands can be obtained from the Department pursuant to N.J.A.C. 7:7A-8. No transition area is required adjacent to ordinary resource value wetlands.

3. If any of the freshwater wetlands on neighboring land within 150 feet of the subject parcel boundary cannot be classified as ordinary, determine whether they are freshwater wetlands of intermediate resource value or freshwater wetlands of exceptional resource value as specified in N.J.A.C. 7:7A-2.5. If a determination of classification by the Department is desired, a letter of interpretation, including a notice of classification, classifying any freshwater wetlands can be obtained from the Department pursuant to N.J.A.C. 7:7A-8.

4. If the freshwater wetlands on the subject parcel or within 150 feet of the subject parcel property boundary are freshwater wetlands of exceptional resource value, a transition area exists on the subject parcel. In order to determine the size and shape of the transition area, obtain a delineation of the freshwater wetlands on neighboring land within 150 feet of the subject parcel boundary and determine the shape and size of the standard transition area on the subject parcel according to N.J.A.C. 7:7A-6.1(d).

i. To avoid the necessity of delineating exceptional resource value freshwater wetlands on other properties, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from prohibited activities on the subject parcel within 150 feet of the property boundary.

5. If there are freshwater wetlands of intermediate resource value on land within 50 feet of the subject parcel boundary, a transition area exists on the subject parcel. In order to determine the size and shape on the transition area, obtain a delineation of the freshwater wetlands on neighboring land within 50 feet of the subject parcel boundary and determine the shape and size of the standard transition area on the subject parcel according to N.J.A.C. 7:7A-6.1(e).

i. To avoid the necessity of delineating intermediate resource value freshwater wetlands on other properties, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from prohibited activities on the subject parcel within 50 feet of the property boundary.

6. It may be necessary to obtain written permission

from adjacent property owners to investigate their land to within 150 feet of the subject parcel boundary. If a transition area waiver or letter of interpretation is needed, the applicant shall provide written notice to adjacent landowners that the Department may conduct an onsite field inspection as part of the application process. This notification shall be included as part of the notification process pursuant to N.J.A.C. 7:7A-7.6(a)7v, Application contents for transition area permits; N.J.A.C. 7:7A-8.3(a)9iv, Application for a letter of interpretation; N.J.A.C.7:7A-9.5(b), Application for Statewide general permit authorization or N.J.A.C. 7:7A-11.1(b)9, Application contents.

(c) Instead of following the procedures at (b)1 to 6 above, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from prohibited activities on the subject parcel within 150 feet of the subject parcel property line.

SUBCHAPTER 7. TRANSITION AREA WAIVER

7:7A-7.1 General provisions

(a) A transition area waiver shall not be granted by the Department pursuant to the Act and this chapter unless it includes conditions as necessary to ensure that a particular project or activity results in minimal environmental impact and unless the purposes and functions of transition areas as set forth in N.J.A.C. 7:7A-6.1(a) and (b) are satisfied.

(b) Any person proposing to engage in a prohibited activity within 150 feet of an exceptional resource value wetland, or within 50 feet of an intermediate resource value wetland shall apply to the Department for a transition area waiver.

(c) The Department may authorize the following through a transition area waiver:

1. A reduction in the standard transition area width established in N.J.A.C. 7:7A-6.1(d) and (e). Reductions are determined at N.J.A.C. 7:7A-7.2 for exceptional resource value freshwater wetlands and at N.J.A.C. 7:7A-7.3 for intermediate resource value freshwater wetlands.

2. A modification in the shape, but not the square footage, of the standard transition area through a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5. This waiver is available for transition areas adjacent to both exceptional and intermediate resource value freshwater wetlands;

3. A partial elimination of the standard transition area width along a portion of the freshwater wetland to allow special activities as established in N.J.A.C. 7:7A-7.4. This waiver is available for transition areas adjacent to both exceptional and intermediate resource value freshwater wetlands;

4. Any combination of (c)1, 2, and 3 above.

(d) Reduction or modification of a transition area shall be based solely on the transition area adjacent to a particular freshwater wetland. For property with more than one freshwater wetland, the standard transition area width and the criteria for reducing or modifying the standard width shall be applied separately to each freshwater wetland. In no case may expansion of a transition area adjacent to one freshwater wetland compensate for reduction of a transition area adjacent to a separate freshwater wetland. However, one transition area waiver application may be used to request transition area waivers for more than one transition area located on a single property.

(e) In determining whether to issue or deny a transition area waiver, the Department shall consider information submitted by the applicant, local, county, state, and federal government agencies; and interested citizens and may consider any other available information.

(f) The Department's authorization of activities under a Statewide general permit, individual freshwater wetlands permit or mitigation plan shall automatically include a transition area waiver. In addition, the approval of a mitigation plan in a transition area as a result of either a permit approval or resolution of an enforcement action under the Act and Federal Act will automatically include a transition area waiver. No fee or application will be required for these waivers. The transition area waiver will allow encroachment only in that portion of the transition area bordering on that portion of the freshwater wetland in which the authorized activity is to take place which the Department determines is necessary to accomplish the authorized activity. Any additional prohibited activities in the transition area not directly required for the authorized activity, shall require a separate transition area waiver from the Department pursuant to the Act and this chapter.

(g) Every approved transition area waiver, except for those issued pursuant to (f) above and N.J.A.C. 7:7A-7.4, Special activity waivers, shall be conditioned on the recording of a Department-approved deed restriction of activities which may be undertaken in the transition area. Prior to construction, the deed restriction shall be

recorded in the office of the clerk of the county or through the register of deeds and mortgages in which the premises are situated. The restriction shall run with the land and be binding upon the applicant and the applicant's successors in interest in the premises or in any part thereof and shall include the following:

1. The Department-approved restriction shall provide that no prohibited activities will occur in the modified transition area unless the Department finds that:

i. There is compelling public need for the activity greater than the need to protect the modified transition area; and

ii. That the activity has no practicable alternative which would:

(1) Not involve a transition area;

(2) Involve a transition area but would have less adverse impact on the transition area and the adjacent wetland; 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.

2. The applicant shall provide proof that the deed restriction is recorded in the office of the clerk of the county or through the register of deeds and mortgages in which the premises are situated, or provide documentation that the restriction has been accepted for recording at the above offices.

7:7A-7.2 Exceptional resource value freshwater wetlands: standards for transition area width reduction

(a) This section addresses standards for overall width reduction of transition areas adjacent to exceptional resource value wetlands. A transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet wide except pursuant to a transition area waiver approved by the Department. Except pursuant to a transition area waiver for access to an authorized activity, granted by the Department pursuant to N.J.A.C. 7:7A-7.1(f), a transition area adjacent to a freshwater wetland of exceptional resource value shall not be reduced to less than 75 feet wide unless the applicant demonstrates, to the satisfaction of the Department that if the activity was instead proposed in the exceptional resource value wetland it would meet the standards for granting a freshwater wetlands permit.

(b) The Department shall grant a transition area waiver to reduce a transition area adjacent to a freshwater wetland of exceptional resource value from the standard transition area width only if:

1. The proposed activity would have no substantial impact as determined pursuant to (c), (d) or (e) below, on the adjacent freshwater wetland; or

2. The waiver is necessary to avoid an extraordinary hardship to the applicant, as described at (f) below.

(c) For the purposes of N.J.A.C. 7:7A-7, a substantial impact shall be deemed to exist on a freshwater wetland of exceptional resource value if one or more of the following is true, unless the applicant demonstrates otherwise to the Department's satisfaction pursuant to (h) below:

1. The freshwater wetland contains a present or "documented habitat for threatened or endangered species" as defined at N.J.A.C. 7:7A-1.4;

2. The freshwater wetland is located adjacent to FW1 waters or FW2 trout production waters;

3. The freshwater wetland is located adjacent to a component of either the Federal or State Wild and Scenic River System designated pursuant to 16 U.S.C. §1271 et seq. or N.J.S.A. 13:8-45 et seq.; or adjacent to a waterway 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;

4. The proposed project would cause the disturbance or exposure of acid producing deposits as defined at N.J.A.C. 7:13-5.10;

5. The property is located adjacent to a local, county, State, or federal park, wildlife refuge, sanctuary, management area or area listed on the New Jersey Register of Natural Areas; or

6. The proposed activity or project includes one or more of the following:

i. Construction or expansion of a commercial or industrial facility within the following Standard Industrial Classification (SIC) major groups as designated in the Standard Industrial Classification Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States.

SIC	Industry Category
22	Textile Mill Products
23	Apparel
24	Lumber & Wood Products
25	Furniture & Fixtures
26	Paper & Allied Products
27	Printing, Publishing & Allied Industries
28	Chemicals & Allied Products
29	Petroleum Refining & Related Industries
30	Rubber & Miscellaneous Plastics Products
31	Leather & Leather Products
32	Stone, Clay, Glass & Concrete Products
33	Primary Metal Industries
34	Fabricated Metal Products
35	Machinery
36	Electrical & Electronic Machinery
37	Transportation Equipment
38	Measuring Analyzing & Controlling Instruments, Photographic, Medical & Optical Goods
39	Miscellaneous Manufacturing Industries
47	Transportation Services
48	Communications
49	Utilities (Electric, Gas, Sewer), excluding linear development
51	Nondurable Goods Wholesaling
55	Automotive Dealers and Gasoline Service Stations;

ii. Establishment of new or expansion of existing mineral extraction and/or processing operations. This includes mining or processing of construction sand, industrial sand, gravel, ilmenite, glauconite, limestone, or other minerals; or

iii. Construction or expansion of wastewater treatment or septic systems which are located within 150 feet of an exceptional resource value wetland or within 50 feet of an intermediate resource value wetland;

iv. Establishment of a new or expansion of an existing solid waste facility.

(d) The Department will consider the proposed project to have no substantial impact, and will issue a transition area waiver reducing the standard transition area width to 100 feet if no activity prohibited pursuant to N.J.A.C. 7:7A-6.2 is conducted within the reduced 100 foot transition area and if all of the following transition area characteristics and proposed project factors are true:

1. The property or proposed project or activity does not fall into any of the categories, indicating a substantial impact as listed at N.J.A.C. 7:7A-7.2(c)1, 2, 4, or 6.

2. The existing, pre-development transition area is unvegetated or has a herbaceous vegetational community as the dominant vegetational community as determined below in (e)1;

3. The property has been part of an established ongoing farming, ranching or silviculture operation" as defined at N.J.A.C. 7:7A-1.4 within the two years before the transition area waiver application is submitted; and

4. The proposed project will include the planting of native trees and shrubs in the reduced 100 foot transition area pursuant to a plan approved by the Department. The planting shall achieve no less than an 85 percent area coverage in the entire 100 foot transition area and ensure no less than 85 percent survival of the plants for no less than three years.

(e) If the project, activities and/or property do not result in a substantial impact as determined in (c) above, the Department shall determine the transition area width based on the slope and dominant vegetational community type of the transition area and the development intensity of the proposed project, as described below at (e) 1 to 3, as indices of impact on a freshwater wetland of exceptional resource value, using the matrix below.

Dominant Vegetational Community		Slope%	Development Intensity		
			Low (0-10%)	Moderate (>10-40%)	High (>40%)
	Herbaceous	0-2	100	120	140
		>2	150	150	150
	Scrub-Shrub	0-2	75	75	80
		>2-5	95	115	130
		>5	150	150	150
	Forest	0-2	75	75	75
		>2-5	75	75	85
		>5-10	75	85	95
		>10-15	95	105	115
		>15-20	115	125	135
		>20	135	145	150

1. The dominant vegetational community in a transition area is the plant community which covers the most surface area of the transition area contained within the subject property. Vegetational communities are classified as herbaceous, scrub-shrub, or forested.

i. An herbaceous vegetational community is characterized by the presence of annual and perennial plant species or bare ground.

ii. A scrub-shrub vegetational community is characterized by shrub and herbaceous plant species with an average height equal to or less than 20 feet. A forested area with little or no herbaceous or shrub layer (understory) shall be considered a scrub-shrub vegetational community for the purposes of this chapter.

iii. A forested vegetational community is characterized by tree species with an average height greater than 20 feet accompanied by a herbaceous or shrub layer.

2. The average slope of the ground in the existing pre-activity standard transition area is measured as the arithmetic mean of slope measurements of the transition area taken every 200 feet along the outside transition area boundary. Slope shall be measured as the change in elevation of the ground from the freshwater wetlands boundary to the outside transition area boundary over the standard transition area width established in N.J.A.C. 7:7A-6.1;

3. The development intensity of the proposed project is the percentage of the surface area of the property, measured on a horizontal scale, which will be covered by impervious surfaces at the completion of the proposed project. For the purposes of this paragraph, "property" means the municipal tax lot or lots upon which any part of the proposed project will occur. Impervious surfaces are areas which prevent the infiltration and percolation of water into the soil. Impervious cover includes, but is not limited to, pavement, rooftops, sidewalks, driveways, tennis courts and swimming pools. The area used to calculate development intensity shall exclude freshwater wetlands, transition areas, and State open waters. The sum of the square footage of freshwater wetlands, transition areas, and State open waters on the property is subtracted from the square footage of the entire property. The resulting number is divided into the square footage of all impervious cover which will result on the property upon completion of the proposed project. This quotient is multiplied by 100 percent to obtain the percentage of impervious cover, also known as the development intensity, which can be expressed mathematically as:

DI = IC/(PA-(FW+TA+SOW)) x 100%, where:

i. DI is the development intensity of the project expressed as a percentage;

ii. IC is the square footage of impervious cover which will exist on the entire subject property or properties which are affected by the proposed project, at the completion of the proposed project, including pre-existing impervious cover.

iii. PA is the square footage of the property or properties on which the proposed project or activity will occur;

iv. FW is the square footage of freshwater wetlands present on the subject property;

v. TA is the square footage of the transition area based on the standard transition area width established at N.J.A.C. 7:7A-6.1; and

vi. SOW is the square footage of State open waters on the subject property.

(f) An extraordinary hardship to the applicant will be considered to exist when:

1. The subject property is not susceptible to a reasonable use as is presently developed or as authorized by the provisions of the Act and this chapter and this limitation results from unique and extreme circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the local region; and

ii. Relate to or arise out of the subject property, rather than the personal situation of the applicant, and are not the result of any action or inaction by the applicant or the owner or the owner's predecessors in title.

2. For single family residential lots which are unbuildable due to the presence of transition areas, the Department may grant a transition area reduction waiver to reduce the transition area to a minimum of 75 feet based on hardship if the following conditions are met:

i. The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time;

ii. The applicant has not received a waiver for a reduction of a transition area based on this hardship

criteria for the past five years;

iii. The applicant shall demonstrate that adjacent properties cannot be purchased for fair market value to create a buildable lot;

iv. The applicant shall demonstrate that the subject property was offered for sale at fair market value to adjacent landowners and that the offer was refused;

v. The subject parcel is not contiguous with an adjacent improved parcel which was owned by the applicant on July 1, 1988;

vi. The applicant shall demonstrate that the subject property was offered for sale at fair market value to interested public or private conservation organizations and that the offer was refused. The Department will provide applicants with a listing of conservation organizations upon request.

(g) If the applicant is unable to demonstrate that an activity will have no substantial impact on the adjacent wetland by satisfying the criteria at (c) above or at N.J.A.C. 7:7A-7.3, 7.4(e), or 7.5, an applicant may demonstrate no substantial impact through the use of scientific documentation. This documentation may include but is not limited to, nutrient or sediment transport models, buffer models such as "The Wetlands Buffer Delineation Method," prepared by Rogers, Golden and Halpern, Inc., the "Buffer Delineation Model for New Jersey Pinelands Wetlands," prepared by Charles T. Roman and Ralph E. Good, or wildlife habitat suitability studies. If the applicant elects to use a buffer model, the following shall be addressed as they relate to the adjacent wetlands: sediment, nutrient, and pollutant transport and removal, impacts on sensitive species, and potential impacts to surface water quality.

7:7A-7.3 Intermediate resource value freshwater wetlands: standards for transition area width reduction

(a) This section addresses standards for overall width reduction of transition areas adjacent to intermediate resource value wetlands. A transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet wide except pursuant to a transition area waiver approved by the Department. Except pursuant to a Department-approved transition area averaging plan issued pursuant to N.J.A.C. 7:7A-7.5, a transition area waiver for access to an authorized activity granted by the Department pursuant to N.J.A.C. 7:7A-7.1(f), or a special activity permit pursuant to N.J.A.C. 7:7A-7.4, a transition area adjacent to a freshwater wetlands of intermediate resource

value shall not be reduced to less than 25 feet wide.

(b) The Department shall grant a transition area waiver to reduce a transition area adjacent to a freshwater wetland of intermediate resource value from the standard transition area width only if:

1. The proposed activity would have no substantial impact, as determined pursuant to (c), and (d) below, on the adjacent freshwater wetland; or

2. The waiver is necessary to avoid a substantial hardship to the applicant, as defined in (e) below.

(c) For the purposes of this subchapter, a substantial impact shall be deemed to exist on a freshwater wetland of intermediate resource value if one or more of the following is true, unless the applicant demonstrates otherwise to the Department's satisfaction pursuant to N.J.A.C. 7:7A-7.2(g):

1. The freshwater wetland is a critical habitat for fauna or flora, as determined by the Department. Critical habitat for fauna are areas which serve an essential role in maintaining commercially and recreationally important wildlife, particularly for wintering, breeding, spawning and migrating activities. Critical habitat for flora are areas supporting rare or unique plant species or uncommon vegetational communities in New Jersey.

2. The freshwater wetland is located adjacent to a component of either the Federal or State Wild and Scenic River System designated pursuant to 16 U.S.C. §1271 et seq. or N.J.S.A. 13:8-45 et seq.; or adjacent to a waterway 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;

3. The proposed activity would include the disturbance or exposure of acid producing deposits as defined at N.J.A.C. 7:13-5.10;

4. The property is located adjacent to a local, county, State or federal park, wildlife refuge, sanctuary, management area, or area listed on the New Jersey Register of Natural Areas; or

5. The proposed activity or project includes one or more of the operations or activities at N.J.A.C. 7:7A-7.2(c)6 .

(d) If the project, activities and/or property do not meet any of the criteria in (c) above, the Department shall determine the transition area width reduction from that of the standard transition area width based on the slope and

dominant vegetational community type of the transition area and the development intensity of the proposed project, as described at N.J.A.C. 7:7A-7.2(e) 1 tthrough 3, as indices of the impact on a freshwater wetland of intermediate resource value, using the criteria below:

1. A transition area waiver reducing the transition area width to 25 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described in N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is a forested vegetational community;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2 , is less than or equal to one percent;

iii. The development intensity of the project, as determined N.J.A.C. 7:7A-7.2(e)3, is less than 20 percent.

2. A transition area waiver reducing the transition area width to 35 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described at N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is a forested vegetational community;

ii. The slope of the standard transition area, as determined pursuant N.J.A.C. 7:7A-7.2(e)2, is less than or equal to three percent; and

iii. The development intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3, is less than 40 percent.

3. A transition area waiver reducing the transition area width to 35 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described at N.J.A.C. 7:7A-7.2(e)1, of the standard transition area is scrub-shrub or herbaceous vegetational community;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2, is less than or equal to one percent; and

iii. The development intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3, is less than 20 percent.

4. A substantial impact on the freshwater wetland shall be deemed to exist, and a transition area waiver shall not be granted pursuant to this section, if the conditions in (d)1, 2 or 3 above are not met.

(e) A substantial hardship to the applicant shall be considered to exist when:

1. The subject property is not susceptible to a reasonable use as authorized by the provisions of the Act and this chapter and this limitation results from unique circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the immediate vicinity;

ii. Relate to or arise out of the subject property, rather than the personal situation of the applicant, and are not the result of any action or inaction by the applicant or the owner or the owner's predecessors in title.

2. For single family residential lots which are unbuildable due to the presence of transition areas, the Department may grant a transition area reduction waiver to reduce the transition area to a minimum of 25 feet based on hardship if the following conditions are met:

i. The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time;

ii. The applicant has not received a waiver for a reduction of a transition area based on this hardship criteria for the past five years;

iii. The applicant shall demonstrate that adjacent properties cannot be purchased to create a buildable lot for fair market value;

iv. The applicant shall demonstrate that the subject property was offered for sale at fair market value to adjacent landowners and that the offer was refused;

v. The subject parcel is not contiguous with an adjacent improved parcel which was owned by the applicant on July 1, 1988;

vi. The applicant shall demonstrate that the subject property was offered for sale at fair market value to interested public or private conservation organizations and that the offer was refused. The Department will provide applicants with a listing of conservation organizations upon request.

7:7A-7.4 Special activities: Standards for granting

transition area waiver

(a) The Department will issue transition area waivers for certain special activities meeting the criteria in this section. Waiver under this section are not subject to the criteria in N.J.A.C. 7:7A-7.2, 7.3 or 7.5. The Department will issue a transition area waiver to reduce or partially eliminate the standard transition area to allow for the special activities listed below at (a)1 through 3, provided the applicable conditions for each activity set forth below at (b), (c), (d), (e) and (f) are met, provided the project is designed to minimize impacts to the freshwater wetland and transition area, and provided the transition area continues to serve the purposes set out at N.J.A.C. 7:7A-6.1(a) and (b). Reductions or partial eliminations authorized under this section shall not require compensation pursuant to N.J.A.C. 7:7A-7.5. Except pursuant to a transition area waiver for access to an authorized activity issued by the Department pursuant to N.J.A.C. 7:7A-7.1(f), a transition area adjacent to freshwater wetlands of exceptional resource value shall not be reduced to less than 75 feet wide unless the applicant demonstrates, to the satisfaction of the Department that if the activity was instead proposed in the exceptional resource value wetland it would meet the standards for granting a freshwater wetlands waiver. The special activities are:

1. Stormwater management facilities as defined at (b) below:

2. Linear development as defined at N.J.A.C. 7:7A-1.4;

3. Activities performed in the transition area which are permitted under specific Statewide general permits listed in (e) below; and

4. Activities performed in the transition area which can be defined as redevelopment as specified in (f) below.

(b) If the proposed activity is the construction of a stormwater management facility, the Department will approve a transition area waiver for the reduction or partial elimination of a transition area if there is no feasible alternative on-site location for the facility.

1. For the purposes of this paragraph "stormwater management facility" means a facility which receives, stores, conveys or discharges stormwater runoff and is designed in accordance with all applicable local, county and state regulations. These facilities may include retention and detention basins and infiltration structures; grassed swales; filter fabric; rip-rap channels and/or stormwater outfalls.

2. An alternative onsite location shall not be considered infeasible merely because it would require one or more of the following:

i. Relocating part or all of the stormwater management facility outside of the transition area and into the upland;

ii. Modifying the type of stormwater management facility;

iii. Redesigning the layout, size, scope or configuration of the buildings, roads or other aspects of the project in order to accommodate the stormwater management facility; or

iv. Reducing the scope or density of the project generating the stormwater.

3. An alternative onsite location shall be considered feasible if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of stormwater management goals.

(c) If the proposed activity is the construction of a linear development as defined at N.J.A.C. 7:7A-1.4 the Department will approve a further transition area waiver for the reduction or partial elimination of transition area if there is no feasible alternative location for the linear development.

1. An alternative location shall be considered feasible when the proposed linear development can be located outside of the transition area by:

i. Modifying the route of the linear development to avoid or reduce impacts to freshwater wetlands and transition areas; or

ii. Reducing the width of the linear development.

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

3. An alternative shall not be excluded from consideration merely because it includes or requires an area not owned by the applicant which could reasonably have been or be obtained or used to fulfill the basic purpose of the proposed activity.

(d) An alternative on-site location, as described in

(b) above, or an alternative location, as described in (c) above, may be considered infeasible if its use for the project would cause other significant adverse environmental consequences.

(e) No substantial impact will be deemed to exist on a freshwater wetland, and a transition area waiver will be granted for the reduction or partial elimination of transition area in order to conduct activities in the transition area which are covered by the Statewide general permits at N.J.A.C. 7:7A-9.2(a) 2, 3, 4, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, and 25.

1. With the exceptions listed below at (e)1i through iii, all limitations and conditions contained in the description of Statewide general permit activities at N.J.A.C. 7:7A-9.2(a) will also apply to those activities when authorized by a permit pursuant to this subsection. For example, where the Statewide general permit at N.J.A.C. 7:7A-9.2(a)10, minor road crossings, is limited to 0.25 acres of wetland or open water disturbance, the special activity waiver for this activity will be limited to 0.25 acres of transition area disturbance. The following exceptions to this provision will apply:

i. For a special activity transition area waiver authorizing activities listed in Statewide general permit number 10, the 200 cubic yard fill limitation does not apply;

ii. For a special activity transition area waiver authorizing construction of stormwater structures that include a swale designed for water quality as listed in Statewide general permit number 11, the limitation at N.J.A.C. 7:7A-9.2(a)11vii, concerning backfill does not apply; and

iii. For a special activity transition area waiver authorizing activities listed in Statewide general permit number 16, the 10 cubic yard fill limitation does not apply.

2. The limits at N.J.A.C. 7:7A-9.4 on the use of multiple Statewide general permits in freshwater wetlands also apply to the use in transition areas of multiple special activity waivers issued under this subsection. For example, pursuant to N.J.A.C. 7:7A-9.4(d), an approval under the Statewide general permit at N.J.A.C. 7:7A-9.2(a)8 will be authorized only once for a single property. Likewise, only one special activity waiver for the activity covered by that Statewide general permit shall be approved in a transition area.

3. The authorization of the special activity waiver for general permit activities in transition areas listed under

this subsection does not eliminate the possibility that activities in freshwater wetlands or State open waters may be authorized under Statewide general permits. However, these waivers shall not be used to double the impact of a specific activity by the combining the allowed wetland and transition area impacts. For example, one minor road crossing shall not exceed 0.25 acres of disturbance or 100 linear feet regardless of whether the crossing is entirely in wetlands and open waters, entirely in the transition area, or traverses both. The 0.25 acre limitation does not include the transition area that is necessary for access to a wetland crossing. For example the Department shall not approve an application that combines a minor road crossing (Statewide general permit number 10) in the wetlands with a minor road crossing in the transition area (Special activity wavier number 10) which results in a minor road crossing designed to cross a 100 feet of wetlands and open waters and then parallels the wetland for an additional 100 feet through the transition area.

(f) A special activity waiver may be granted for the reduction or partial elimination of a transition area in order to allow redevelopment, as defined at N.J.A.C. 7:7A-1.4, of a transition area, if the following conditions are met:

1. The applicant must demonstrate to the satisfaction of the Department that the proposed activity will not result in substantial impact to the adjacent freshwater wetland;

2. The area of proposed activity must be covered by pavements or impervious surfaces legally existing in the transition area prior to July 1, 1989, or permitted under the Act. This does not include expansion of impervious surfaces or any additional disturbance of the transition area;

3. Where practicable, a portion of the developed transition area adjacent to the wetland shall be revegetated and restricted pursuant to N.J.A.C. 7:7A-7.1(g).

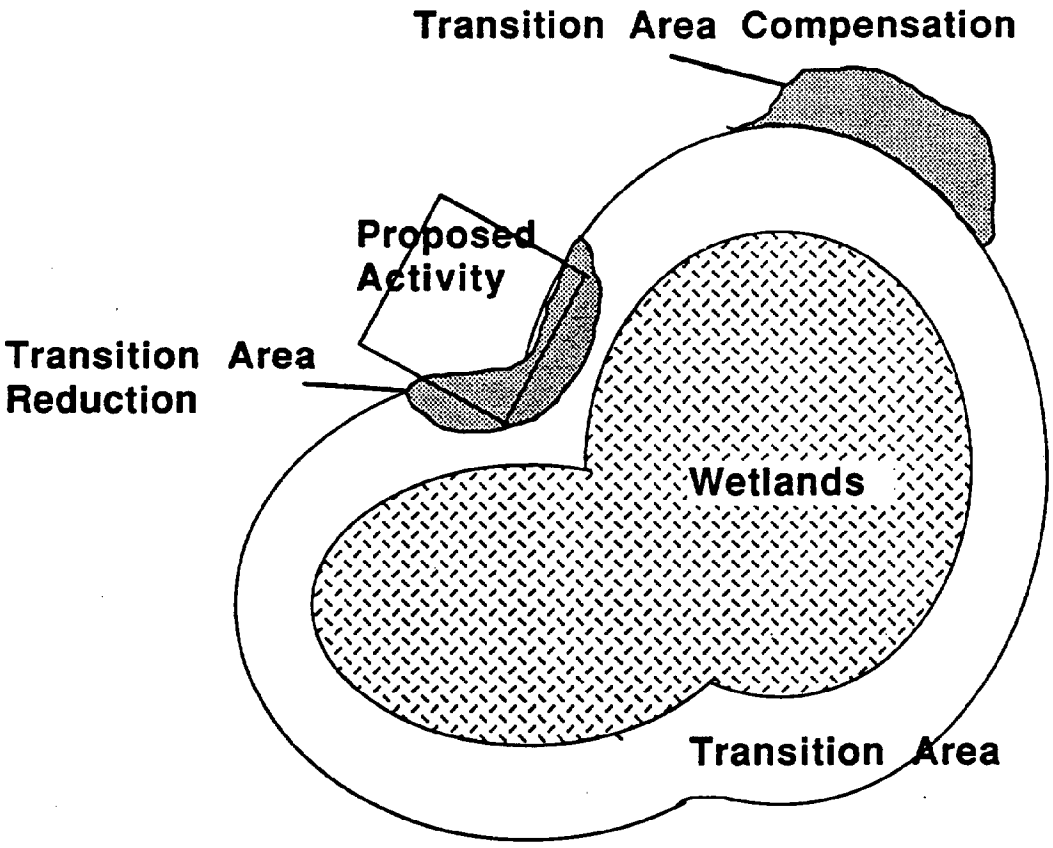
(g) A person shall not commence a prohibited activity in a transition area pursuant to (e) above prior to obtaining a transition area waiver from the Department pursuant to the Act and this chapter. The limitations of N.J.A.C. 7:7A-7.2(c) and 7.3(c) do not apply to transition area waivers granted under (e) above.

7:7A-7.5 Transition area waiver, averaging plans: Standards for modifying the shape of a transition area

(a) A transition area averaging plan, a type of transition area waiver, is a plan to modify the overall shape of the transition area without reducing the total

square footage of the transition area. A transition area averaging plan may be approved for activities adjacent to either an intermediate or exceptional resource value freshwater wetlands. An example of a transition area averaging plan is shown in N.J.A.C. 7:7A-7 Appendix A, which is incorporated by reference in this subchapter.

7:7A-7 Regulatory Appendix A. Example of a transition area averaging plan.



The square footage in the compensation area is equal to that of the reduction area.

(b) Subject to the limitations contained in this subsection and to the limitations of (c) and below, an applicant may change the shape of a transition area consistent with a Department approved transition area averaging plan. Portions of the required transition area width may be reduced provided that the reduction in width is compensated, on a square footage basis, by the expansion of another portion of the same transition area on property owned or legally controlled by the applicant, and provided that the resulting transition area continues to serve the purposes of a transition area set forth in N.J.A.C. 7:7A-6.1(a) and (b).

1. The Department shall not approve any transition area averaging plan for exceptional resource value wetlands if any of the following site conditions exist because the Department has determined that the resultant transition area will no longer serve the purposes of a transition area set forth in N.J.A.C. 7:7A-6.1(a) and (b):

i. The slope of the existing, pre-activity transition area where the reduction is proposed is greater than 25 percent;

ii. The freshwater wetland adjacent to the transition area is a breeding or nesting habitat for "threatened or endangered species," as defined at N.J.A.C. 7:7A-1.4; or

iii. The transition area averaging plan proposes to:

(1) Compensate for the reduction of the transition area by increasing the width of any portion of the transition area to more than 50 percent of the standard transition area width;

(2) Reduce the transition area in order to place or construct a new septic system which discharges onsite; or

(3) Reduce the transition area to place or construct an outfall structure that is discharging or will discharge unfiltered or otherwise untreated stormwater into the adjacent wetlands.

2. For an exceptional resource value wetland, in the case where an averaging plan is applied for in conjunction with a transition area reduction, regardless of the reduction width approved, the averaging plan shall be calculated on a minimum 100 foot width; or

3. In no case shall the width of any part of a transition area adjacent to a freshwater wetland of exceptional resource value be reduced to less than 75 feet except pursuant to N.J.A.C. 7:7A-7.1(f) (transition area

waiver for access to authorized activities), or N.J.A.C. 7:7A-7.2(a) (standards for width reduction) unless the applicant demonstrates, to the satisfaction of the Department that if the activity was instead proposed in the exceptional resource value wetland it would meet the standards for granting a freshwater wetlands permit.

4. The Department shall not approve any transition area averaging plan for intermediate resource value wetlands if the following site conditions exist because the Department has determined that the resultant transition area will no longer serve the purposes of a transition area set forth in N.J.A.C. 7:7A-6.1(a) and (b):

i. The slope of the existing, pre-activity transition area where the reduction is proposed is greater than 25 percent;

ii. The transition area averaging plan proposes to:

(1) Reduce any portion of the transition area to less than 10 feet:

(2) Reduce the transition area to less than 25 feet in areas of critical habitat;

(3) Reduce the transition area to 10 feet wide for a continuous distance of 100 linear feet or more along the freshwater wetlands boundary;

(4) Compensate for the reduction of the transition area by increasing the width of any portion of the transition area to more than 50 percent of the standard transition area width;

(5) Reduce the transition area to place or construct a new septic system in the transition area which discharges onsite;

(6) Reduce the transition area to place or construct an outfall structure that is discharging unfiltered or otherwise untreated stormwater into the adjacent wetlands;

(7) Place structures, impervious surfaces or stormwater management facilities as defined at N.J.A.C. 7:7A-7.4 within 20 feet of the freshwater wetlands; or

(8) Reduce the transition area to less than 25 feet within the drainage basins of currently existing or proposed National Wildlife Refuges.

(c) A transition area averaging plan shall be based on each individual freshwater wetland and its associated transition area. Any expansion(s) of a transition area to

compensate for a reduction elsewhere shall be located on the same transition area as the reduction, shall be adjacent to the same freshwater wetland where the transition area was reduced, and shall be on property owned or legally controlled by the applicant.

7:7A-7.6 Application contents for transition area waivers

(a) Except for applications for a special activity waiver based on Statewide general permit #25 for repair or alteration of malfunctioning individual subsurface sewage disposal systems pursuant to N.J.A.C. 7:7A-7.4(e), the application for a transition area waiver shall include the applicable fee for the review and processing of a transition area waiver application specified at N.J.A.C. 7:7A-16 and three copies of the following information. Applicants seeking authorization pursuant to N.J.A.C. 7:7A-7.4(e), shall comply with the notification procedures found at (c)4 below:

1. A completed application form, obtainable at the address at N.J.A.C. 7:7A-1.3, filled out as directed for a transition area waiver in the instructions accompanying the application form;

2. A written description of the location of the proposed activity and property including county, municipality, municipal lot(s), block(s) and street address;

3. A copy or photocopy of a portion of the U.S. Geologic Survey (U.S.G.S.) 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, CN 402, Trenton, N.J., 08625) with the property clearly outlined, and a determination of the State Plane Coordinates for the center of the property. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects, the applicant shall provide State plane coordinates for the end-points of those projects which are 1999 feet or less, and for those projects which are 2000 feet and longer, additional coordinates at each 1000 foot interval;

4. A folded preliminary site plan or subdivision map of the property, or folded out-bound survey map of the property if no preliminary site plan or subdivision map exists, clearly identifying all proposed activities on the entire property, all existing structures on the property, and the freshwater wetland boundary as verified through a Letter of Interpretation;

i. Note: If the freshwater wetlands boundary shown on the site plan or subdivision map has not been verified by an LOI, the freshwater wetland boundary shall be visibly flagged and/or staked in the field.

5. A detailed written description of the proposed activity or activities, describing the total area to be modified by the entire project, and the total square footage of the transition area potentially affected, either temporarily or permanently.

6. A certified mail return receipt card, white receipt or green card is acceptable, from the U.S. Post Office, showing that a complete copy of the submittal to the Department requesting a transition area waiver, including all materials required by this subsection, has been submitted to the clerk of each municipality in which the prohibited activity is proposed to take place.

7. A certified mail return receipt card, white receipt or green card is acceptable, from the U.S. Post Office, showing that a written notice has been forwarded to the municipal construction official, the environmental commission, or any other public body with similar responsibilities, planning board of each municipality, and the planning board of each county in which the activity is to occur and all landowners within 200 feet of the subject property. One written notice may be submitted for multiple applications so long as all notification requirements for each separate subsection is met. The written notice shall include, at a minimum, the following information and statement:

i. The name(s) and address(es) of the property owner(s);

ii. The property location by municipal lot(s) and block(s), municipality, county, and street address;

iii. A description of the proposed project and types of activities in the transition area;

iv. A map of the type required by (a)3 above showing the location of the property; and

v. The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the Land Use Regulation Element, Department of Environmental Protection and Energy, for a transition area waiver. The rules governing transition areas are found at N.J.A.C. 7:7A (Freshwater Wetlands Protection Act Rules).

A transition area waiver, if approved by the Department, will allow certain prohibited activities, as defined in N.J.A.C. 7:7A-6.2, to occur in a transition area. A transition area is an area adjacent to a freshwater

wetlands which minimizes adverse environmental impacts on the freshwater wetlands and serves as an integral component of the freshwater wetlands ecosystem. A transition area can extend up to 150 feet from the freshwater wetlands boundary depending on the resource value classification of the freshwater wetlands.

A copy of the application can be viewed at the Municipal Clerk's Office or by appointment at the address below during normal business hours. The Department welcomes comments on the transition area waiver application. Procedures for the Department's review of transition area waiver applications can be found at N.J.A.C. 7:7A-7.7. Written comments should be submitted to the Department within 15 days of receiving notice. Comments will be accepted until the Department makes a decision on the application. Please submit your written comments along with a copy of this letter to:

New Jersey Department of Environmental Protection and Energy
Land Use Regulation Element
Bureau of Regulation
CN 401
Trenton, New Jersey 08625
att: (County in which the property is located) Section Chief

As part of the Department's review of this application, Department personnel may perform a site inspection on your property. This site inspection will involve only that area of your property within 150 feet of the applicant's property line. This site visit will involve a visual inspection and possibly minor soil borings using a 4" diameter hand auger. The inspection will not result in any damage to vegetation or to improvements on your property.

The Department will notify the environmental commission or any other public body with similar responsibilities, and the planning board and the municipal construction official of each municipality and the planning board of each county in which the activity is to occur of the Department's final decision concerning this transition area waiver application;"

vi. If the proposed project involves a linear facility such as a pipeline or road of more than .5 miles, instead of notifying all landowners within 200 feet of the property(ies) lines, the applicant shall give public notice by publication of a display advertisement. The advertisement shall be a minimun of four column inches and be published in at least one newspaper of local circulation and one of regional circulation in the municipality. In addition, notice shall be given to owners of all real

property within 200 feet of any above surface structure related to the linear facility, such as pumping stations, treatment plants, power substations, grade separated interchanges or similar structures. This does not include utility support structures or conveyance lines.

8. Written consent by the applicant to allow access to the subject property by representatives or agents of the Department for the purpose of conducting site inspections or surveys of the freshwater wetlands and transition areas thereon; and

9. Any information establishing a claim of hardship as determined pursuant to N.J.A.C. 7:7A-7.2(f) or 7.3(e), if applicable.

(b) If the freshwater wetlands boundary on the property has not been confirmed or delineated by the Department through a letter of interpretation pursuant to N.J.A.C. 7:7A-8 and the property is greater than one acre, the applicant shall also provide as part of the transition area waiver application the information required in N.J.A.C. 7:7A-8.3(a), except for the notice requirements at 8.3(a)8 and 9, and 8.3(b)2, Application for letters of interpretation. For Special Activity Waivers based on Statewide general permits pursuant to N.J.A.C. 7:7A-7.4(e), a wetlands delineation is only required for the area of the proposed activity.

(c) In addition to the information required in (a) and (b) above, the following information shall be submitted depending on the type of transition area waiver(s) requested in the application:

1. To reduce the standard transition area width pursuant to N.J.A.C. 7:7A-7.2 and 7.3 (except pursuant to 7.2(d):

i. A description of the dominant vegetational community in the standard transition area, as described at N.J.A.C. 7:7A-7.2(e)1;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)2; and

iii. The development intensity of the proposed project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3.

2. To reduce the standard transition area width pursuant to N.J.A.C. 7:7A-7.2(d), a proposal containing:

i. A detailed description of the size and type of the transition area planting project;

ii. A site plan showing the location of the proposed work and a cross-sectional and plan view of the proposed work;

iii. A description of the types of native trees and shrubs to be planted and at what spacing, as well as the type of seeding, fertilization and other stabilization activities;

iv. A monitoring and maintenance plan of the reduced transition area to ensure no less than 85 percent area coverage in the entire 100 foot wide transition area and no less than 85 percent survival of the plants for three years;

v. A schedule from initiation to completion of the planting project including the dates of planting and fertilization (rates and types), dates of monitoring measurements, as well as any other activities;

vi. Existing soil type(s) and soil conditions in the transition area; and

vii. Proof that the standard transition area has been part of an "established, ongoing farming, ranching or silviculture operation" as defined at N.J.A.C. 7:7A-1.4 within the two years prior to submittal of the application.

3. For a special activity transition area waiver for the construction of a stormwater management facility or a linear development pursuant to N.J.A.C. 7:7A-7.4:

i. A written alternatives analysis describing the various alternatives considered including a written description and site plan drawings of each possible alternative considered and the reason(s) each alternative is not considered feasible.

4. For a special activity transition area waiver for a general permit activity pursuant to N.J.A.C. 7:7A-7.4(e), except for those based on Statewide general permit number 25 as described below at (c)4ii:

i. All of the information required for determining compliance with the criteria of the specific general permit activity pursuant to N.J.A.C. 7:7A-9.2(a).

ii. A person proposing to engage in activities pursuant to N.J.A.C. 7:7A-7.4(e), based on Statewide general permit number 25, repair or alteration of malfunctioning individual subsurface sewage disposal systems, shall submit written notice containing a description of the proposed activities to the Department at least 30 days prior to commencement of work. This notification shall include a description and plan of the activities and their location including

municipality, county, block, and lot; and an approval from the Board of Health or its designated agent for the proposed activities. If the Department fails to notify the applicant within 30 days of receiving the notification, the special activity waiver shall be deemed to have been approved, to the extent that the activity does not violate other statutes or regulations then in effect, and subject to any standard terms and conditions pursuant to N.J.A.C. 7:7A-9.3.

5. For a special activity transition area waiver for redevelopment of a transition area pursuant to N.J.A.C. 7:7A-7.4(f):

i. Plans showing location and extent of existing impermeable surfaces in relation to transition area.

ii. Plans showing location and extent of proposed development and attendant features including but not limited to septic systems discharging onsite, and stormwater outfalls and proposed mechanism to treat stormwater runoff prior to leaving the site.

6. For a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5, a statement that includes:

i. The total square footage of the standard transition area;

ii. The total square footage of the transition area to be disturbed by the proposed project;

iii. The total square footage proposed for transition area reduction, and proposed for transition area expansion in compensation for the proposed reduction, pursuant to the transition area averaging plan; and

iv. A site plan showing and clearly labeling the standard transition area, the proposed area of reduction of the standard transition area, and the proposed areas adjacent to the standard transition area that will be added to the standard transition area as square footage compensation for the reduction. The transition area shown on the site plan shall be reproducible in the field.

(d) Applicants shall perform recordkeeping activities for transition area waiver applications according to the requirements at N.J.A.C. 7:7A-11.2.

(e) All transition area waiver applications shall be signed according to the signatory requirements at N.J.A.C. 7:7A-11.3.

(f) All transition area application fees shall be paid according to the requirements set forth for payment of

permit fees at N.J.A.C. 7:7A-16.

7:7A-7.7 Procedure for review of transition area waiver applications

(a) Within 30 days of the receipt of an application for a transition area waiver, the Department shall review the application for completeness and may return all materials contained in a deficient application with a request for additional information, or declare the application complete. If the application does not include the fee specified at N.J.A.C. 7:7A-16, no action shall be taken by the Department under this section, the submittal will not be considered an application, and completeness review will not begin.

(b) If additional information is required of an applicant, the Department shall have 15 days after receipt of the information to request clarification of the submitted additional information. In such cases, the application shall not be considered complete until the clarification is received by the Department. If no clarification of the additional information is necessary, the application shall be considered complete as of the date of receipt of the additional information.

(c) Except as indicated in (d) and (h) below, the Department shall issue or deny a transition area waiver within 90 days of receiving a complete transition area waiver application or within 90 days after receipt of the requested additional information or clarification sufficient for the application to be considered complete.

(d) If the transition area waiver application is submitted together with an individual freshwater wetlands permit application concerning the same property, the Department shall approve or deny the transition area waiver within the time period set forth in N.J.A.C. 7:7A-12 for the approval or denial of the individual freshwater wetlands permit application.

(e) Applications may be cancelled by the Department or withdrawn, amended, or resubmitted by the applicant pursuant to N.J.A.C. 7:7A-7.10.

(f) When a transition area waiver is issued pursuant to this subchapter, the Department shall send copies to all municipal and county agencies which received copies of the transition area waiver application.

(g) The Department will provide notice of application for a transition area waiver, the status of all applications, and the final decision concerning all applications in the DEPE Bulletin, as set forth in N.J.A.C.

7:7A-12.4.

1. Copies of all transition area waiver applications will be available for public review by interested persons at the Municipal Clerk's office and in the offices of the Department in Trenton (see N.J.A.C. 7:7A-1.3 for address) by appointment during normal business hours.

(h) Within 20 days of publication of the notice of application in the DEPE Bulletin, interested persons may request in writing that the Department hold a public hearing on a particular application. The Department will set a time, place and date for the public hearing after the close of the 20 day hearing request period, and shall so notify the applicant. The Department will hold the public hearing within 60 days from the close of the 20 day period. The hearing shall be in the county wherein the transition area is located whenever practicable. The applicant is responsible for the cost of the hearing.

1. The Department may issue or deny a waiver without a public hearing unless there is a significant degree of public interest in the application. If the Department grants a hearing, the application shall not be considered complete until 15 days after the public hearing.

2. The Department and the applicant shall follow the public hearing procedures for freshwater wetlands permits established N.J.A.C. 7:7A-12.4(d) through (i).

(i) The Department shall establish conditions in transition area waiver as required on a case-by-case basis, to assure compliance with all applicable provisions of this chapter and the Act.

7:7A-7.8 Hearings and appeal

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

7:7A-7.9 Duration, effect, modification and transfer of transition area waiver

(a) A transition area waiver issued by the Department shall be effective for a fixed term of five years.

(b) If construction is begun during the valid five year term of the waiver and performed on a continuous basis, the applicant may apply for an extension of the effective date of the waiver.

(c) If construction does not begin in the transition

area within the five year term of the waiver a new waiver application will be required.

(d) The issuance of a transition area waiver does not convey property rights of any sort, or any exclusive privilege.

(e) In the event of rental, lease, sale or other conveyance of the site by the permittee, the waiver shall be continued in force and shall apply to the new tenant, lessee, owner or assignee so long as there is no change in the site, proposed construction or proposed use of the facility, as described in the original application, and as long as a waiver modification pursuant to N.J.A.C. 7:7A-13 has been approved.

7:7A-7.10 Cancellation, withdrawal, resubmission and amendment of applications

(a) Applications may be cancelled by the Department; or withdrawn, amended, or resubmitted by an applicant.

(b) If an application is not complete for final review within 60 days of a request for additional information, the Department shall send a letter canceling the application and stating that the application will be purged from Department files and that 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 30 days. The Department will grant additional 30-day extensions upon receiving a written request for such extension from the applicant.

1. All fees submitted with an application subsequently cancelled shall be non-refundable.

(c) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable when a significant portion of the review has been completed. In some cases however (see (d) below) the fees may be credited toward future applications.

(d) If an application is cancelled, denied or withdrawn, the applicant may resubmit an application for a revised project on the same site. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. A new fee will be required unless application is resubmitted within one year of the date of denial or withdrawal, in which case the original waiver fee may be credited to the new application.

(e) A waiver application may be amended at the applicant's discretion at any time as part of the waiver review process. Copies of amendments and amended information shall be distributed by the applicant to the same persons to whom copies of the initial application were distributed. All amendments to pending applications shall constitute a new submission and may at the Department's discretion require reinitiation of the entire review process.

SUBCHAPTER 8. LETTERS OF INTERPRETATION

7:7A-8.1 Purpose

A person proposing to engage in a regulated activity in a freshwater wetland and/or open water, or in a regulated activity which requires a transition area waiver , or desiring the information for other purposes, may request from the Department a letter of interpretation (LOI) to establish either the presence or absence, of freshwater wetlands, State open waters or transition areas or the verification of the boundary of wetlands, open waters, and/or transition areas on a project site. The information provided by this letter then may be used in applying for a permit from the Department, for activities proposed in a freshwater wetland, State open water, or transition area.

In addition to the above information, if the subject property has wetlands within or adjacent to its boundaries, or transition areas located within its boundaries, a resource value classification will be provided with the letter of interpretation.

A letter of interpretation only provides information on the location or presence of wetlands, open waters, and/or transition areas and does not grant an approval to the applicant to conduct any regulated or prohibited activities.

7:7A-8.2 Types of letters of interpretation

(a) Various types of letters of interpretation are available from the Department, depending on the type of information requested by the applicant, the size of the right-of-way or size of the parcel (based on municipal tax block and lot), or the project (based on the proposed limits of disturbance) for which the letter will be issued. The types of letters of interpretation are as follows:

1. Presence or absence determination: The Department will issue an LOI determining whether any freshwater wetlands, State open waters or transition areas exist on a right-of-way or parcel (limits defined by municipal tax block and lot boundaries or ROW description).

This LOI will not determine the location of these features, but only whether they are present and the resource value classification if wetlands are present. This LOI will be issued for any size parcel.

2. Footprint of disturbance - Presence or absence determination: The Department will issue an LOI determining only the presence or absence of wetlands, State open waters or transition areas for projects which have proposed limits of disturbance totally contained within an area of one acre or less. The limits of disturbance of the proposed project must be flagged in the field and indicated on an out bound survey. The Department may at its discretion require that the limits of disturbance be surveyed upon completion of the field inspection. The project limits must include all possible disturbances, either temporary or permanent in nature, that are a result of the proposed regulated activities listed in N.J.A.C. 7:7A-2.3, Regulated Activities, and N.J.A.C. 7:7A-6.2, Prohibited activities in transition areas. Examples of activities that shall be indicated on the plans include, but are not limited to the following: clearing of vegetation, grading or earth work, construction of any buildings, location of wells and septic systems, placement of any impervious surfacing for walkways, driveways, or parking lots, and any landscaping.

3. Regulatory line delineation: The Department will issue a letter of interpretation, delineating the limits of any wetlands, State open water or transition areas present on a parcel or right of way of one acre or less, whose limits are defined by municipal tax block(s) and lot(s) boundaries or ROW description. The Department may require that the wetlands line be surveyed upon completion of the field inspection.

4. Regulatory line verification: The Department will issue a letter of interpretation verifying an applicant's delineation of the boundaries of a wetland, open water and/or transition area present on parcels or rights-of-way over one acre in size. The limits of the parcel or right of way must be defined by municipal tax block(s) and lot(s) boundaries or ROW description.

7:7A-8.3 Application for letters of interpretation

(a) The application for a letter of interpretation shall include the applicable fee for the review and processing of a letter of interpretation application specified at N.J.A.C. 7:7A-16.2 and three copies of the following information:

1. Name and address of owner(s) of the property, municipality, county, block and lot number(s) or ROW description;

2. A folded out-bound survey of the property or a folded site plan, if available. If the applicant is applying for a Presence or absence determination pursuant to N.J.A.C. 7:7A-8.2(a)1, a tax map may be substituted to satisfy this requirement. The survey or site plan should include all natural or human-made features such as structures, fences, streams, ponds, treelines, etc. In addition, the corners of the property boundary shall be visibly flagged and/or staked in the field to facilitate the on-site inspection;

3. A copy of the current municipal tax map for the subject property;

4. A copy of the appropriate county road map or other local street map clearly indicating the location of the subject property;

5. A folded copy of the appropriate portion of a U.S. Geologic Survey Quadrangle Map for the parcel site with the boundaries of the parcel (defined by tax block and lot) or project (limits of disturbance) clearly outlined, and a determination of the State Plane Coordinates for the center of the parcel. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects, the applicant shall provide State plane coordinates for the end-points of those projects which are 1999 feet or less, and for those projects which are 2000 feet and longer, additional coordinates at each 1000 foot interval;

6. A copy of the appropriate United States Department of Agriculture, Soil Conservation Service County Soil Survey sheet, with the boundaries of the subject parcel (defined by tax block and lot) or project (limits of disturbance) clearly outlined. The sheet number of the Soil Survey shall be included;

7. For the copies of the applications submitted to the Department, clear color photographs of the property (a minimum of four views is recommended) with description and location of each view;

8. Verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a complete copy of the request for a letter of interpretation including all materials required by this subsection, have been forwarded to the clerk of the municipality in which the parcel or project is located;

9. Verification that certified mail notice with return receipt requested (white receipt or green card is acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, the planning board and the municipal

construction official of each municipality, and the planning board of each county in which the parcel or project is located and landowners within 200 feet of the legal boundary line of the subject property or properties. Applicant must also provide a list of landowners within 200 feet. The written notices satisfying this item and item 9 above may be filed concurrently with notices required pursuant to N.J.S.A. 40:55D-1 et seq. (The Municipal Land Use Law), but should be mailed no sooner than two working days before the application package is delivered to the Department. This will allow ample time for the application to be processed to accommodate public review. The written notice shall include, at a minimum, the following information and statement:

i. The name(s) and address(es) of the property owner(s);

ii. The property location described by block(s) and lot(s), municipality, county, and street address;

iii. A description of the proposed project or the reason for applying for a letter of interpretation; and

iv. The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the New Jersey Department of Environmental Protection and Energy, Land Use Regulation Element for a letter of interpretation.

A letter of interpretation is a legal document that establishes either the presence or absence or limits of wetlands, open water or transition areas on a subject property as defined at N.J.S.A. 13:9B-1 et seq. The width of the transition area adjacent to a wetland is determined by the resource value classification of the wetland. This information is also provided by a letter of interpretation. If any of these features are present on a parcel the Department will regulate many aspects of development on those areas as defined in N.J.A.C. 7:7A-1.4, Regulated activities.

The complete letter of interpretation application package can be reviewed at either the municipal clerk's office or by appointment at the Land Use Regulation Element office at the address listed below. The Department welcomes comments and any information that you may provide concerning the presence of wetlands, open water or transition areas on the referenced parcel. Written comments should be submitted within 15 days of receiving this letter. Comments will be accepted until the Department makes a decision on the application. Please submit your written comments along with

a copy of this letter to:

New Jersey Department of Environmental Protection and Energy
Land Use Regulation Element
Bureau of Regulation
CN 401
5 Station Plaza
Trenton, New Jersey 08625
att: (County in which the property is located) Section Chief

As part of the Department's review of this application, Department personnel may perform a site inspection on your property. This site inspection will involve only land within 150 feet from the applicant's property line. This site visit will involve a visual inspection and possibly minor soil borings using a 4" diameter hand auger. The inspection will not result in any damage to vegetation or any improvements on your property.

The Department will notify the environmental commission, the planning board of the municipality and the municipal construction official of the Department's determination in the letter of interpretation.";

v. If the proposed project involves a linear facility such as a pipeline or road of more than .5 miles, instead of notifying all landowners within 200 feet of the property(ies) lines, the applicant shall give public notice by publication of a display advertisement. The advertisement shall be a minimun of four column inches and be published in at least one newspaper of local circulation and one of regional circulation in the municipality. In addition, notice shall be given to owners of all real property within 200 feet of any above above surface structure related to the linear facility, such as pumping stations, treatment plants, power substations, grade separated interchanges or similar structures. This does not include utility support structures or conveyance lines.

10. Unconditional written consent by the owner of the subject property to allow access to the site by representatives or agents of the Department for the purpose of conducting a site inspection or survey of the freshwater wetlands, State open waters or transition areas thereon;

11. A fee pursuant to N.J.A.C. 7:7A-16, as indicated on the printed fee schedule which is available from the Department.

(b) In addition to the information required in (a) above, the following information shall be submitted depending on the type of Letter of Interpretation requested in the application:

1. For a letter of interpretation for a footprint of disturbance - presence or absence determination pursuant to N.J.A.C. 7:7A-8.2(a)2:

i. The limits of all disturbance of any proposed regulated activities, including grading, shall be clearly indicated and labeled on an out-bound survey with a scale of one inch equals no more than 50 feet. These limits must encompass no more than one acre in total. In addition, the project limits shall be visibly flagged and/or staked in the field with numbered flags and referenced by matching numbers on the out-bound survey. The flags and/or stakes shall be set in relation to known points and landmarks if available, so that the limits can be reestablished. The Department may at its discretion require that the limits of disturbance be surveyed upon completion of the field inspection.

2. For a letter of interpretation for a regulatory line verification pursuant to N.J.A.C. 7:7A-8.2(a)4:

i. The applicant shall provide a folded out-bound survey or folded site plan of the property. The scale of the survey shall be one inch equals no more than 100 feet. If the subject parcel is located in either Middlesex or Mercer County or north of these counties, the survey must include topography depicting contours at no greater than five foot intervals. For counties south of Middlesex and Mercer, the survey must include topography depicting, at a minimum, two foot contours.

(1) The proposed wetlands and/or open waters boundary must be clearly indicated and labeled on the out-bound survey. The boundary must be accurate enough to allow Department personnel to locate the wetland boundary in the field. A surveyed line will only be required after the line has been verified by the Department and only for properties of five acres or more;

(2) The locations of all soil borings or pits, if applicable, shall be indicated on the survey and numbered. Soil logs should be presented with an indication of the depth to the seasonal high water table. Soil borings must be to a minimum depth of 24 inches on transects perpendicular to the wetlands boundary starting in the definite wetlands area and moving towards the uplands. In wetlands with atypical characteristics, or in wetlands which have been disturbed by human activities or as otherwise deemed appropriate, the Department may require deeper borings as needed;

(3) Vegetative species, recorded at soil boring locations, and classified using United States Fish and Wildlife Service categories as listed under "R/IND" and

"NAT-IND" (Regional and National Indicators) columns in the "National List of Plant Species that Occur in Wetlands: 1988-New Jersey" and amendments thereto, compiled by the USFWS, United States Army Crop of Engineers (Corps), USEPA and the United States Soil Conservation Service;

(4) The wetlands and/or open water boundary line shall be visibly flagged and/or staked in the field with numbered flags, placed no greater than 75 feet apart, and referenced by matching numbers on the out-bound survey. The flags and/or stakes are to be set in relation to known points and landmarks if available, so that the boundary can be re-established;

(5) Name of the person who prepared the proposed wetland and/or open water boundary.

7:7A-8.4 Onsite inspections

(a) For properties greater than one acre in size, the Department shall require an applicant for a letter of interpretation to submit to the Department an onsite wetlands delineation using the three-parameter method to determine or verify the location of the freshwater wetland boundary. The line shall be subject to approval and verification by the Department.

(b) If the Department determines that onsite inspection by the Department is necessary, the Department shall conduct an inspection, and the time specified in this subchapter for issuance of the letter of interpretation shall be extended by 45 days.

(c) Depending upon the specific project location and its proximity to documented hydrologic indicators, and other available information and documentation, the Department may issue a letter of interpretation without conducting a site inspection.

7:7A-8.5 Local review

The Department, in determining the presence or absence of freshwater wetlands, State open waters and transition areas and the location of their boundaries if they are present, shall consider comments filed by municipal and county governments and interested citizens. Comments filed by the clerk, environmental commission or any public body with similar responsibilities and planning board of a municipality or county, or municipal construction official will be actively considered as part of all determinations. Written comments should be submitted to the Department within 15 days of receiving notice. Comments will be accepted until the Department makes a decision on the application.

7:7A-8.6 Effect of a letter of interpretation

A person who receives a letter of interpretation pursuant to this subchapter shall be entitled to rely on the determination of the Department, concerning the presence or absence, or the extent of freshwater wetlands and/or State open waters, for a period of five years unless the letter of interpretation is determined to have been based on inaccurate information, in which case it shall be void.

7:7A-8.7 Reissuance of a Letter of Interpretation

A Letter of Interpretation may be extended beyond the five year time period, but not to exceed five years from the original expiration date. Requests for extensions shall be made in writing to the Department before the letter has expired and shall include the file number, a copy of the originally approved plans and fee as specified at N.J.A.C. 7:7A-16.2. Applicants will be required to submit a new application if an extension is not applied for prior to the expiration date of the letter of interpretation. The term of the letter may be extended provided that the information upon which the original letter was based remains valid.

7:7A-8.8 Effect of non-issuance of a letter of interpretation within time allotted

(a) Within 20 days after receipt of a request for a letter of interpretation, the Department may require the submission of any additional information necessary to issue the letter of interpretation.

(b) If no additional information is requested, the Department shall issue a letter of inerpretation within 30 days after receiving the request.

(c) If additional information is requested by the Department in order to issue a letter of interpretation, the Department shall issue a letter of interpretation within 45 days after receipt of the information sufficient to declare the application complete.

(d) Any person who requests a letter of interpretation pursuant to the provisions of the Act and this chapter, and does not receive a response from the Department within the deadlines imposed in this subchapter shall not be entitled to assume that the site of the proposed activity which was the subject of the request for a letter of interpretation is not in a freshwater wetland or a transition area.

(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.

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.

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.

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 N.J.A.C. 7:7A-9.2(b) 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 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, cleanup 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 of 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; and

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 as 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 wetlands 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 revegatated 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 7:7A-2.3(c).

13. Dredging activities in wetlands 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 spoil 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 (i.e., 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.

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 can not 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 adequately support an individual 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.

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 7:7A-9.4 and Mitigation pursuant to 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 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. 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 NJ 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

American Shad-For the Delaware River from the Delaware Bay to the Delaware Memorial Bridge, and tidal Maurice River

March 1-April 30 and October 1-November 30

All other waterways classified for anadromous fish

April 1 - June 30;

For waterways classified, on a case by case basis, as spawning areas for warm water fish

May 1- June 30.

4. During construction activities, all excavation must be monitored to check for the presence of acid-producing deposits pursuant to N.J.A.C. 7:13-5.10 of the Flood Hazard Area Control Rules. If any such deposits are encountered, the mitigation and disposal standards described in N.J.A.C. 7:13-5.10 must be implemented. If any such deposits are encountered, an annual post-planting monitoring program shall be established to ensure that the reestablishment of vegetation in temporarily disturbed areas, shall have a minimum 85 percent plant survival and coverage rate after two complete growing seasons. Failure to achieve this survival rate will require implementation of additional corrective measures and/or reevaluation of the acid producing soils mitigation proposal to ensure the 85 percent survival rate requirement.

5. The activity will not result in a violation of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 or implementing rules at N.J.A.C. 7:13-1.

6. Best management practices shall be followed whenever applicable.

7:7A-9.4 Use of multiple Statewide General Permits

(a) The Department may approve activities under the authority of more than one Statewide General Permit onsite

as defined at N.J.A.C. 7:7A-1.4, Definitions. No activity is authorized by a Statewide General Permit without an approval letter from the Department indicating that a Statewide General Permit authorizes the particular activity at the particular location.

(b) The Department may issue an approval, authorizing activities covered under a single Statewide General Permit, for more than one location on a single property, provided that the total area of wetlands or State open waters disturbed or modified by activities covered by the Statewide General Permit does not exceed the maximum allowed under that general permit.

(c) The Department may approve activities covered by different general permits onsite, provided that the individual limits of each general permit are complied with and that the total area of wetlands, and State open waters disturbed or modified does not exceed one acre with the exception of Statewide general permit number 17. For example, the Department could approve on-site a minor road crossing disturbing 0.25 acres, stormwater outfall structures disturbing a total of 0.25 acres, and the filling of 0.5 acres of a ditch.

(d) An individual permit will be required for review of all regulated impacts onsite (as defined at N.J.A.C. 7:7A-1.4), if the cumulative impact of one acre will be exceeded by any combination of Statewide general permits, or if the individual limits of Statewide general permits 2, 6, 7, 8, 10, 11, 19, 21, or 24 will be exceeded by the proposed activities.

(e) For Statewide General Permits at N.J.A.C. 7:7A-9.2(a) 1, 3, 4, 5, 12, 14, 16 and 17, the Department may issue approvals for any number of activities on a single property covered by any number of these general permits. Later activities on the same property will also be eligible for approval under these Statewide general permits.

(f) Statewide general permit numbers 13, 15, 18, and 20 shall be authorized onsite only once every five years.

7:7A-9.5 Application for activities under Statewide General Permits

(a) Except for Statewide General Permit number 25 pursuant to N.J.A.C. 7:7A-9.2(a)25, a person proposing to engage in an activity covered by a Statewide General Permit shall provide a fee pursuant to N.J.A.C. 7:7A-16 and three copies of the following information to the Department at least 30 working days prior to commencement of work. Applicants seeking authorization pursuant to N.J.A.C. 7:7A-9.2(a)25, shall comply with the notification procedures

found at (f) below:

1. An application form completed as per the instructions for a Statewide general permit;

2. Any information necessary to determine whether the conditions of the general permit will be satisfied, including but not limited to the following information:

i. Complete wetlands delineation including field delineation, folded plans at an appropriate scale, and wetlands field data sheets including soils and vegetation information (no formal report is required), for the area to be disturbed under the Statewide general permit application;

ii. A copy of the appropriate portion of the U.S. Geologic Survey Quadrangle (USGS) Map for the project site and a determination of the State Plane Coordinates for the center of the project. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects, the applicant shall provide State plane coordinates for the end-points of those projects which are 1999 feet or less, and for those projects which are 2000 feet and longer, additional coordinates at each 1000 foot interval;

iii. For projects that are located in municipalities listed below at (a)2iii(1) and all amendments thereto, pursuant to (a)2iii(2) below the applicant shall submit a signed statement certifying that the proposed activities will not result in any direct or indirect adverse impacts to Swamp pink (Helonias bullata) or its documented habitat; and

(1) Municipalities which have documented record of Helonias bullata:

Atlantic County
- Egg Harbor Township
- Town of Hammonton
- Mullica Township

Burlington County
- Evesham Township
- Maple Shade Township
- Pemberton Township
- Southampton Township
- Woodland Township
- Medford Township

Camden County
- Berlin Township
- Berlin Borough
- Clementon Borough
- Gibbsboro Borough
- Gloucester Township

Gloucester County
- Franklin Township
- Glassboro Borough
- Mantua Township
- Monroe Township
- Newfield Borough
- Washington Township
- Wenonah Borough
- West Deptford Township
- Woodbury Heights Borough
- Woolwich Township

Mercer County
- West Windsor Township

Middlesex County
- East Brunswick Township

Haddonfield Borough
Lindenwold Borough
Pine Hill Borough
Pine Valley Borough
Runnemede Borough
Voorhees Township
Waterford Township
Winslow Township

Cape May County
Cape May Point Borough
Dennis Township
Lower Township
Middle Township
Upper Township

Cumberland County
Bridgeton City
Downe Township
Fairfield Township
Hopewell Township

Lawrence Township
Millville City
Stow Creek Township

Upper Deerfield Township
Vineland City

Gloucester County
Clayton Borough
Deptford Township
East Greenwich Township
Elk Township
Edison Township
New Brunswick City
Sayreville Borough

Monmouth County
Brielle Borough
Colts Neck Township
Freehold Township
Howell Township
Wall Township

Morris County
Mount Olive Township
Randolph Township
Roxbury Township

Ocean County
Barnegat Township
Brick Township
Dover Township
Jackson Township
Lacey Township
Lakewood Township
Little Egg Harbor Twp.
Manchester Township
Plumsted Township
Stafford Township

Salem County
Alloway Township
Lower Alloways Creek Twp.
Pittsgrove Township
Quinton Township
Upper Pittsgrove Township

(2) The Department will publish notice in the New Jersey Register of any amendments to the list at (a)2iii(1) based upon updated information and make such information available at its offices and through the Office of Administrative Law.

3. Photographs of the portion of the property for which authorization is being requested.

(b) In addition, a person proposing to engage in an activity covered by a Statewide General Permit shall provide verification that a certified mail notice with return receipt requested and a complete copy of the application has been forwarded to the clerk of the municipality and that a certified mail notice with return receipt requested (white receipts or green cards are acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, municipal planning board, county planning board, municipal construction official, and

landowners within 200 feet of the legal boundary lines of the property(ies) on which the proposed activity will occur. Applicant must also provide a list of landowners within 200 feet. The notice shall contain:

1. A description of the proposed activity;

2. A description of the location of the activity including county, municipality, lot(s), block(s), and a plan of the site detailing existing structures, wetlands boundaries and proposed structures or activities, or both; and

3. The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the New Jersey Department of Environmental Protection and Energy, Land Use Regulation Element for a Statewide general permit.

A Statewide general permit will allow the property owner to conduct certain limited activities in freshwater wetlands or State open waters.

The complete Statewide general permit application package can be reviewed at either the municipal clerk's office or by appointment at the Land Use Regulation Element office at the address listed below. The Department of Environmental Protection and Energy welcomes comments and any information that you may provide concerning the wetlands or open waters on the referenced parcel. Written comments should be submitted to the Department within 15 days of receiving notice. Comments will be accepted until the Department makes a decision on the application. Please submit your written comments along with a copy of this letter to:

New Jersey Department of Environmental Protection and Energy
Land Use Regulation Element
Bureau of Regulation
CN 401
5 Station Plaza
Trenton, New Jersey 08625
att: (County in which the property is located) Section Chief

As part of the review of this application, Department personnel may perform a site inspection on your property. This site inspection will involve only that area within a maximum of 150 feet from the border of the applicant's property. This site visit will involve a visual inspection and possibly minor soil borings using a 4" diameter hand auger. The inspection will not result in any damage to the vegetation or improvements on your property.

The Department will notify your municipal environmental commission, planning board and the municipal construction official, as well as the county planning board of the Department's approval or denial of the Statewide general permit application."

(c) If the proposed project involves a linear facility such as a pipeline or road of more than .5 miles, instead of notifying all landowners within 200 feet of the property(ies) lines, the applicant shall give public notice by publication of a display advertisement. The advertisement shall be a minimun of four column inches and be published in at least one newspaper of local circulation and one of regional circulation in the municipality. In addition, notice shall be given to owners of all real property within 200 feet of any above surface structure related to the linear facility, such as a pumping station or treatment plant, power substations, grade separated interchanges or similar structures. This does not include utility support structures or conveyance lines.

(d) The Department, within 30 days of receipt of this notification, shall either return the package as incomplete or accept the application as administratively complete and notify in writing the person proposing to engage in the activity covered by a general permit as to whether they are covered by the Statewide General Permit, or whether an individual permit is required for the activity pursuant to (e) below. Activities begun or carried out without this written notification shall be a violation of the Statewide General Permit, the Act and this chapter. Issuance of authorizations shall be published in the DEPE Bulletin.

(e) Upon receiving an application for a general permit, the Department may require that the owner apply for an individual permit. Cases where an individual permit may be required include but are not limited to:

1. The activity has more than a minimal adverse environmental effect;

2. The cumulative effects on the environment of the authorized activities are more than minimal;

3. The applicant or project is not in compliance with the conditions of the general permit; or

4. Public comment indicates that the application does not meet general permit criteria.

(f) A person proposing to engage in activities pursuant to N.J.A.C. 7:7A-9.2(a)25, repair or alteration of malfunctioning individual subsurface sewage disposal systems, shall submit written notice containing a

description of the proposed activities to the Department at least 30 days prior to commencement of work. This notification shall include a description and plan of the activities and their location including municipality, county, block, and lot; and an approval from the Board of Health or its designated agent for the proposed activities. If the Department fails to notify the applicant within 30 days of receiving the notification, the activity shall be deemed to have been authorized, to the extent that the activity does not violate other statutes or regulations then in effect, and subject to any standard terms and conditions pursuant to N.J.A.C. 7:7A-9.3.

7:7A-9.6 Hearings and appeal

An applicant or other affected party may request an administrative hearing on any decision to issue or deny an authorization made by the Department pursuant to N.J.A.C. 7:7A-12.7.

7:7A-9.7 Duration of permit authorizations

(a) Authorizations for Statewide general permits shall be effective for a term not to exceed five years from the date of authorization.

(b) The term of an authorization shall not be extended beyond the maximum duration specified in this section. However, if necessary, an authorization may be renewed through the application process set forth in this chapter.

(c) If the term of the authorization exceeds the expiration date of the issued general permit, and the permit upon which the authorization is based is modified to include more stringent standards or conditions, or is not reissued, the applicant must comply with the requirements of the new regulations by applying for a new GP authorization or an Individual permit. For those applicants whose activities will no longer comply with the new regulations, if prior to the expiration date of the GP, the applicant is able to document that the activity was either under contract or under construction, the Department will allow the applicant one additional year, from the date of expiration of the issued general permit (not the authorization date), to complete the authorized activity. If the GP authorizing a particular activity is reissued without amendments, or with amendments expanding the authorized scope of activities, the authorization remains effective for the authorized five-year term.

7:7A-9.8 Cancellation, withdrawal, resubmission and amendment of applications

(a) Applications may be cancelled by the Department;

or withdrawn, amended, or resubmitted by an applicant.

(b) If an application is not complete for final review within 60 days of a request for additional information, the Department shall send a letter canceling the application and stating that the application will be purged from Department files and that 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 30 days. The Department will grant additional 30-day extensions upon receiving a written request for such extension from the applicant.

1. All fees submitted with an application subsequently cancelled shall be non-refundable.

(c) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable when a significant portion of the review has been completed. In some cases however (see (d) below) the fees may be credited toward future applications.

(d) If an application is cancelled, denied or withdrawn, the applicant may resubmit an application for a revised project on the same site. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. A new fee will be required unless application is resubmitted within one year of the date of denial or withdrawal, in which case the original permit fee may be credited to the new application.

(e) A permit application may be amended at the applicant's discretion at any time as part of the permit review process. Copies of amendments and amended information shall be distributed by the applicant to the same person to whom copies of the initial application were distributed. All amendments to pending applications shall constitute a new submission and may at the Department's discretion require reinitiation of the entire review process.

SUBCHAPTER 10. PRE-APPLICATION CONFERENCES

7:7A-10.1 Purpose

A pre-application conference is optional, but highly recommended. It allows the Department to inform potential applicants of the various procedures and policies which apply to the freshwater wetlands, open water fill, stream encroachment, and coastal program permitting process.

Department staff will candidly discuss the apparent strengths and weaknesses of the proposed permit application at this conference, but the Department shall in no way commit itself to approval or rejection of a proposed project as a result of these discussions.

7:7A-10.2 Request for a pre-application conference

(a) Potential applicants may request a pre-application conference with the Department. A request for a pre-application conference shall be made in writing and shall include a project description, a tax lot and block designation of the site, the location of the project site, including the municipality and county, the general location of freshwater wetlands and State regulated waters, a copy of the appropriate United States Soil Conservation Service map(s) locating the project, and a United States Geological Survey quadrangle map showing the site. The Department encourages the applicant to obtain a letter of interpretation prior to the preapplication conference.

(b) The Department shall, within 15 days of receipt of such request, schedule a pre-application conference.

7:7A-10.3 Discussion of information requirements

The Department shall candidly discuss the level of detail and areas of emphasis which will be necessary to allow the Department to review the application if one is submitted.

7:7A-10.4 Memorandum of record

(a) After the pre-application conference, the Department shall prepare a written memorandum of record summarizing the discussion of the apparent strengths and weaknesses of the proposed project, the apparent sensitivity of the land and water features of the site, and the level of detail and areas of emphasis necessary in the materials that the potential applicant may be required to submit as part of the application.

(b) The memorandum of record shall be mailed to the potential applicant or his or her agent, if designated in writing, and to the municipality, within 30 days after the pre-application conference. If the potential applicant submits an application, a copy of the memorandum of record shall be included with the application, and shall be included in the Department's file on the application.

(c) The memorandum of record shall not be construed as a decision of the Department. The Department is in no way bound by any information or statement recorded in the memorandum of record.

SUBCHAPTER 11. APPLICATION PROCEDURE

7:7A-11.1 Application contents for Individual Freshwater Wetlands and Open Water Fill Permits

(a) The Element will issue joint permits for projects requiring more than one Element permit whenever possible. It is strongly recommended that an applicant requiring more than one Element permit submit all applications materials simultaneously to facilitate joint permit processing. For example, the submission of all information necessary for both a Freshwater Wetlands permit and a Stream Encroachment permit at the same time will facilitate the issuance of a joint permit.

(b) The application for a freshwater wetland permit or open water fill permit shall include 10 copies of the following information:

1. A completed freshwater wetlands permit or open water fill permit application form including the names and addresses of all owners of property adjacent to the property which is the site of the proposed project. All activities which the applicant plans to undertake which are reasonably related to the same project should be included in the same permit application and will be considered simultaneously with the review of the individual permit. Only one application and fee will be required to review all regulated activities in freshwater wetlands, State open waters and transition areas associated with the project.

2. A folded preliminary site plan or subdivision map of the proposed regulated activities, or other map of the site if no preliminary site plan or subdivision map exists;

3. A written description of the proposed regulated activity, the total area to be used, filled or modified, the total area of the freshwater wetland or State open waters potentially affected, identification of the watershed in which the project is located, and the relationship of the area affected to the area of the entire freshwater wetland or State open waters complex, for example, one-half acre to be filled of a 15 acre freshwater wetland. In addition, project elements affecting transition areas should be detailed.

4. A description of the source of any fill material and a description of the type, composition and quantity of the material;

5. A description of alternatives to the proposed activity or discharge, including alternative sites, construction methods, methods of discharge, and reasons for

rejecting the alternatives pursuant to 7:7A-3, General Standards for Granting Individual Freshwater Wetlands and Open Water Fill Permits;

6. The purpose and intended use of the proposed activity, including whether it is water-dependent; a description of the use of any structures to be erected; and a schedule for the progress and completion of the proposed activity;

7. A list of the approvals required by other Federal, interstate, State and local agencies for the activity, including all approvals or denials received;

8. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, CN 402, Trenton, NJ, 08625) showing the location of the property and its general vicinity, indicating and labeling the location of the proposed activity and the property boundaries, and a determination of the State Plane Coordinates for the center of the property. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects, the applicant shall provide State plane coordinates for the end-points of those projects which are 1999 feet or less, and for those projects which are 2000 feet and longer, additional coordinates at each 1000 foot interval;

9. Verification that a complete copy of the application for an Individual permit, including all materials required by this subsection, has been submitted to the clerk of the municipality in which the proposed regulated activity will occur. Verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a copy of the vicinity map in (a)8 above have been forwarded to the environmental commission or any other public body with similar responsibilities, and planning board of the municipality in which the proposed regulated activity will occur; the planning board, environmental commission and county mosquito control agency of the county in which the proposed regulated activity will occur; landowners within 200 feet of the property or properties on which the proposed regulated activity will occur (applicant shall also provide a list of all landowners within 200 feet) , and all persons as identified by the Department who requested to be notified of proposed regulated activities (the Department will furnish a list of such person's upon request), which notice may at the applicant's option, be filed concurrently with notices required pursuant to N.J.S.A. 40:55D-1 et seq. A copy of the notice shall be included in the application to the Department. The notice shall include the following:

i. The name and address of the applicant and, if

different, the address or location of the activity or activities regulated by the permit;

ii. The name, address, and telephone number of the applicant or agent to contact for further information;

iii. A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills, and a description of the type, composition and quantity of materials to be discharged;

iv. A plan and elevation drawing showing the general and specific site location (drawings may be 8.5 by 11 inches);

v. Any other information which is necessary to evaluate the likely impact of the proposed activity;

vi. The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the New Jersey Department of Environmental Protection and Energy, Land Use Regulation Element for an Individual Freshwater Wetlands permit.

An Individual permit will allow the property owner to conduct activities in freshwater wetlands or State open waters.

The complete Individual permit application package can be reviewed at either the municipal clerk's office or by appointment at the Land Use Regulation Element office at the address listed below. The Department of Environmental Protection and Energy welcomes comments and any information that you may provide concerning the wetlands or open waters on the referenced parcel. Please submit your written comments within 15 days of receiving this letter. In addition, interested persons may request in writing that the Department hold a public hearing on this application. Requests shall be made in writing within 30 days after the notice of application in the DEPE Bulletin and shall state the nature of the issues proposed to be raised at the hearing. Both comments and hearing requests should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection and Energy
Land Use Regulation Element
Bureau of Regulation
CN 401

5 Station Plaza
Trenton, New Jersey 08625
att: (County in which the property is located) Section Chief

As part of the review of this application, Department personnel may perform a site inspection on your property. This site inspection will involve only that area within a maximum of 150 feet from the border of the applicant's property. This site visit will involve a visual inspection and possibly minor soil borings using a 4" diameter hand auger. The inspection will not result in any damage to the vegetation or improvements on your property.

The Department will notify your municipal environmental commission, planning board and the municipal construction official of the Department's approval or denial of the Individual permit application;"

10. Verification that notice of the proposed activity has been published as a display advertisement in an official newspaper used by the municipality, in which the activity is proposed, for legal notice. For projects proposing more than 10 acres of fill, notification shall also be published in a newspaper of regional circulation;

11. A statement detailing any potential adverse environmental effects of the regulated activity and any measures necessary to prevent and/or minimize those effects, and any information necessary for the Department to make the findings pursuant to N.J.A.C. 7:7A-3. Applicants should review N.J.A.C. 7:7A-3 in great detail and provide all the listed information to avoid unnecessary delays in permit processing;

12. A fee as set forth in the fee schedule published by the Department at N.J.A.C. 7:7A-16;

13. A list and brief description of all freshwater wetlands, special aquatic sites as defined at N.J.A.C. 7:7A-1.4, public use areas, wildlife refuges, and public water supply intakes in the affected or adjacent areas that may require special protection or preservation;

14. A list of plants, fish, shellfish and/or wildlife in the proposed activity or discharge site which may be dependent on water quality and quantity;

15. Uses of the proposed activity or discharge site which might affect human health and welfare; and

16. A description of technologies or management practices by which the applicant proposes to minimize adverse environmental effects of the activity or discharge.

(Note: The Department shall upon request provide permit applicants with guidance, either through the application form or on an individual basis, regarding the level of detail of information and documentation required under this subsection. The level of detail shall be reasonably commensurate with the type and size of the proposed project, proximity to critical areas, and degree of environmental degradation.)

(c) The application shall also include 10 copies (including one of reproducible quality-a mylar copy is not required) of a site plan, on 8½ inch by 11 inch paper if appropriate (if larger than 8½ inch by 11 inch, all copies shall be folded) indicating the following:

1. All existing structures and related appurtenances on the lot and immediately adjacent lots;

2. Distances and dimensions of areas, structures and lots, including freshwater wetlands, State open waters, transition areas, limits of inundation for the 100 year flood for non-delineated streams or flood hazard area flood for delineated streams (if applicable), mean high water line (if appropriate), upland property, roads and utility lines;

3. A complete delineation of the wetlands boundary(ies) in accordance with the requirements of N.J.A.C. 7:7A-8.3(a) and 3(b). A letter of interpretation issued by the Department may be submitted to satisfy this requirement;

4. The proposed area which will be used for the activity or discharge;

5. The general site location in relation to development in the region;

6. The scale of the plan and a north arrow;

7. A title block for each sheet containing the following information:

i. The name of the applicant and the name or the proposed project (if any):

ii. Identification of the proposed activity;

iii. County and municipality;

iv. Lot and block;

v. Number of the sheet and the total number of sheets in set; and

vi. Preparer, and date of the drawing and all revisions.

(d) The application shall also include color photographs of sufficient quality and quantity to show the project site including:

1. Location of known freshwater wetlands and State open waters; and

2. Proposed location of the regulated activity.

(e)If the proposed project involves the discharge of dredged or fill material, the application shall include a cross-sectional view of the proposed project showing the following:

1. Water elevations;

2. Water depths at waterward face of proposed work, or if dredging is proposed, showing dredging grade;

3. Cross-section of fill;

4. Elevation of spoil areas;

5. Location of wetlands; and

6. Delineation of disposal site.

(f) A mitigation plan meeting the requirements of N.J.A.C. 7:7A-14.4 may be submitted with the permit application. The Department requires an approved mitigation plan as a condition precedent to engaging in a regulated activity.

7:7A-11.2 Recordkeeping

Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under N.J.A.C. 7:7A-11.1 for a period of at least three years from the date the application is submitted to the Department.

7:7A-11.3 Signatories to permit applications and reports

(a) All permit applications shall be signed as follows:

1. For a corporation, by a principal executive officer of at least the level of vice-president;

2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency, by either a principal executive officer or ranking elected official; or

4. By individual owners of record.

(b) All reports required by permits and other information requested by the Department shall be signed by a person described in (a) above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (a) above;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. A duly authorized representative may, thus, be either a named individual or any individual occupying a named position; and

3. The written authorization is submitted with the application to the Department.

(c) If an authorization under (b) above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of (b) above must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Any person signing a document under (a) or (b) above shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

7:7A-11.4 Confidentiality

(a) Any information submitted to the Department pursuant to these regulations may be claimed as confidential by the submitter at the time of submittal.

(b) Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;

2. Effluent data;

3. Permit application; and

4. Permit decision.

(c) Claims of confidentiality for all information not listed in (b) above will be denied unless the claimant can show that the information should be kept confidential under the requirements and procedures of 40 CFR Part 2.

SUBCHAPTER 12. REVIEW OF APPLICATIONS

7:7A-12.1 Initial Department action for Individual Freshwater Wetlands and Open Water Fill Permits

(a) Upon receipt of an application, which includes the fee specified in N.J.A.C. 7:7A-16, the Department shall if appropriate, transmit copies to other reviewing agencies. In addition, the Department will publish notice of the application in the DEPE Bulletin. If the application does not include the appropriate fee, no action will be taken by the Department under this section, and the submittal will not be considered an application, and completeness review will not begin.

(b) Within 30 days of receipt of the application, the Department shall review the application for completeness and may return the application as incomplete, make any necessary requests for more information, or declare the application complete. However, after assumption by the State of the 404 program, this deadline for requesting additional information shall not apply if requests for more information are made by the Department because of comments received from the USEPA.

1. If the application is returned as incomplete a new application will be required;

2. New notices meeting the requirements at N.J.A.C. 7:7A-11.9 will be required if the new application is not filed within 60 days.

(c) If additional information is required of an applicant, the Department shall have 15 days after receipt of that information to request further clarification. In such cases, the application shall not be considered complete until all the additional information is received by the Department.

1. Copies of information submitted in response to deficiency letters shall, at the discretion of the Department, be distributed to the same persons to whom copies of the initial application were distributed and to reviewing agencies who have requested such information or who will require it in order to complete their review.

7:7A-12.2 USEPA review

(a) The Federal Act requires that, after assumption by the State of the 404 program, the USEPA oversee the State's administration of the program. The procedures in (b) through (j) below explain USEPA's oversight role, and the procedures which the State will follow to facilitate USEPA's oversight.

(b) Permits for at least the following categories of activities will require USEPA review. Generally, any projects not meeting the criteria listed below will be considered waived from the requirement of EPA review. However, any permits either individually or as a category may be elevated for EPA review:

1. Discharges with reasonable potential for adverse impacts on waters of another state, as provided in N.J.A.C. 7:7A-12.3(d);

2. Major discharges as defined at N.J.A.C. 7:7A-1.4;

3. Discharges into or within critical areas established under State or Federal law including but not limited to fish and wildlife sanctuaries or refuges, national and historic monuments, wilderness areas and preserves, national and State parks, components of State and Federal Wild and Scenic River systems, and sites identified or proposed under the National Historic Preservation Act of 1966, 16 U.S.C. §§470 et seq.;

4. Proposed Statewide general permits;

5. Discharges known or suspected to contain toxic pollutants in toxic amounts under Section 307(a)(1) of the Federal Act, or hazardous substances in reportable quantities under Section 311 of the Federal Act;

6. Discharges located in proximity of a public water supply; and

7. Discharges with potential for adversely affecting threatened or endangered species, identified pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531 et al. and subsequent amendments thereto.

(c) The Department shall promptly transmit to the Regional Administrator:

1. A copy of the complete permit application received by the Department for which permit review has not been waived under N.J.A.C. 7:7A-12.2(b). The Department shall supply the Regional Administrator with copies of the complete permit applications for which permit review has been waived whenever requested by USEPA;

2. A copy of a draft Statewide general permit whenever the Department intends to propose a general permit;

3. Notice of every significant action taken by the State agency related to the consideration of any permit application for which Federal review has not been waived, or of any draft Statewide general permit; and

4. A copy of every permit decision for which review has not been waived.

(d) If USEPA intends to comment upon, object to, or make recommendations with respect to a permit application, draft Statewide general permit, or the State's failure to accept the recommendations of an affected state pursuant to N.J.A.C. 12.3(d) below, USEPA may notify the State of this intent within 30 days of receipt of the permit application. If the State has been so notified, the permit shall not be issued until after the receipt of such comments or within 90 days of the USEPA's receipt of the application, draft Statewide general permit or State response, whichever comes first. The USEPA may notify the State within 30 days of receipt that there is no comment but that USEPA reserves the right to object within 90 days of receipt, based on any new information brought out by the public during the comment period or at a hearing.

(e) When the Department has received a USEPA objection or requirement for a permit condition to a permit application or draft Statewide general permit under this section, the State shall not issue the Federal 404 permit unless the steps required by the USEPA to eliminate the objection have been taken.

(f) Within 90 days of receipt by the Department of an objection or requirement for a permit condition by the USEPA, the State or any interested person may request that the USEPA hold a public hearing on the objection or requirement. USEPA shall conduct a public hearing whenever requested by the State proposing to issue the permit, or if warranted by significant public interest based on requests received.

(g) If a public hearing is held under (f) above, USEPA

shall, following that hearing, reaffirm, modify or withdraw the objection or requirement for a permit condition, and notify the Administrator of this decision.

1. If the USEPA withdraws the objection or requirement for a permit condition, the State may issue the Federal 404 permit.

2. If the USEPA does not withdraw the objection or requirement for a permit condition, the Department must either issue a revised permit satisfying the USEPA's objection or including the required permit condition, or notify USEPA of its intent to deny the permit within 30 days of receipt of the USEPA's notification.

(h) If no public hearing is held under paragraph (f) of this section, the Department shall, within 90 days of receipt of the objection or requirement for a permit condition, either issue the revised permit to satisfy USEPA's objections or notify USEPA of its intent to deny the permit.

(i) In the event that the Department neither satisfies USEPA's objections or requirement for a permit condition nor denies the permit, the Federal 404 permit application will no longer be processed by the Department and shall be transferred to the Army Corps of Engineers for processing.

(j) No Federal 404 permit shall be issued by the Department in the following circumstances:

1. When the Regional Administrator has objected to issuance of the permit and the objection has not been resolved.

2. When the proposed discharges would be in an area which has been prohibited, withdrawn, or denied as a disposal site by the USEPA under Section 404(c) of the Federal Act, or when the discharge would fail to comply with a restriction imposed thereunder.

3. If the Army Corps of Engineers determines, after consultation with the Secretary of the Department in which the Coast Guard is operating, that anchorage and navigation of any of the navigable waters would be substantially impaired.

7:7A-12.3 Soliciting public comment

(a) The Department shall provide notice of application pursuant to N.J.A.C. 7:7A-12.1 for an individual freshwater wetlands or open water fill permit, or transition area waiver, in addition to the applicant's notice requirements in N.J.A.C. 7:7A-11.1(a), in the DEPE Bulletin upon receipt

of the application. The public shall have 30 days from publication to submit written comments.

(b) Copies of all freshwater wetlands and open water fill permit applications, and transition area waiver, applications will be available for public scrutiny by interested persons in the Municipal Clerk's office and by appointment in the offices of the Department in Trenton (See N.J.A.C. 7:7A-1.3 for address) during normal business hours.

(c) The status of all permit applications shall be published in the DEPE Bulletin, and shall constitute notice to all interested persons except those specifically provided with notice in this chapter.

(d) If a proposed discharge may affect the biological, chemical, or physical integrity of the waters of any state(s) other than New Jersey, the Department shall provide an opportunity for such state(s) to submit written comments within the public comment period and to suggest permit conditions. If these recommendations are not accepted, the Department shall notify the affected state and the USEPA in writing, prior to permit issuance, of the State's failure to accept these recommendations, together with the reasons for so doing. The Regional Administrator shall then have the time provided for in N.J.A.C. 7:7A-12.2(d), to comment upon, object to, or make recommendations.

7:7A-12.4 Hearings on applications

(a) Within 30 days after publication of the notice of application in the DEPE Bulletin, interested persons may request in writing that the Department hold a public hearing on a particular application. Requests shall state the nature of the issues proposed to be raised at the hearing.

(b) The Department may issue or deny a permit without a public hearing, unless there is a significant degree of public interest in the application as manifested by written requests for a hearing within 20 days after the publication of notice of the permit application in the DEPE Bulletin or unless a hearing is requested by USEPA.

(c) If a hearing is to take place, the Department shall, within 15 days of declaring the application complete or within 30 days of publication in the DEPE Bulletin (whichever is later), set a date, place, and time for the public hearing and shall so notify the applicant, in accordance with the following:

1. The hearing shall be in the county wherein the freshwater wetland or State open water is located whenever practicable.

(d) The Department shall publish a notice announcing the date, place, and time of the public hearing in the DEPE Bulletin.

(e) The applicant shall give public notice of the public hearing at least 30 days before the hearing.

1. This notice shall comply with the notice requirements for applications found at N.J.A.C. 7:7A-11.1(b)7, 9 and 10 using the following format:

"NOTICE OF STATE FRESHWATER WETLANDS INDIVIDUAL PERMIT APPLICATION PUBLIC HEARING

TAKE NOTICE that the New Jersey Department of Environmental Protection and Energy, Land Use Regulation Element will hold a public hearing on the following permit application submitted under the Freshwater Wetlands Protection Act N.J.S.A. 13:9B-1 et seq.

APPLICANT: Name
FILE NUMBER: Element's file number
PROJECT NAME: Name (if any)
PROJECT DESCRIPTION: Detailed description of the proposed improvements including all construction activities
LOCATION: Block and Lot
MUNICIPALITY: Municipality in which project is located
COUNTY: County in which project is located
PROJECT ADDRESS: Street address of project

The Land Use Regulation Element invites the public to attend the hearing and present written or oral comments on the application.

HEARING DATE & TIME: As assigned by Element
HEARING LOCATION: As assigned by Element
HEARING OFFICER: Your project review officer
DATE OF PREVIOUS HEARING (If one was held):

A copy of the complete application is available for review at the township clerk's office. The Land Use Regulation Element invites the public to submit written comments on the Freshwater Wetlands Individual Permit application within fifteen (15) days of the hearing to:

Your project review officer
Department of Environmental Protection and Energy
Land Use Regulation Element
CN 401/501 E. State St., 5 Station Plaza
Trenton, NJ 08625

DATE OF THIS NOTICE: Date";

2. Proof of notice shall be submitted to the Department at least three days prior to the public hearing. In cases where proof of publication is unavailable three days prior to the hearing, the applicant may submit a notarized affidavit stating that notice of the hearing has been published, and specifying the date and newspaper in which such notice was published.

(f) The Department shall maintain a copy of the hearing transcript and all written comments received. The transcript and written comments shall be made part of the official record on the application and shall be available for public inspection in its Trenton Office. See N.J.A.C. 7:7A-1.3 for address.

(g) The applicant shall provide a court reporter, bear the cost of the hearing and provide the Department with a transcript.

(h) The presiding official at the non-adversarial public hearing shall have broad discretion with respect to oral and written presentations by interested persons. This discretion shall be exercised to allow every person the opportunity to speak, to reasonably limit the length of individual testimony, and to ensure the maintenance of an orderly forum. At the conclusion of statements by interested persons, the applicant shall be afforded the opportunity to speak to the statements offered by interested persons.

(i) Any interested person may submit information and comments, in writing, concerning the application within 15 days after the hearing.

7:7A-12.5 Final decisions

(a) Until the State assumes the implementation of the Federal Act, the Department shall issue or deny a permit within 180 days of submittal of a complete application, except as may otherwise be provided by the Federal Act.

(b) If the Department issues, denies or requests modification of a permit, the Department shall send notice thereof to the applicant.

(c) The Department may issue a permit imposing conditions necessary for compliance with the Act, this chapter, the Federal Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. Any regulated activities undertaken under authority of any issued permit, shall constitute an acceptance by the applicant of the entire permit including all conditions therein.

(d) Decisions by the Department shall be published in the DEPE Bulletin and a copy of every issued individual permit for which USEPA review has not been waived shall be transmitted to USEPA.

(e) The permit application review process may be extended by mutual agreement between the applicant and the Department.

7:7A-12.6 Cancellation, withdrawal, resubmission and amendment of applications

(a) Applications may be cancelled by the Department; or withdrawn, amended, or resubmitted by an applicant.

(b) If an application is not complete for final review within 60 days of a request for additional information, the Department shall send a letter canceling the application and stating that the application will be purged from Department files and that 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 30 days. The Department will grant additional 30-day extensions upon receiving a written request for such extension from the applicant.

1. All fees submitted with an application subsequently cancelled shall be non-refundable.

(c) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable when a significant portion of the review has been completed. In some cases however (see (d) below) the fees may be credited toward future applications.

(d) If an application is cancelled, denied or withdrawn, the applicant may resubmit an application for a revised project on the same site. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. A new fee will be required except for applications that are withdrawn and resubmitted within one year of the withdrawal date.

(e) A permit application may be amended at the applicant's discretion at any time as part of the permit review process. Copies of amendments and amended information shall be distributed by the applicant to the same person to whom copies of the initial application were distributed. All amendments to pending applications shall constitute a new submission and may at the Department's

discretion require reinitiation of the entire review process.

7:7A-12.7 Hearings and appeal of permit decisions

(a) An applicant who receives a final agency action or other affected party may request of the Commissioner an administrative hearing on any decision to issue or deny a permit made by the Department pursuant to the Act and this chapter. When a request for an administrative hearing is filed by an affected party contesting an approved permit, the effective date of the approved permit may be stayed at the discretion of the Commissioner until the matter is resolved.

(b) Such request shall be submitted in writing within 30 days of the DEPE Bulletin publishing date, or the date of receipt of the permit decision, whichever is later. The request shall state in what way the Department has acted improperly in issuing or denying the permit, and what issues will be raised by the requestor should a hearing be held.

(c) The request for a hearing shall be sent to:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

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.

SUBCHAPTER 13. PERMIT CONTENTS

7:7A-13.1 Conditions applicable to all permits

(a) The following conditions apply to all Individual and Statewide general freshwater wetlands and open water

fill permits:

1. Duty to comply: The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Act and this chapter, and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. In some cases, permit noncompliance may also constitute a violation of the Federal Act.

2. Duty to reapply: If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

3. Duty to halt or reduce activity: It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

4. Duty to minimize environmental impacts: The permittee shall take all reasonable steps to prevent, minimize or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit. Mitigation consistent with N.J.A.C. 7:7A-14 will also be required for freshwater wetlands permits, open water fill permits and those Statewide General permits described at N.J.A.C. 7:7A-9.2(a).

5. Proper operation and maintenance: The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit. This provision requires the proper execution of any approved mitigation plan designed to mitigate losses caused by the permitted activity.

6. Permit actions: The permit may be modified, revoked and reissued, suspended, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit conditions.

7. Property rights: The permit does not convey any property rights of any sort, or any exclusive privilege.

8. Duty to provide information: The permittee shall furnish to the Department within a reasonable time, any information which the Department requests to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by the permit.

9. Inspection and entry: The permittee shall allow the Department, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

i. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

iii. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

iv. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Federal Act, by the Act, or by any rule or order issued pursuant thereto, any substances or parameters at any location.

10. Monitoring and records requirements are as follows:

i. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

ii. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Commissioner at any time.

iii. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

11. Signatory requirement: All applications, reports, or information submitted to the Department shall be signed and certified as required in N.J.A.C. 7:7A-11.3.

12. Reporting requirements are as follows:

i. Planned changes: The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted project or activity.

ii. Anticipated noncompliance: The permittee shall give advance notice to the Department of any planned changes in the permitted project or activity which may result in noncompliance with permit requirements.

iii. Transfers: The permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act (see N.J.A.C. 7:7A-13.5). In some cases, modification or revocation and reissuance is mandatory.

iv. Monitoring reports: Monitoring results shall be reported at the intervals specified elsewhere in the permit.

v. Twelve hour reporting: The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 12 hours from the time the permittee becomes aware of the potentially dangerous circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance

has not been corrected, the anticipated length of time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

vi. Other noncompliance: The permittee shall report all instances of noncompliance not reported pursuant to (a)12i, iv, and v above, at the time monitoring reports are submitted. The reports shall contain the information listed in (a)12v above.

vii. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

13. The permittee need not comply with the conditions of the permit to the extent and for the duration that such noncompliance is authorized in an emergency permit.

14. Regulated activities are not conducted under the authority of the permit if they are not specifically identified and authorized in the permit.

15. The permittee shall maintain the authorized work areas in good condition and in accordance with the requirements contained in the permit.

16. If any applicable water quality standards are revised or modified, or if a toxic effluent standard or prohibition under section 307(a) of the Federal Act is established for a pollutant present in the permittee's discharge and is more stringent than any limitation in the permit, the permit shall be promptly modified, pursuant to N.J.A.C. 7:7A-13.6 to conform to the standard, limitation or prohibition.

17. All projects authorized by an individual or general permit issued pursuant to this chapter shall be posted with a sign, prominently displayed at the main entrance to the property or worksite, at all times from commencement to completion of the permitted activity. The sign shall contain at least the following information:

i. The work which is authorized by the Department;

ii. The type of permit applied for or authorizing the work, and the permit or application number;

iii. A Department phone number for verification; and

iv. The location nearest the site at which the permit may be inspected.

7:7A-13.2 Establishing permit conditions

(a) In addition to conditions required in all permits (N.J.A.C. 7:7A-13.1), the Department shall establish conditions in permits, as required on a case-by-case basis, under N.J.A.C. 7:7A-13.3 (duration of permits) and N.J.A.C. 7:7A-13.1 (a) 10 (monitoring).

(b) The Department shall also establish conditions in permits, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Federal Act, the Act, the Water Pollution Control Act, this chapter and other appropriate rules or regulations.

1. For the purposes of this subsection, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit, or prior to the modification or revocation and reissuance of a permit, to the extent allowed in N.J.A.C. 7:7A-13.

2. New or reissued permits, and to the extent allowed under N.J.A.C. 7:7A-13.6 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in N.J.A.C. 7:7A-13.1.

(c) In addition to the requirements in N.J.A.C. 7:7A-13.6, each permit shall include information meeting the following requirements, when applicable.

1. A specific identification and description of the authorized activity, including:

i. The name and address of the permittee and the permit application identification number;

ii. The use or purpose of the regulated activity;

iii. The type and quantity of the materials to be discharged or used as fill;

iv. Any structures proposed to be erected; and

v. The location and boundaries of the activity site(s), including a detailed sketch and the name and description of affected freshwater wetlands, State open waters, and transition areas, identification of the major watershed and subwatershed; and

vi. A reference to the specific site plans depicting the approved regulated activity(ies).

2. Provisions ensuring that the regulated activity will be conducted in compliance with the environmental

guidelines issued under section 404(b)(1) of the Federal Act (40 C.F.R. Part 230), the Act, and this chapter, including conditions to ensure that the regulated activity shall be conducted in a manner which minimizes adverse impacts upon the physical, chemical, and biological integrity of the waters of the United States, such as requirements for restoration or mitigation;

3. Any requirements necessary to comply with water quality standards established under applicable Federal or State law. If an applicable water quality standard is promulgated after the permit is issued, it shall be modified as provided in N.J.A.C. 7:7A-13.6;

4. Requirements necessary to comply with any applicable toxic effluent standard or prohibition under section 307(a) of the Federal Act or applicable State or local law. If an applicable toxic effluent standard or prohibition is promulgated after the permit is issued, it shall be modified as provided in N.J.A.C. 7:7A-13.6;

5. Applicable best management practices (BMPs) as provided in the memorandum of agreements included in the State application for assumption of the Federal permit program in section 404 of the Federal Act;

6. Any conditions necessary for general permits as required under N.J.A.C. 7:7A-9.3;

7. A specific date on which the permit shall automatically expire, unless previously revoked and reissued or modified or continued, if the authorized work has not been commenced; and

8. Reporting of monitoring results. All permits shall specify:

i. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

ii. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

iii. Applicable reporting requirements based upon the impact of the regulated activity.

(d) All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable rules or regulations or requirements shall be given in the permit.

7:7A-13.3 Duration of permits

(a) Freshwater wetlands and open water fill permits shall be effective for a fixed term not to exceed five years.

7:7A-13.4 Effect of a permit

(a) Compliance with a permit during its term constitutes compliance, for purpose of enforcement, with "sections 301, 307, and 403 of the Federal Act, with the Act, and with this chapter. However, a permit may be modified, revoked and reissued, suspended, or terminated during its term for cause as set forth in this chapter.

(b) The issuance of a permit does not convey property rights of any sort, or any exclusive privilege.

7:7A-13.5 Transfer of permits

A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under N.J.A.C. 7:7A-13.6, or a minor modification made under N.J.A.C. 7:7A-13.9 to identify the new permittee and incorporate such other requirements as may be necessary under the Federal Act, this chapter, or any permit or order issued pursuant thereto.

7:7A-13.6 Modification or revocation and reissuance of permits

(a) When the Department receives any information (for example, through a site inspection, through submission of information by the permittee as required by a permit, through a request for notification or revocation and reissuance, or through a review of the permit file) the Department may determine whether one or more of the causes for modification or revocation and reissuance listed in N.J.A.C. 7:7A-13.7 and 13.8 exist. If cause exists, the Department may modify or revoke and reissue the permit accordingly, subject to the limitations of (e) below, and may request an updated application, if necessary.

(b) Any permit modification not processed as a minor modification must be made for cause and with the public notice and hearings procedures required for permit applications under N.J.A.C. 7:7A-11.1(a)7,9,10, and 12.1(a) 12.3, 12.4, and 12.5.

(c) If cause does not exist under this chapter, the Department shall not modify or revoke and reissue the permit.

(d) If a permit modification satisfies the criteria in N.J.A.C. 7:7A-13.9 for "minor modifications", the permit may be modified without public review.

(e) When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision, public hearings and comments, and the permit may be reissued for a new term.

(f) No Federal 404 permit shall be modified or revoked and reissued if USEPA objects (See N.J.A.C. 7:7A-12.3).

(g) Any modification except for those issued pursuant to N.J.A.C. 7:7A-13.9(b)4 will be published in the DEPE Bulletin.

(h) Except for minor modifications of permits as described at N.J.A.C. 7:7A-13.9, a fee shall be submitted for modifications according to the requirements set forth for permit fees at N.J.A.C. 7:7A-16.

7:7A-13.7 Causes for modification, but not revocation and reissuance

(a) The following are causes for modification, but not for revocation and reissuance of permits. The following may only be causes for revocation and reissuance as well as modification when the permittee requests or agrees.

1. Material and substantial alterations or additions proposed to the permitted project or activity after permit issuance which justify the application of permit conditions that are different or absent from the existing permit.

2. Permits may be modified during their terms if the Department receives information which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) which would have justified the application of different permit conditions at the time of issuance. (For general permits, see N.J.A.C. 7:7A-9.5). This cause shall include any information indicating that cumulative effects on the environment are unacceptable.

3. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations, or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

i. For promulgation of amended standards or regulations, when:

(1) The permit condition requested to be modified was

based on a USEPA or Department approved or promulgated water quality standard; and

(2) The Department or USEPA has revised, withdrawn, or modified that portion of the rule or regulation on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(3) A permittee requests modification in accordance with this chapter within 90 days after Federal Register or New Jersey Register notice of the action on which the request is based.

ii. For judicial decisions, a court of competent jurisdiction has remanded and stayed USEPA or Department promulgated standards, if the remand and stay concern that portion of the standards on which the permit condition was based, and a request is filed by the permittee in accordance with this chapter within 90 days of judicial remand.

7:7A-13.8 Causes for modification or revocation and reissuance

(a) Cause exists to modify or, alternatively, revoke and reissue a permit when:

1. Cause exists for termination under N.J.A.C. 7:7A-15.10 (termination of permits), and the Department determines that modification or revocation and reissuance is more appropriate under the circumstances; or

2. The Department has received notification, as required under N.J.A.C. 7:7A-13.5 of a proposed transfer of the permit and the transfer does not meet the criteria at N.J.A.C. 7:7A-13.9(b)3.

7:7A-13.9 Minor modifications of permits

(a) Upon the consent of the permittee, the Department may modify a permit to make the minor corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of N.J.A.C. 7:7A-13.6. Any permit modification not processed as a minor modification under this section must be made for cause and must follow the modification procedures in N.J.A.C. 7:7A-13.6.

(b) Minor modifications may only:

1. Correct typographical errors;

2. Require more frequent monitoring or reporting by the permittee;

3. Allow for a change in ownership or operational control of a project or activity where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Department; and

4. Allow for a change in materials or construction techniques required by another permitting agency provided the change will not result in additional wetland, State open water or transition area impacts from that of the originally approved permit.

SUBCHAPTER 14. MITIGATION

7:7A-14.1 Mitigation goals

(a) The Department shall require mitigation as a condition of an individual freshwater wetlands or State open water fill permit, and certain Statewide general permits. Mitigation may include restoration, creation, enhancement, or donation of money or land or both to the Mitigation Bank, or to other public or private non-profit conservation organizations. Donations of land to public or private non-profit conservation organizations shall first be approved by the Mitigation Council and the Department in consultation with USEPA.

(b) When an individual freshwater wetlands permit, State open water fill permit or certain Statewide general permits allow the disturbance or loss of wetlands or State open waters, this disturbance or loss shall be compensated for as specified below at N.J.A.C. 7:7A-14.2, unless the applicant can prove, through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be a replacement of wetlands or State open water of equal ecological value. In order to demonstrate equal ecological value, the applicant shall survey and provide written documentation regarding, at a minimum, existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat conditions and detail how the proposed mitigation plan will replace the ecological values of the wetland to be lost or disturbed.

(c) Mitigation must be performed prior to or concurrently with permitted activities that will permanently disturb wetlands or State open waters, and immediately after activities that will temporarily disturb wetlands or State open waters. Applicants shall be required to obtain a secured bond, or other surety acceptable to the Department

including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the applicant default. The performance bond for the construction of the proposed mitigation shall be posted in an amount equal to 115 percent of the estimated cost of construction of the mitigation activity. In addition, a maintenance bond to assure the success of the mitigation shall be posted in an amount equal to 30 percent of the estimated cost of construction. The performance and maintenance bonds will be reviewed annually and shall be adjusted to reflect current economic factors.

1. The performance bond or other surety will be released upon an inspection by the Department confirming completion of construction and planting of the mitigation site. The maintenance bond will be released upon the Department's confirmation that the three-year, post-planting monitoring period has been successfully completed and that no additional maintenance is required in order to meet the specifications of the approved mitigation plan.

(d) The Department shall not consider a mitigation proposal in determining whether a project should be awarded a permit, but shall require mitigation as a condition of any permit found to be acceptable under the criteria listed in N.J.A.C. 7:7A-3.

(e) As a condition of every creation or enhancement plan authorized under this subsection, an applicant shall sign a Department approved conservation easement and register this restriction on the deed for the subject parcel. This restriction will provide that no regulated activities will occur in the created or enhanced wetland area. This restriction shall be memorialized in a deed restriction meeting the Department's requirements and shall run with the land and be binding upon the applicant and the applicant's successors in interest in the premises or any part thereof. The freshwater wetland permit will not become effective until the deed restriction is registered with the county clerk. Any regulated activities undertaken on the site before a copy of the registered restriction is submitted to the Department will be considered in violation of the Act and this chapter.

1. No future development will be permitted on the mitigation site unless the Department finds that the regulated activity has no practicable alternative which would:

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

ii. Involve a freshwater wetland, or State open water

but would have a less adverse impact on the aquatic ecosystem;

iii. 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; and

iv. That there is a compelling public need for the activity greater than the need to protect the mitigation site.

2. To satisfy this condition the applicant shall provide a receipt showing that the restriction has been registered at the county clerk's office.

(f) Except for publicly funded projects, as described at (f)1 below any mitigation carried out offsite shall be on private property.

1. Mitigation for publicly funded projects may be carried out on public lands provided that these lands were private lands purchased by a public agency expressly for the purpose of performing mitigation.

(g) When loss or disturbance of freshwater wetlands or State open waters results from a violation of the Act, this chapter, or any permit, order or approved mitigation plan issued pursuant thereto, the mitigation portion of the penalty shall be that specified in N.J.A.C. 7:7A-15. The Department may, at its discretion, condition approval of a mitigation plan, or a permit, or both, on the resolution of the violation.

7:7A-14.2 Wetland or State open water mitigation options

(a) The Department distinguishes between four types of mitigation: restoration, creation, enhancement, and contribution. Depending on the circumstances under which wetlands or State open waters are lost or disturbed, different types of mitigation may be required by the Department. The types of mitigation are explained below:

1. Restoration refers to actions performed on the site of a regulated activity, within six months of the regulated activity, in order to reverse or remedy the effects of the activity on the wetland or State open waters, and to restore the site to pre-activity condition.

i. Restoration will be required at a ratio of one acre restored to one acre lost, modified or disturbed. If restoration type actions are performed more than six months after the regulated activity which disturbed the wetland, these actions will no longer be considered restoration, but

will be considered creation, and will be governed by the provisions of (a) 2 below. At the Department's discretion, restoration activities may exceed six months in cases where a violation has occurred.

2. Creation refers to actions performed to establish freshwater wetland or State open water characteristics, habitat and functions on upland areas. The creation of freshwater wetlands or State open waters shall be governed by the following provisions:

i. Creation will be required at a ratio of two acres created to one acre lost or disturbed unless the applicant demonstrates equal ecological value pursuant to N.J.A.C. 7:7A-14.1(b). Where the Department permits mitigation on less than a 2:1 basis, frequent monitoring will be required by the permittee. In such cases, the Department will require additional mitigation or further remedial action if a net loss of equal ecological value occurs during the three-year monitoring period. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from other existing climax habitats is discouraged.

ii. Creation shall not be permitted on a site that retains wetlands characteristics. Rather such a site is only eligible for enhancement activities pursuant to (a) 3 below.

iii. In addition to the wetlands created in the ratio required, the mitigation site shall include the appropriate transition area. The transition area width will be that which is required for the resource value classification of the closest adjacent wetland areas and will be a minimum of 50 feet.

3. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing, degraded wetland such that the enhanced wetland will have resource values and functions similar to an undisturbed wetland. The ratio of enhanced wetlands to wetlands disturbed or modified will be determined based on the documented assessment of the loss of ecological value of the wetlands disturbed or modified.

4. Contribution refers to the donation of money or land to the Mitigation Bank or to other public or private non-profit conservation organizations as approved by the Mitigation Council and the Department in consultation with EPA. Donations shall only be considered if the Department in consultation with USEPA determines that other forms of mitigation are not feasible onsite or offsite in the same watershed. For the purposes of this subsection only, feasible shall include a determination of whether other types of mitigation would be as ecologically beneficial as

the donation.

i. If money is donated, the donation shall be equivalent to the lesser of the following costs:

(1) purchasing and enhancing existing degraded freshwater wetlands, resulting in preservation of freshwater wetlands of equal ecological value to those which are being lost; or

(2) purchase of property and the cost of creation of freshwater wetlands of equal ecological value to those which are being lost.

ii. If the Department determines that land donation is appropriate, as part or all of a contribution, only land which has been determined by the Mitigation Council to have the potential to be a valuable component of the freshwater wetlands ecosystem will be acceptable to satisfy the mitigation requirement.

7:7A-14.3 Location of mitigation sites

(a) All mitigation projects shall be carried out on-site to the maximum extent practicable.

1. For the purposes of this subsection the term practicable shall mean that all efforts have been exhausted after taking into consideration cost, existing technology, and logistics in light of the overall project purposes.

(b) If on-site mitigation is found to be impracticable, the mitigation shall be carried out within the same watershed to the maximum extent practicable.

(c) If the Department determines that mitigation onsite or in the same watershed is not feasible or less ecologically beneficial, the Department may approve mitigation in a different watershed.

7:7A-14.4 Wetland mitigation proposal requirements

(a) A proposal for mitigation shall include the following information, as appropriate:

1. A description of the size and type of mitigation project proposed, including a transition area, a description of the freshwater wetlands which are being lost or disturbed and how the proposal satisfies the requirement for creation of wetlands of equal ecological value within the same watershed;

2. Names and addresses of current and proposed owner(s) of the mitigation project site;

3. The language of a proposed conservation easement or deed restriction which provides for the maintenance of the mitigation site as a natural area in perpetuity;

4. A monitoring and maintenance plan to ensure 85 percent survival and 85 percent areal coverage of the mitigation plantings for at least three years after planting;

5. A description of the existing and proposed vegetation on the mitigation site including scientific names. Spacing of all plantings must be shown along with the stock type, that is, bare root, potted, seed, and source of the plant material;

6. A description of the existing and proposed hydrology of the site including the elevation of adjacent surface water and the depth to the seasonal high water table;

7. Existing soil types and proposed soil characteristics;

8. A schedule from initiation to completion of the project including dates of excavation, planting, fertilizing (rates and type), etc.;

9. A metes and bounds description of the proposed mitigation site, which will form the basis for the deed restriction;

10. Five folded copies of a site plan for the mitigation project which includes:

i. Project location within the region and in relation to adjacent development;

ii. The lot and block number of the project location;

iii. Existing and proposed elevations and grades of the project shown in one foot intervals; and

iv. Plan views and cross sectional view; and

11. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, CN 402, Trenton, NJ, 08625) showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and the property boundaries, and a determination of the State Plane Coordinates for the center of the property. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects,

the applicant shall provide State plane coordinates for the end-points of those projects which are 1999 feet or less, and for those projects which are 2000 feet and longer, additional coordinates at each 1000 foot interval.

7:7A-14.5 Acceptability of wetlands mitigation proposals

(a) Wetlands and State open water mitigation proposals shall be reviewed by the Department for acceptability. The Department will base the acceptability determination upon the following criteria:

1. Location of the mitigation site as described under N.J.A.C. 7:7A-14.3 and in relation to adjacent development;

2. Size of the proposed mitigation project as described under this subchapter;

3. Suitability of the selected vegetative species to survive in the proposed environment;

4. Suitability of the monitoring program and maintenance to ensure 85 percent survival and 85 percent areal coverage of the mitigation plantings for at least three years following planting;

5. Suitability of the proposed substrate (soil) to support the selected vegetative species;

6. Success of other mitigation projects within the area;

7. Proposed elevations and hydrology;

8. Ability of the site to support wildlife; and

9. Any other relevant consideration.

(b) When a mitigation plan is submitted subsequent to the permit decision, within 30 days of the receipt of the submission, the Department shall review the submission for completeness and make any necessary requests for additional information, or declare the submission complete. Within 60 days of accepting a submission as complete, the Department shall issue a decision on the acceptability of a proposed mitigation plan unless extended by consent of the permittee.

7:7A-14.6 Wetlands Mitigation Council

(a) The Wetlands Mitigation Council shall have oversight of the creation and implementation of the Wetlands Mitigation Bank. The Wetlands Mitigation Bank will serve all programs within the Land Use Regulation Element for which wetlands and open water mitigation is required as a

condition of a permit. The Council duties and functions shall include:

1. Accepting donations of money or land when the Department has determined donation to be an acceptable form of mitigation for a permit or a violation;

2. Determining if land to be donated has the potential to be a valuable component of the wetlands or surface water ecosystem;

3. Disbursement of funds from the Wetlands Mitigation Bank to finance mitigation projects;

4. Purchasing land to provide areas for restoration of degraded freshwater wetlands and to preserve wetlands, and surface waters and transition areas determined to be of critical importance; and

5. Reviewing and approving the establishment of private mitigation banks.

(b) The Council may transfer any funds or lands restricted by deed, easement or other appropriate means to mitigation and freshwater wetlands conservation purposes, to a State or Federal conservation agency that consents to the transfer, to expand or provide for:

1. Freshwater wetlands preserves;

2. Transition areas around existing freshwater wetlands to preserve freshwater wetland quality;

3. Future mitigation sites for freshwater wetlands restoration; or

4. Research to determine more successful mitigation techniques .

(c) Under no circumstances will the resources of the Mitigation Bank be used to aid permittees or violators in locating mitigation sites required of them because of their permit or violation.

SUBCHAPTER 15. ENFORCEMENT

7:7A-15.1 General provisions

The burden of proof and degrees of knowledge or intent required to establish a violation of the Act or of any permit, order, rule or regulation promulgated pursuant thereto shall be no greater than the burden of proof or degree of knowledge or intent which USEPA must meet in establishing a violation of the Federal Act or implementing

regulations.

7:7A-15.2 USEPA review

The Department shall make available without restriction any information obtained or used in the implementation of the Act to USEPA upon request.

7:7A-15.3 Administrative order

(a) Whenever, on the basis of available information, the Department finds a person in violation of any provision of the Act, or of any permit, order, rule or regulation issued pursuant thereto the Department may issue an order:

1. Specifying the provision or provisions of the Act, rule, regulation, permit or order which has been, or is being violated;

2. Citing the action which constituted the violation;

3. Requiring immediate compliance with the provision or provisions violated;

4. Requiring the restoration or rehabilitation of the freshwater wetlands, State open waters or transition area which is the site of the violation; and

5. Providing notice of the right to a hearing on the matters contained in the order.

7:7A-15.4 Civil action

(a) Whenever, on the basis of available information, the Department finds a person in violation of any provision of the Act, or of any rule or regulation adopted, or permit or order issued, pursuant to the Act, the Department is authorized to institute a civil action in Superior Court for appropriate relief. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;

2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this section;

3. Assessment of the violator for any costs incurred by the State in removing, correcting, or terminating the adverse effects upon the freshwater wetlands, State open waters or transition areas resulting from any unauthorized regulated activity for which legal action under this section

may have been brought;

4. Assessment against the violator for compensatory damages for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by an unauthorized regulated activity. Assessments under this section shall be paid to the State Treasurer except that compensatory damages shall be paid by specific order of the court to any persons who have been aggrieved by the unauthorized regulated activity; and/or

5. A requirement that the violator restore or rehabilitate the site of the violation to the maximum extent practicable and feasible as defined in N.J.A.C. 7:7A-1.4. If the violator does not do so, the State may take corrective action, and will assess the violator pursuant to this chapter.

7:7A-15.5 Civil administrative penalty

(a) Whenever, on the basis of available information, the Department finds a person in violation of any provision of the Act, or of any rule or regulation adopted, or permit or order issued, pursuant to the Act, the Department is authorized to assess a civil administrative penalty of not more than $10,000 for each violation. Each day during which each violation continues shall constitute an additional, separate, and distinct offense. Specific penalty amounts, and procedures for their assessment and for adjudicatory hearings on penalties assessed, can be found at N.J.A.C. 7:7A-17.

1. Any amount assessed under this section shall fall within the ranges established by N.J.A.C. 7:7A-17.

2. No assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service pursuant to N.J.A.C. 7:7A-17.8.

3. The ordered party shall have 20 days from receipt of the notice within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:7A-17.9. Such hearing shall be conducted 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.

4. The authority to levy an administrative order is in addition to all other enforcement powers. The payment of any assessment shall not be deemed to affect the availability of any other enforcement powers in connection with the violation for which the assessment is levied.

5. Any civil administrative penalty assessed under this section may be compromised by the Department upon the

posting of a performance bond by the violator, or upon such terms and conditions as the Department may establish by regulation.

7:7A-15.6 Civil penalty

(a) Each person who violates the Act or this chapter, or an administrative order or a court order issued pursuant to the Act, and who fails to pay a civil administrative assessment in full pursuant to N.J.A.C. 7:7A-15.5 shall be subject, upon order of a court, to a civil penalty not to exceed $10,000 per day of such violation. Each day during which the violation continues shall constitute an additional, separate, and distinct offense.

(b) Any civil penalty imposed pursuant to this section may be collected with costs in a summary proceeding pursuant to the penalty enforcement law, N.J.S.A. 2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the penalty enforcement law in conjunction with the Act and this chapter.

7:7A-15.7 Criminal action

(a) A person who willfully or negligently violates the Act, or any regulation or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the fourth degree and shall be subject to a fine of not less than $2,500 nor more than $25,000 per day of violation.

(b) A second offense under this subsection shall subject the violator to a fine of not less than $5,000 nor more than $50,000 per day of violation.

(c) A person who knowingly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the Act, or under any permit, order or rule issued pursuant to the Act, or who falsifies, tampers with or knowingly renders inaccurate, any monitoring device or method required to be maintained pursuant to the Act or any order or rule issued pursuant thereto, shall, upon conviction, be subject to a fine of not more than $10,000.

7:7A-15.8 Notice of violation recorded on deed to property

In addition to the penalties prescribed in this subchapter, a notice of violation of the Act shall be recorded on the deed of the property wherein the violation occurred, on order of the Department, by the clerk or register of deeds and mortgages of the county wherein the affected property is located and with the clerk of the Superior Court and shall remain attached thereto until such time as the violation has been remedied and the Department

orders the notice of violation removed.

7:7A-15.9 "After the fact" permit

(a) The Department may issue an "after the fact" permit for the regulated activity that has already occurred only when:

1. The Department has determined that the restoration or rehabilitation of the site to its previolation condition would increase the harm to the freshwater wetlands, State open waters or its ecology; or the regulated activity meets the standards for permit approval pursuant to the Act or the Federal Act;

2. Assessment against the violator for costs or damages enumerated in N.J.A.C. 7:7A-15.4 has been made and collected;

3. The creation or enhancement of freshwater wetlands or State open waters at another site has been required of the violator;

4. An opportunity has been afforded for public hearing and comment; and

5. The reasons for the issuance of the "after the fact" permit are published in the DEPE Bulletin and in a newspaper of general circulation in the geographic area of the violation.

(b) Any person violating an "after the fact" permit issued pursuant to this section shall be subject to the provisions of this chapter.

7:7A-15.10 Termination of permits

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

1. Noncompliance by the permittee with the permit or any condition of the permit;

2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

3. The permit has unanticipated negative environmental impacts such as, but not limited to excessive erosion and subsequent siltation, destruction of vegetation not covered by the permit, die-off of aquatic biota, etc., which become apparent during construction.

(b) Prior to a termination, the Department shall furnish written notice to the permittee by certified mail. The notice shall provide 10 days within which the permittee shall either remedy the violations, or unanticipated negative environmental impacts, offer a plan as to how to bring the permit back into compliance or correct the unanticipated impact, or request a hearing pursuant to (e) below. Within 60 days of Department approval of a plan, the violations or unanticipated impact shall be remedied.

(c) If the requirements of (b) above have not been met within 10 days of the Department's notice, the permit shall automatically terminate and the unanticipated negative environmental impacts or violations shall be remedied. Once the violations are remedied, the Department may reinstate the permit or require the applicant to apply for a new permit, following the application procedures in this chapter.

(d) Should a permit be terminated, the permittee shall restore the site to its pre-activity condition to the maximum extent practicable and feasible or otherwise compensate for any loss in resource value through mitigation pursuant to N.J.A.C. 7:7A-14. This restoration shall be accomplished within 90 days unless the Department authorizes in writing a longer period of time.

(e) A request for a hearing under (b) above shall first be filed with the Department at the following address:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

7:7A-15.11 Public participation

The State shall provide for public participation in the State enforcement process by providing assurance that the State agency or enforcement authority will:

1. Investigate and provide responses to all citizen complaints submitted pursuant to State procedures;

2. Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

3. Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action in the DEPE Bulletin.

SUBCHAPTER 16. FEES

7:7A-16.1 Payment of fees

(a) Except when submitted by an agency of the State, each request for a letter of interpretation, or freshwater wetlands permit application, open water fill permit application, letter of authorization for a Statewide general permit activity, transition area permit application, or request for a letter of exemption shall be accompanied by the appropriate fee as set forth at N.J.A.C. 7:7A-16.2 to 16.6. Except when submitted by an agency of the State, no request, application, or notice will be considered complete, and therefore will not be acted on by the Department, unless accompanied by the appropriate fee.

(b) All fees shall be paid by personal check, certified check, attorney check, or money order. Checks and money orders shall be payable to "Treasurer, State of New Jersey" and submitted with the application.

(c) Each check or money order shall be marked to identify the nature of the submittal (for example, freshwater wetlands Individual permit application) for which the fee is paid and the name of the applicant.

7:7A-16.2 Fees for review of requests for letters of interpretation

(a) If a request is made for a letter of interpretation to determine;

1. Whether freshwater wetlands, State open waters or transition areas are present or absent on a parcel of land or right-of-way, pursuant to N.J.A.C. 7:7A-8.2(a)1, the fee shall be $100.00;

2. Whether freshwater wetlands, State open waters or transition areas are present or absent on a footprint of land, pursuant to N.J.A.C. 7:7A-8.2(a)2, the fee shall be $200.00.

(b) Any request for a letter of interpretation which requires any freshwater wetlands or State open water boundary delineation, or verification of a delineation, shall be accompanied by the following fee:

1. For a parcel of land or right-of-way which is smaller than one acre, pursuant to N.J.A.C. 7:7A-8.2(a)3, the fee shall be $250.00; or

2. For a parcel of land or right-of-way, with total acreage of one acre or more, pursuant to N.J.A.C. 7:7A-

8.2(a)4, the fee shall be $250.00 plus $35.00 per acre or any fraction thereof, with a total not to exceed $50,000. For example, the fee for line verification of a parcel with a total acreage of 7.2 acres would be $250.00 + (8 acres x $35.00)= $530.00.

(c) For a request for the reissuance of a letter of interpretation pursuant to N.J.A.C. 7:7A-8.7, the fee shall be 25 % of the original fee or $100.00, whichever is larger.

(d) If in order to review and process a request for a letter of interpretation, more than one inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed $1,000. No letter of interpretation shall be issued until this fee has been paid.

7:7A-16.3 Fees for review of individual freshwater wetlands, and open water fill permits

(a) The fee for the review and processing of an individual freshwater wetlands and open water fill permit application shall be $1,000 plus $100.00 per one-tenth acre, or any fraction thereof, of freshwater wetlands or State open waters affected by any regulated activities. For a permit requiring both an individual freshwater wetlands and open water fill permit the fee shall be $1,000 plus $100.00 per one-tenth acre, or any fraction thereof, of freshwater wetlands and State open waters affected by any regulated activities.

(b) For projects that require both an individual freshwater wetlands/open water fill permit and a transition area permit, only one fee for the review and processing of the permit shall be required, the higher of the two fees.

(c) If, in order to review and process a freshwater wetlands permit application, more than one inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed $1,000. No permit shall be issued until this fee has been paid.

7:7A-16.4 Fees for review of Statewide general permit authorization applications

(a) The fee for review of a Statewide general permit authorization application pursuant to N.J.A.C. 7:7A-9.4(a) shall be $250.00.

(b) If a proposed project requires more than one type of general permit, the fee shall be $250.00 for the first general permit and $100.00 for each additional general

permit.

7:7A-16.5 Fees for review and processing of transition area waiver applications

(a) Each request for a transition area waiver shall be accompanied by the appropriate fee as follows:

1. If a letter of interpretation has been performed on the property by the Department pursuant to N.J.A.C. 7:7A-8 confirming or delineating the freshwater wetlands boundary, the transition area waiver application fee shall be:

i. For a property or right of way of one acre or less: $100.00; and

ii. For a property or right of way over one acre: $250.00 plus $20.00 per acre, or any fraction thereof, of the standard transition area affected or disturbed by the proposed activity.

iii. For review of applications for more than one type of transition area waiver the fee shall be $250.00 plus $20.00 per acre, or any fraction thereof of the standard transition area affected or disturbed by the proposed activity, plus $100.00 for each additional special activity waiver.

2. If no letter of interpretation for the property has been prepared by the Department pursuant to N.J.A.C. 7:7A-8 confirming or delineating the freshwater wetlands boundary, the transition area waiver application fee shall be:

i. For a property or right of way of one acre or less: $350.00;

ii. For a property or right of way over one acre: $450.00 plus $40.00 per acre, or any fraction thereof, of the total property; and

iii. For review of applications for more than one type of transition area waiver the fee shall be $450.00 plus $40.00 per acre, or any fraction thereof of the total property plus $100.00 for each additional special activity waiver.

3. If a letter of interpretation for the property which provides only a determination of the presence or absence of freshwater wetlands has been prepared for a property by the Department pursuant to N.J.A.C. 7:7A-8, the transition area waiver application fee shall be:

i. For a property or right of way of one acre or less: $350.00; and

ii. For a property or right of way over one acre: $450.00 plus $40.00 per acre, or any fraction thereof, of the total property.

4. For special activity waivers for activities covered by Statewide general permits:

i. For the review of a special activity waiver pursuant to N.J.A.C. 7:7A-7.4(e): $250.

ii. If a proposed project requires more than one type of special activity waiver, the fee shall be $250.00 for the first special activity waiver and $100.00 for each additional special activity waiver.

5. If, in order to review and process a transition area waiver application, more than one site inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed $1,000. No transition area waiver shall be issued until this additional fee is paid.

7:7A-16.6 Fees for the review and processing of requests for exemption letters

(a) The fee for the review and processing of a request for an exemption letter certifying that a project or activity is exempt from freshwater wetlands or open water fill permit requirements, or from transition area requirements, shall be $100.00.

7:7A-16.7 Fees for the review and processing of requests for permit modifications

Except for minor modifications pursuant to N.J.A.C. 7:7A-13.9 for which no fee will be charged, the fee for the review and processing of a request for permit modification shall be 25% of the original fee.

7:7A-16.8 Fee refunds

All fees submitted with an application that is declared administratively complete shall be non-refundable.

SUBCHAPTER 17. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:7A-17.1 General penalty provisions

(a) This subchapter shall apply only to violations of

the Act and this chapter which involve freshwater wetlands and transition areas. This subchapter shall not apply to regulated activities in State open waters. The penalty procedures and amounts for State open water fill violations are set by N.J.A.C. 7:14-8. This subchapter shall also govern the procedures for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b) Each violation of any provision of the Act or any rule, administrative order, approved mitigation plan, waiver or permit issued pursuant thereto shall constitute an additional, separate, and distinct violation for which a separate penalty may be assessed.

(c) Each day during which such violation exists and/or continues shall constitute an additional, separate, and distinct violation for which a separate civil administrative penalty may be assessed. A violation shall be considered to continue as long as it is not rectified, remedied, repaired, or removed, to the satisfaction of the Department. For example, each day that an obstruction, structure, piling, fill or discharge placed or constructed in violation of the Act remains in place shall constitute an additional, separate, and distinct violation. Also for example, for destruction, dredging, or removal of freshwater wetlands components such as soil or vegetation, each day between the destruction or removal and the replacement, restoration, or remediation to the satisfaction of the Department shall constitute an additional, separate, and distinct violation.

1. For the purposes of calculating the duration of any violation, the first day of the violation shall be the day which is the earliest point in time that the Department can establish that the violation occurred, had occurred, or was occurring.

2. The last day of the violation shall be as follows:

i. The day upon which a complete application for a permit or waiver to pursue the activity is submitted to the Department;

ii. The day upon which a complete restoration plan is submitted to the Department; or

iii. The first day upon which a good faith effort was made to comply with the Department's requirements. If such a good faith effort is shown, the Department may, in its sole discretion, consider the first day of such efforts to be the last day of the violation.

3. To demonstrate a good faith effort, the violator shall show that all regulated and prohibited activity has

been halted, shall promptly submit any information required by the Department, shall promptly remedy all deficiencies in any application or other materials submitted to the Department, and shall otherwise promptly comply with all Department requirements.

4. For the purposes of penalty assessment, the number of days required by the Department to render a decision and give notice of such decision on a submitted permit application or restoration proposal shall be excluded from the per day penalty calculation.

(d) In addition to the civil administrative penalties assessed under this subchapter, restoration and/or mitigation may be required pursuant to N.J.A.C. 7:7A-14 and 15.

(e) The Department may in its discretion settle any civil administrative penalty assessed under this chapter.

7:7A-17.2 Civil administrative penalty determination

(a) Except for those violations set forth in N.J.A.C. 7:7A-17.4 through 17.6, the Department may assess a civil administrative penalty for violations described in this section using three factors: conduct of violator, acreage of impact, and resource value classification of impacted wetland. Point values are assigned to the three ranges within each factor, as described below in N.J.A.C. 7:7A-17.2(b). For each violation, the total number of points are determined and the total is used at (c) below to determine penalty amount per day.

(b) The following is a description of the factors to be used in penalty determination and the point values assigned to them:

1. The conduct factor of the violation shall be determined as major, moderate or minor as follows:

i. Major shall include an intentional, deliberate, purposeful, knowing or willful act or omission by the violator and is assigned 3 points;

ii. Moderate shall include any unintentional but foreseeable act or omission by the violator and is assigned 2 points; and

iii. Minor shall include any other conduct not identified in (b)1i or ii above and is assigned 1 point.

2. The acreage of wetlands impacted by the violation factor shall be determined as:

i. An impact to greater than 3 acres of wetlands is assigned 3 points;

ii. An impact to 1-3 acres of wetlands is assigned 2 points;

iii. An impact to less than one acre of wetlands is assigned 1 point.

3. The resource value classification factor shall be determined as:

i. An impact to exceptional resource classification wetlands is assigned 3 points;

ii. An impact to intermediate resource classification wetlands is assigned 2 points;

iii. An impact to ordinary resource classification wetlands is assigned 1 point.

(c) The total points from the above factors shall be used to determine the penalty assessment per day according to the following table:

Total Points	Penalty Amount Per Day
9	$10,000
8	9,000
7	7,500
6	6,000
5	4,500
4	3,000
3	1,500.

7:7A-17.3 Civil administrative penalty for engaging in regulated activities without approval

(a) The Department may assess a civil administrative penalty in accordance with the provisions of this section against each violator who engages in a regulated activity in a freshwater wetland without a freshwater wetlands permit or engages in a prohibited activity in a transition area without a transition area waiver.

(b) For each violation under this section, the Department may assess a penalty of up to $10,000. Each day, from the day the regulated or prohibited activity begins to the day its effects are rectified, remedied, repaired, or removed to the satisfaction of the Department, shall constitute an additional, separate, and distinct violation.

7:7A-17.4 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained, under the Act or any rule, administrative order, permit, mitigation plan, or waiver issued pursuant thereto.

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator, shall be an additional, separate, and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing, or willful act or omission by the violator, the civil administrative penalty shall be in an amount of not more than $10,000 nor less than $8,000 for violations described in N.J.A.C. 7:7A-15; and

2. For each other violation, the penalty shall be in the amount of $1,000.

7:7A-17.5 Civil administrative penalty for failure to allow entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative.

(b) Each day that a violator refuses, inhibits or prohibits immediate lawful entry and inspection, shall be an additional, separate, and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section as follows:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which an administrative order, freshwater wetlands permit, open water fill permit, transition area waiver, approved mitigation plan or general permit authorization notification exists for the property in question under the Act, the civil administrative penalty shall be no more than

$10,000 nor less than $7,000; and

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount not more than $7,000 nor less than $1,500.

7:7A-17.6 Civil administrative penalty for failure to pay a civil administrative penalty assessed under the Act

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a civil administrative penalty when due pursuant to the Act.

(b) The Department shall assess a civil administrative penalty pursuant to this section in an amount equal to the unpaid civil administrative penalty up to a maximum of $10,000 per violation.

(c) Each day a civil administrative penalty is not paid after it is due shall constitute an additional, separate and distinct violation.

7:7A-17.7 Economic benefit factor

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as a civil administrative penalty the economic benefit (in dollars) which the violator has realized as the result of not complying, or by delaying compliance with the requirements of the Act or any rule, permit, mitigation plan, waiver or administrative order issued pursuant thereto. If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than $10,000 per violation.

7:7A-17.8 Procedures for assessment of civil administrative penalties under the Act

(a) To assess a civil administrative penalty under the Act, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the Act, rule, mitigation plan, permit or administrative order violated;

2. Concisely state the facts alleged to constitute the violation;

3. Specify the amount of the civil administrative penalty to be imposed; and

4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7A-17.9.

(b) Payment of a civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case, or when a Notice of Civil Administrative Penalty Assessment becomes a Final Order as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7A-17.9, a Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;

2. If the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of notice of such denial; or

3. If the Department conducts an adjudicatory hearing, upon receipt by the violator of a final order of a contested case.

7:7A-17.9 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

(a) To request an adjudicatory hearing to contest an administrative order, and/or a notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit the following information in writing to the Department, addressed to Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, 401 East State Street, 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 finding 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 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 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 accessible to physically disable persons.

(b) If the Department does not receive the hearing request within 20 days after receipt by the violator of the Notice of Civil Administrative Penalty Assessment and/or the Administrative Order being challenged, 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) If it grants the request, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and in accordance with 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.

SECTION: A-II

FRESHWATER WETLANDS PERMIT APPLICATION (FW-1)

New Jersey Department of Environmental Protection and Energy | FW-1

Freshwater Wetlands Permit Application

FOR: Individual Freshwater Wetlands Permit, Open Water Fill Permit and Transition Area Waiver
(NJSA 13:9B, NJAC 7:7A)

This form is to be used to apply for a Statewide General Freshwater Wetlands Permit, Individual Freshwater Wetlands Permit, Open Water Fill Permit, and Transition Area Waiver. Activites covered by Statewide General Permits are described in the Freshwater Wetlands Protection Act Rules (Specifically, NJAC 7:7A-9). All activities regulated under the Freshwater Wetlands Protection Act, P.L. 1987, c. 156 which are not explicitly covered by a Statewide General Permit, require an Individual Permit. Instructions are attached, explaining which items need to be completed for Individual Permits, Statewide General Permits, and Transition Area Waivers. All items must be completed for an Individual Freshwater Wetlands or Open Water Fill Permit. For more detailed information, and procedures for obtaining permit approvals, see NJAC 7:7A.

Information provided on this form will be used in evaluating the application for a permit/waiver, and shall be a matter of public record. Disclosure of the information requested is voluntary. If necessary information is not provided, the permit/waiver application cannot be processed nor can a permit/waiver be issued.

This application should be submitted to the NJ Department of Environmental Protection and Energy, Land Use Regulation Program, CN 401, Trenton, NJ 08625 (Street address: Station Plaza 5, 501 East State Street, Trenton, NJ 08625-0401). An original and two (2) copies are needed for a proposed activity covered by a Statewide General Permit. An original and nine (9) copies of this completed application form, along with ten (10) copies of all support documents specified below, must be submitted for an Individual Freshwater Wetlands Permit or Open Water Fill Permit Application. An original and two (2) copies are needed for a Transition Area Waiver. If additional space is needed to complete this application, use plain bond paper and attach it to the application form. Please reference the application form item numbers for all such additions.

FOR NJDEPE USE ONLY
Application number:

Fee received: $_____
By: _____ Date: _____

Type or print all information

1. Name and address of applicant:

Telephone number during business hours:
Residence ( ) _____/ _____
Work ( ) _____/ _____

2. I have an authorized agent to act on my behalf relative to this application. __ Yes __ No
(See instruction sheet item #2)
Name, address and title of agent, if any.

Telephone number during business hours:
Work ( ) _____/ _____
Statement of Authorization: I hereby designate and authorize _____
to act on my behalf as my agent with regard to this permit application and to furnish, upon request, supplemental information in support of this application.

_____ _____
Signature of Applicant Date

3. This application is for:

___ Approval of activities covered by a Statewide General Permit Number(s) _____

___ Individual Freshwater Wetlands Permit

___ Open Water Fill Permit

___ Transition Area Waiver

See Program Summary in Appendix A for applicable permit/waiver descriptions and numbers.

4. Fee Attached:

$_____

(See Attached fee schedule)

5. Provide a written description of the proposed regulated/prohibited activity. See instruction Item #5 for the specific information required for an Individual or Open Water Fill Permit, Statewide General Permit, or Transition Area Waiver.

6. Describe the purpose and use of the proposed regulated activity.

7. Describe in detail the discharge of dredged or fill material, if such a discharge is part of the proposed project.

8. List the names and addresses of adjoining property owners, leasees and holders of easements on properties within 200 feet of the property which is the site of the proposed project.

9. List the name of adjacent waterbodies, or location on the waterbody where the activity is proposed.

10. Location where the activity is proposed:

Address: _____
Street, Road, Route or other descriptive location

_____
Municipality State ZIP

_____
Block(s) Lot(s) County

11. Is any portion of the activity for which authorization is sought now completed? ___ Yes ___ No

If answer is "Yes," give month and year the activity was completed and indicate the existing work on the drawings.

12. Provide a description of alternatives.

13. Describe any potential adverse environmental impacts.

14. Describe the wetland plant community, special aquatic sites, etc. as specified in Item #14 of instruction sheet.

15. Describe potential human health or welfare impacts from the proposed regulated activity.

16. Describe mechanisms to minimize adverse environmental impacts.

17. For any structure, construction, discharges or other activities described in this application, indicate below all approvals, certifications or denials received from any federal, interstate, state or local agencies.

- In Column A, indicate application status: (pending, approved, denied, or other - explain other).
- In Column B, indicate application , permit, or docket number.

	A	B		A	B
CAFRA			Water Quality Certificate		
Waterfront Development			Open Water Fill		
(Tidal or Coastal) Wetlands			Stream Encroachment		
Statewide General Freshwater Wetlands			Dam Construction or Repair		
Individual Freshwater Wetlands			Tidelands (Riparian) Conveyance		
Freshwater Wetlands Transition Area Waiver			Sewer System: Extension Collectors, pumpstations, etc.		
Purchase Water Diversion			Exemption from Sewer Ban		
Divert Water Supply for Public Use			NJ Pollution Discharge Elimination System		
Divert Surface Waters for Private Use			Solid Waste Permits (Specify)		
Divert Subsurface or Percolating Water for Private Use			Air Quality Permits (Specify)		
Well Drilling			D&R Canal Certificate		
Permanent Water Lowering			Pinelands Certificate		
Temporary Water Lowering			Other State (Specify)		
Construct, Modify or Operate Public Potable Water Works			Local Permits (Specify)		
Connection between approved and Non-approved water supply			Federal Permits (Specify)		

18. Provide a list of plants, fish, etc. as described in Item #18 of the instruction sheet.

19. For an Individual Freshwater Wetlands or Open Water Fill Permit, attach an original and nine (9) copies of the following: Site plan, a subdivision map if available, and vicinity map. (See instruction sheet Item #19.)

For a Statewide General Permit, attach an original and two (2) copies of site plan and vicinity map. (See General Permit instruction sheet Item #19.)

For a Transition Area Waiver, attach an original and two (2) copies of all the information specified at instruction sheet Item #5.

20. Attach verification that notices have been forwarded by registered mail to all parties specified in Item #20 of the instruction sheet.

21. Attach a newspaper notice, or notices, if required. (See instruction sheet Item #21.)

22. Attach photographs of the site of the proposed activity as described in Item #22 of the instruction sheet.

23. Have you attached a separate mitigation proposal as described in Item #23 of the instruction sheet?

____ Yes ____ No

24. Signatures - I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are penalties for submitting false information including the possibility of fines and imprisonment. I hereby authorize the staff of the NJDEPE to conduct such on-site inspections of the parcel(s) which are the subject of the application as are necessary to review this application and to ensure compliance with the requirements of the New Jersey Freshwater Wetlands Protection Act (N.J.S.A. 13:9B- et seq.) and implementing rules (N.J.A.C. 7:7A-1 et. seq.).

Signature of Applicant	Date	Signature of Agent	Date

25. Property Owner's Certification - (Complete if applicant is different than property owner).

I hereby certify that I am the owner of the property upon which the proposed work is to be done, and I grant permission to conduct the proposed activity. A portion of the proposed activity will _____ will not _____ take place within an easement, and no _____ some _____ part of the proposed activity will take place on property owned by the State of New Jersey.

	Signature of Owner(s)
Type or Print Name and Address of Owner, if different from applicant	Date

Attachments: I have attached supplemental information for the items checked below:

Item #1. _____	Item #6. _____	Item #11. _____	Item #16. _____	Item #21. _____
Item #2. _____	Item #7. _____	Item #12. _____	Item #17. _____	Item #22. _____
Item #3. _____	Item #8. _____	Item #13. _____	Item #18. _____	Item #23. _____
Item #4. _____	Item #9. _____	Item #14. _____	Item #19. _____	Item #24. _____
Item #5. _____	Item #10. _____	Item #15. _____	Item #20. _____	Item #25. _____

APPLICATION INSTRUCTIONS

These are instructions for completing an Individual Freshwater Wetlands Permit, Open Water Fill Permit, Statewide General Permit, and Transition Area Waiver. For more detailed information regarding Freshwater Wetlands Permits see Appendix 'A' (attached) or the Freshwater Wetlands Protection Act Rules N.J.A.C. 7:7A.

INSTRUCTIONS FOR

Individual/Open Water Fill Permit Applications

Application Number and Fee:
Do not mark in this block. This will be completed by NJDEPE.

Item #1 - Name and permanent legal address of the applicant (The site of the proposed activity goes in item #10).

Item #2 - (Optional). All applications to the Department shall be signed by the applicant or by a duly authorized representative, or agent, of that person in Item #24. The NJDEPE does not require an applicant to have an agent. A person is a duly authorized representative only if the requirements of N.J.A.C. 7:7A-11.3 are met. Sign this item only if you have an agent.

Item #3 - Indicate the permit(s) for which you are applying. See attached Program Summary in Appendix A and N.J.A.C. 7:7A if a more detailed explanation is necessary. If the proposed activity includes the discharge of dredged or fill materials in wetlands or water of the United States, then a Section 401 Water Quality Certificate is required.

Item #4 - Enter the amount of the fee submitted based upon the attached fee schedule. Do not submit cash. Your personal check, certified or cashier's check, attorney check or money order must be made payable to "Treasurer - State of New Jersey" and marked to identify the nature of the submittal and the name of the applicant. The permit review fee is based on N.J.A.C. 7:7A-16.

Item #5 - Provide a written description of the proposed regulated activity, the total area to be used, filled or modified, the total area of the freshwater wetland or State open waters potentially affected. In addition, project elements affecting transition areas should be detailed.

Item #6 - Describe the purpose and intended use of the proposed activity, including whether it is water dependent as defined in N.J.A.C. 7:7A-1.4, a description of the use of any structures to be erected, and a schedule for the progress and completion of the proposed activity.

Item #7 - Describe the source and location of any dredged or fill material. For fill material, describe the source of any material and the type, composition and quantity of the material. For dredge projects, describe the method of dredging used, if any; a description of the type, composition and quantity of the material; and the proposed method of transportation and disposal of the material, including the type of equipment to be used. NOTE: The site plan (Item #19) shall include a cross-sectional view showing the following:

a. Existing water elevations of the wetland or water area;

b. Existing water depths at waterward face of proposed work, or if dredging is proposed, show dredging grade;

c. Cross-section of fill;

d. Elevation of spoil areas;

e. Location of wetlands; and

f. Delineation of disposal site.

Item #8 - Self explanatory. If adjacent properties or property owners are not readily apparent, municipal tax records should be consulted.

Item #9 - Identify the waterbody or watershed, such as the name of adjacent streams, lakes, reservoirs, creeks, rivers, etc., in or near where the project is located. Quantify the relationship of the area affected by the proposed work to the area of the entire freshwater wetland or State open waters complex, for example, one-half acre to be filled of a 15 acre freshwater wetland.

Item #10- Specify the location of the activity (work site) including county, municipality, lot(s), block(s),etc.

Item #11- Self explanatory.

Item #12- Provide a description of alternatives to the proposed activity or discharge, including alternative sites, construction methods, methods of discharge, and reasons for rejecting the alternatives pursuant to 7:7A-3, General Standards for Granting Individual Freshwater Wetlands and Open Water Fill Permits;

Item #13- Attach a statement detailing any potential adverse environmental effects of the regulated activity and any measures necessary to prevent and/or minimize those effects, and any information necessary for the Department to make the findings pursuant to N.J.A.C. 7:7A-3. Applicants should review N.J.A.C. 7:7A-3 in great detail and provide all the listed information to avoid unnecessary delays in permit processing.

Item #14- Describe all freshwater wetlands vegetative communities, special aquatic sites (as defined at N.J.A.C. 7:7A-1.4), public use areas, wildlife refuges, and public water supply intakes in the areas affected by or adjacent to the proposal that may require special protection or preservation.

Item #15- Describe any uses or aspects of the proposed activity or discharge which might affect human health and welfare.

Item #16- Describe technologies or management practices by which the applicant proposes to minimize adverse environmental effects of the activity or discharge. Guidance regarding minimizing adverse effects can be found in federal regulations (commonly known as the 404(b)1 guidelines) at 40 CFR 230 Subpart H.

Item #17- Several approvals may be required for certain activities. For example, installation of municipal water wells in a wetlands may require a Well Drilling Permit, Water Allocation Permit, as well as a Freshwater Wetlands Permit. In Item #17 indicate all necessary governmental approvals, permits pending, approved, denied, or other explain other.

Item #18- Attach a list of plants, fish, shellfish and wildlife in the proposed activity or discharge site which may be dependent on water quality and quantity.

Item #19-

A. Attach a copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, CN 417, Trenton, NJ, 08625) showing the location of the property and its general vicinity, indicating and labeling the location of

the proposed activity and the property boundaries, and a determination of the State Plane Coordinates for the center of the property. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects, the applicant shall provide State plane coordinates for the end-points of those projects which are 1999 feet or less, and for those projects which are 2000 feet and longer, additional coordinates at each 1000 foot interval;

B. Attach 10 copies, including one of reproducible quality, (a mylar copy is not required) of a site plan on 8½ inch by 11 inch paper if appropriate (if larger than 8½ inch by 11 inch, all copies shall be folded) indicating the following:

1. All existing structures and related appurtenances on the lot and immediately adjacent lots;

2. Distances and dimensions of areas, structures and lots, including freshwater wetlands, State open waters, transition areas, limits of inundation for the 100 year flood for non-delineated streams or flood hazard area flood for delineated streams (if applicable), mean high water line (if appropriate), upland property, roads and utility lines;

3. A complete delineation of the wetlands boundary(ies) in accordance with the requirements of N.J.A.C. 7:7A-8.3(a) and 3(b). A letter of interpretation issued by the Department may be submitted to satisfy this requirement;

4. The proposed area which will be used for the activity or discharge;

5. The general site location in relation to development in the region;

6. The scale of the plan and a north arrow;

7. A title block for each sheet containing the following information:

a. The name of the applicant and the name or the proposed project (if any):

b. Identification of the proposed activity;

c. County and municipality;

d. Lot and block;

e. Number of the sheet and the total number of sheets in set; and

f. Preparer, and date of the drawing and all revisions.

Item #20-

A. Attach verification that a complete copy of the application for an Individual permit, including all materials required by this subsection, has been submitted to the clerk of the municipality in which the proposed regulated activity will occur.

B. Attach verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a copy of the vicinity map in Item 19A above have been forwarded to the environmental commission or any other public body with similar responsibilities, and planning board of the municipality in which the proposed regulated activity will occur; the planning board, environmental commission and county mosquito control agency of the county in which the proposed regulated activity will occur; landowners within 200 feet of the property or properties on which the proposed regulated activity will occur (applicant shall also provide a list of all landowners within 200 feet) , and all persons as identified by the Department who requested to be notified of proposed regulated activities (the Department will furnish a list of such person's upon request), which notice may at the applicant's option, be filed concurrently with notices required pursuant to N.J.S.A. 40:55D-1 et seq. A copy of the notice shall be included in the application to the Department. The notice shall include the following:

1. The name and address of the applicant and, if different, the address or location of the activity or activities regulated by the permit;

2. The name, address, and telephone number of the applicant or agent to contact for further information;

3. A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills, and a description of the type, composition and quantity of materials to be discharged;

4. A plan and elevation drawing showing the general and specific site location;

5. Any other information which is necessary to evaluate the likely impact of the proposed activity;

6. The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the New Jersey Department of Environmental Protection and Energy, Land Use Regulation Element for an Individual Freshwater Wetlands permit.

An Individual permit will allow the property owner to conduct activities in freshwater wetlands or State open waters.

The complete Individual permit application package can be reviewed at either the municipal clerk's office or by appointment at the Land Use Regulation Element office at the address listed below. The Department of Environmental Protection and Energy welcomes comments and any information that you may provide concerning the wetlands or open waters on the referenced parcel. Please submit your written comments within 15 days of receiving this letter. In addition, interested persons may request in writing that the Department hold a public hearing on this application. Requests shall be made in writing within 30 days after the notice of application in the DEPE Bulletin and shall state the nature of the issues proposed to be raised at the hearing. Both comments and hearing requests should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection and Energy
Land Use Regulation Element
Bureau of Regulation
CN 401
5 Station Plaza
Trenton, New Jersey 08625
att: (County in which the property is located) Section Chief

As part of the review of this application, Department personnel may perform a site inspection on your property. This site inspection will involve only that area within a maximum of 150 feet from the border of the applicant's property. This site visit will involve a visual inspection and possibly minor soil borings using a 4" diameter hand auger. The inspection will not result in any damage to the vegetation or improvements on your property.

The Department will notify your municipal environmental commission, planning board and the municipal construction official of the Department's approval or denial of the Individual permit application."

Item #21- Attach verification that notice of the proposed activity has been published as a display advertisement in an official newspaper used by the municipality, in which the activity is proposed, for legal notice. For projects proposing more than 10 acres of fill, notification shall also be published in a newspaper of regional circulation;

Item #22- Attach color photographs of sufficient quality and quantity to show the project site including:

a. Location of known freshwater wetlands and State open waters; and

b. Proposed location of the regulated activity.

Item #23- Please indicate whether or not you are submitting a mitigation proposal with this application. A mitigation proposal, meeting the requirements of N.J.A.C. 7:7A-14.4, may be submitted with the permit application or may be submitted at a later time. The Department requires an approved mitigation plan as a condition precedent to engaging in a regulated activity. Section 13b of the Freshwater Wetlands Protection Act requires the Department to review the merits of a mitigation proposal independently of the review the merits of a mitigation proposal independently of the review process for a Freshwater Wetlands or Open Water Fill Permit.

Item #24- Signature. All permits applications and reports shall be signed as follows:

a. For a corporation, by a principal executive officer of at least the level of vice-president;

b. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

c. For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official;

d. By individual property owners of record; or

e. By a duly authorized representative or agent as specified in item #2 of this instruction sheet.

Item #25- Self explanatory.

Attachments: Please check the items for which you have submitted additional attachments, if any.

Note: The Department shall provide permit applicants with guidance, either through the application form or on an individual basis, regarding the level of detail of information and documentation required. The level of detail shall be reasonably commensurate with the type and size of the proposed project, proximity to critical areas, and degree of environmental degradation. The NJDEPE Land Use Regulation Program can be reached at (609) 292-1235.

If you have any questions, first please read the appropriate section(s) of the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A-1 et. seq.) See in particular N.J.A.C. 7:7A-11.

Applicants are encouraged to consider requesting a pre-application conference to resolve any questions. See N.J.A.C. 7:7A-10 for information on requesting a pre-application conference.

INSTRUCTIONS FOR

STATEWIDE GENERAL PERMIT APPLICATION

NOTE: No activity is authorized under a Statewide General Permit unless first approved in writing by NJDEPE. To obtain an authorization letter, complete form FW-1 according to the instructions below, and submit it, with attachments specified below, to NJDEPE at least 30 days prior to commencement of the proposed work. See N.J.A.C. 7:7A-9 for more information on obtaining approvals under Statewide General Permits. Attach additional sheets if necessary. Other items in the FW-1 form do not need to be completed for approval of a Statewide General Permit.

Item #1 - Enter the name of applicant, permanent legal address, and telephone number during business hours.

Item #2- (Optional). NJDEPE does not require an applicant to have an agent. If you have an agent, complete Item #2 according to Individual Permit Instruction sheet Item #2. Sign this item only if you have an agent.

Item #3- Indicate the identification number of the Statewide General Permit or permits for which you are applying as listed in the attached Program Summary in Appendix A. See N.J.A.C. 7:7E-9.4 for guidance regarding the use of multiple Statewide General Permits on a specific site.

Item #4- Enter the amount of fee submitted based upon the attached fee schedule. Do not submit cash. Your personal check, certified or cashier's check, attorney check, or money order must be made payable to "Treasurer - State of New Jersey" and marked to identify the nature of the submittal and name of applicant. PLEASE NOTE THAT APPLICATIONS FOR STATEWIDE GENERAL PERMIT #25 DOES NOT REQUIRE A FEE. (Repair or alteration of malfunctioning individual subsurface sewage disposal systems) SEE ATTACHED FEE SCHEDULE FOR APPROPRIATE FEE.

Item #5- Enter a written description of the proposed activity. Also, please submit any information necessary to determine whether the conditions of the general permit for which you are applying will be satisfied, including but not limited to the following information (APPLICANTS FOR STATEWIDE GENERAL PERMIT #25 (Repair or alteration of malfunctioning individual subsurface sewage disposal systems) NEED ONLY SUBMIT THE ITEMS LISTED AT LETTER d. of the following):

a. Complete wetlands delineation including field delineation, folded plans at an appropriate scale, and wetlands field data sheets including soils and vegetation information (no formal report is required), <u>for the area to be disturbed under the Statewide general permit application</u>;

b. A copy of the appropriate portion of the U.S. Geologic Survey Quadrangle (USGS) Map for the project site and a determination of the State Plane Coordinates for the center of the project. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects, the applicant shall provide State plane coordinates for the end-points of those projects which are 1999 feet or less, and for those projects which are 2000 feet and longer, additional coordinates at each 1000 foot interval;

c. For projects that are located in municipalities listed below at N.J.A.C. 7:7A-9.5(a)2iii(1) and all amendments thereto, pursuant to 9.5(a)2iii(2) below, the applicant shall submit a signed statement certifying that the proposed activities will not result in any direct or indirect adverse impacts to Swamp pink (Helonias bullata) or its documented habitat; and

1. Municipalities which have documented record of Helonias bullata:

Atlantic County	Gloucester County
Egg Harbor Township	Franklin Township
	Glassboro Borough
Town of Hammonton	Mantua Township

Mullica Township

Burlington County
- Evesham Township
- Maple Shade Township
- Pemberton Township
- Southampton Township
- Woodland Township
- Medford Township

Camden County
- Berlin Township
- Berlin Borough
- Clementon Borough
- Gibbsboro Borough
- Gloucester Township
- Haddonfield Borough
- Lindenwold Borough
- Pine Hill Borough
- Pine Valley Borough
- Runnemede Borough
- Voorhees Township
- Waterford Township
- Winslow Township

Cape May County
- Cape May Point Borough
- Dennis Township
- Lower Township
- Middle Township
- Upper Township

Cumberland County
- Bridgeton City
- Downe Township
- Fairfield Township
- Hopewell Township
- Lawrence Township
- Millville City
- Stow Creek Township
- Upper Deerfield Township
- Vineland City

Gloucester County
- Clayton Borough
- Deptford Township
- East Greenwich Township
- Elk Township
- Monroe Township
- Newfield Borough
- Washington Township
- Wenonah Borough
- West Deptford Township
- Woodbury Heights Borough
- Woolwich Township

Mercer County
- West Windsor Township

Middlesex County
- East Brunswick Township
- Edison Township
- New Brunswick City
- Sayreville Borough

Monmouth County
- Brielle Borough
- Colts Neck Township
- Freehold Township
- Howell Township
- Wall Township

Morris County
- Mount Olive Township
- Randolph Township
- Roxbury Township

Ocean County
- Barnegat Township
- Brick Township
- Dover Township
- Jackson Township
- Lacey Township
- Lakewood Township
- Little Egg Harbor Twp.
- Manchester Township
- Plumsted Township
- Stafford Township

Salem County
- Alloway Township
- Lower Alloways Creek Twp.
- Pittsgrove Township
- Quinton Township
- Upper Pittsgrove Township

2. The Department will publish notice in the New Jersey Register of any amendments to this list based upon updated information and make such information available at its offices and through the Office of Administrative Law.

d. A person proposing to engage in activities pursuant to N.J.A.C. 7:7A-9.2(a)25, repair or alteration of malfunctioning individual subsurface sewage disposal systems, shall submit a description and plan of the activities and their location including municipality, county, block, and lot; and an approval from the Board of Health or its designated agent for the proposed activities.

Skip Items #6 and #7

Item #8- Self explanatory. If adjacent properties or property owners are not readily apparent, municipal tax records should be consulted.

a. If the proposed project involves a linear facility such as a pipeline or road of more than 0.5 miles, instead of notifying all landowners within 200 feet of the property(ies) lines, the applicant shall give public notice by publication of a display advertisement. The advertisement shall be a minimum of four column inches and be published in at least one newspaper of local circulation and one of regional circulation in the municipality. In addition, notice shall be given to owners of all real property within 200 feet of any above surface structure related to the linear facility, such as a pumping station or treatment plant, power substations, grade separated interchanges or similar structures. This does not include utility support structures or conveyance lines.

Skip Item #9

Item #10- Specify the location of the activity (work site) including county, municipality, lot(s), block(s), etc.

Item #11- Self explanatory.

Skip Items #12 to 16.

Item #17- Specify all necessary governmental approvals, permits pending, approved or denied which are necessary. See Item #17 of the Individual Permit instruction sheet for further explanation.

Skip Item #18

Item #19- Submit an original and two (2) copies of the site plan and vicinity map listed above at Item #5a and #5b.

Item #20-

a. Attach verification that a certified mail notice with return receipt requested and a complete copy of the application has been forwarded to the clerk of the municipality.

b. Attach verification that a certified mail notice with return receipt requested (white receipts or green cards are acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, municipal planning board, county planning board, municipal construction official, and landowners within 200 feet of the legal boundary lines of the property(ies) on which the proposed activity will occur. Applicant must also provide a list of landowners within 200 feet. The notice shall contain:

1. A description of the proposed activity;

2. A description of the location of the activity including county, municipality, lot(s), block(s), and a plan of the site detailing existing structures, wetlands boundaries and proposed structures or activities, or both; and

3. The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the New Jersey Department of Environmental Protection and Energy, Land Use Regulation Element for a Statewide general permit.

A Statewide general permit will allow the property owner to conduct certain limited activities in freshwater wetlands or State open waters.

The complete Statewide general permit application package can be reviewed at either the municipal clerk's office or by appointment at the Land Use Regulation Element office at the address listed below. The Department of Environmental Protection and Energy welcomes comments and any information that you may provide concerning the wetlands or open waters on the referenced parcel. Written comments should be submitted to the Department within 15 days of receiving notice. Comments will be accepted until the Department makes a decision on the application. Please submit your written comments along with a copy of this letter to:

New Jersey Department of Environmental Protection and Energy
Land Use Regulation Element
Bureau of Regulation
CN 401
5 Station Plaza
Trenton, New Jersey 08625
att: (County in which the property is located) Section Chief

As part of the review of this application, Department personnel may perform a site inspection on your property. This site inspection will involve only that area within a maximum of 150 feet from the border of the applicant's property. This site visit will involve a visual inspection and possibly minor soil borings using a 4" diameter hand auger. The inspection will not result in any damage to the vegetation or improvements on your property.

The Department will notify your municipal environmental commission, planning board and the municipal construction official, as well as the county planning board of the Department's approval or denial of the Statewide general permit application."

Skip Item #21.

Item #22- Attach photographs of the portion of the property for which authorization is being requested.

Skip Item #23.

Item #24- Sign and date the application in accordance with the Individual Permit instructions for #24.

Item #25- This item must be completed if the applicant (Item #1) is different than the owner(s).

NOTE:

It is not necessary for you to complete any other items on the FW-1 form unless you need to cross-reference to other permit applications currently pending with NJDEPE, or to other applications to be submitted to NJDEPE relating to the proposed work. Item #17 provides the place to do this if necessary.

If you have any questions, first please read the appropriate section(s) of the Freshwater Wetlands Protection Act rules (N.J.A.C. 7:7A). See in particular N.J.A.C. 7:7A-9.

If you still have questions feel free to contact the NJDEPE Land Use Regulation Program at (609)292-1235.

Applicants are encouraged to consider requesting a pre-application conference to resolve any questions. See N.J.A.C. 7:7A-10 for information on requesting a pre-application conference.

INSTRUCTIONS FOR

TRANSITION AREA WAIVER APPLICATION

Application Number and Fee:
Do not mark in this block. This will be completed by NJDEPE.

Item #1 - Name and permanent legal address of the applicant (The site of the proposed activity goes in item #10).

Item #2 - (Optional). All applications to the Department shall be signed by the applicant or by a duly authorized representative, or agent, of that person in Item #24. The NJDEPE does not require an applicant to have an agent. A person is a duly authorized representative only if the requirements of N.J.A.C. 7:7A-11.3 are met. Sign this item only if you have an agent.

Item #3 - Indicate the transition area waiver(s) for which you are applying. See attached Program Summary in Appendix A and N.J.A.C. 7:7A if a more detailed explanation is necessary.

Item #4 - Enter the amount of the fee submitted based upon the attached fee schedule. Do not submit cash. Your personal check, certified or cashier's check, attorney check or money order must be made payable to "Treasurer - State of New Jersey" and marked to identify the nature of the submittal and the name of the applicant. PLEASE NOTE THAT APPLICATIONS FOR SPECIAL ACTIVITY WAIVERS BASED ON STATEWIDE GENERAL PERMIT #25 DO NOT REQUIRE A FEE (Repair or alteration of malfunctioning individual subsurface sewage disposal systems). The permit review fee is based on N.J.A.C. 7:7A-16.

Item #5 - The following items must be submitted for the following types of transition area waivers:

a. Transition area waiver, reductions.

1. Standard reduction pursuant to N.J.A.C. 7:7A-7.2 and 7.3.

i. A description of the dominant vegetational community in the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)1.

ii.The slope of the standard transition area, pursuant to N.J.A.C. 7:7A-7.2(e)2.

iii. The development intensity of the proposed project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)3.

2. "Farming" reduction pursuant to N.J.A.C. 7:7A-7.2(d). In addition to the above three items the following items are required for this waiver.

i. A detailed description of the size and type of the transition area planting project.

ii. A site plan showing the location of the proposed work and a cross sectional and plan view of the proposed work.

iii. A description of the types of native trees and shrubs to be planted and at what spacing, as well as the type of seeding, fertilization and other stabilization activities to be used.

iv. A monitoring and maintenance plan of the transition area to ensure no less than 85 percent survival of the plants for three years.

v. A schedule from initiation to completion of the planting project including the dates of planting and fertilization, dates of monitoring measurements, and other activities as they apply.

vi. Existing soil type(s) and soil conditions in the standard transition area.

vii. Proof that the standard transition area has been part of an "established ongoing farming, ranching, or silviculture operation" within the two years prior to submittal of the application.

3. Reduction based on a claim of hardship pursuant to N.J.A.C. 7:7A-7.2(f) or 7.3(e).

a. The applicant shall provide documentation which demonstrates that the subject property is not susceptible to a reasonable use as is presently developed or as authorized by the provisions of the Act and the regulations and that this limitation results from unique and extreme circumstances peculiar to the subject property which:

i. Do not apply to or affect other property in the local region; and

ii. Relate to or arise out of the subject property, rather than the personal situation of the applicant, and are not the result of any action or inaction by the applicant or the owner or the owner's predecessors in title.

b. For single family residential lots which are unbuildable due to the presence of transition areas, the applicant must provide documentation which demonstrates that:

i. The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time;

ii. The applicant has not received a waiver for a reduction of a transition area based on this hardship criteria for the past five years;

iii. Adjacent properties cannot be purchased for fair market value to create a buildable lot;

iv. The subject property was offered for sale at fair market value to adjacent landowners and that the offer was refused;

v. The subject parcel is not contiguous with an adjacent improved parcel which was owned by the applicant on July 1, 1988; and

vi. The subject property was offered for sale at fair market value to interested public or private conservation organizations and that the offer was refused. The Department will provide applicants with a listing of conservation organizations upon request.

b. Transition area waiver, special activities.

1. Special activity, stormwater management facilities pursuant to N.J.A.C. 7:7A-7.4(b).

i. A written alternatives analysis considering all feasible onsite alternatives including a written description and site plan drawing depicting these alternatives and the reason for rejecting alternatives.

2. Special activity, linear development pursuant to N.J.A.C. 7:7A-7.4(c).

i. A written alternatives analysis considering all feasible alternatives including a written description and site plan drawing depicting these alternatives and the reason for rejecting alternatives.

3. Special activity, activities permitted under certain Statewide general permits pursuant to N.J.A.C. 7:7A-7.4(e).

i. Provide a written description of the proposed activity. Also, please submit any information necessary to determine whether the conditions of the general permit, upon

which the Special activity waiver is based, for which you are applying will be satisfied, (see conditions for each general permit in the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-9) including but not limited to the following information (APPLICANTS FOR SPECIAL ACTIVITY WAIVERS BASED ON STATEWIDE GENERAL PERMIT #25 (Repair or alteration of malfunctioning individual subsurface sewage disposal systems) NEED ONLY SUBMIT THE ITEMS LISTED AT LETTER c. OF THIS ITEM):

a. Complete wetlands delineation including field delineation, folded plans at an appropriate scale, and wetlands field data sheets including soils and vegetation information (no formal report is required), for the area to be disturbed under the Special Activity Waiver application;

b. A copy of the appropriate portion of the U.S. Geologic Survey Quadrangle (USGS) Map for the project site and a determination of the State Plane Coordinates for the center of the project. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects, the applicant shall provide State plane coordinates for the end-points of those projects which are 1999 feet or less, and for those projects which are 2000 feet and longer, additional coordinates at each 1000 foot interval;

c. A person applying for a Special activity waiver based on General Permit #25, repair or alteration of malfunctioning individual subsurface sewage disposal systems, shall submit a description and plan of the activities and their location including municipality, county, block, and lot; and an approval from the Board of Health or its designated agent for the proposed activities.

4. Special activity, reduction or partial elimination for redevelopment activities pursuant to N.J.A.C. 7:71A-7.4(f).

i. Provide plans showing the location and extent of existing impermeable surfaces in relation to the transition area.

ii. Provide plans showing the location and extent of proposed development and attendant features including but not limited to septic systems discharging onsite, and stormwater outfalls and the proposed mechanism to treat stormwater runoff prior to leaving the site.

c. Transition area waiver, averaging plans pursuant to N.J.A.C. 7:7A-7.5.

i. The total square footage of the standard transition area.

ii. The total square footage of the transition area to be disturbed by the proposed project.

iii. The total square footage proposed for both the transition area reduction and expansion pursuant to the transition area averaging plan.

iv. A site plan clearly showing:

(1). the standard transition area;

(2). the proposed area of reduction; and

(3). the proposed area of compensation.

Skip Items #6 and #7

Item #8 - Self explanatory. If adjacent properties or property owners are not readily apparent, municipal tax records should be consulted.

Skip Item #9

Item #10- Specify the location of the activity (work site) including county, municipality, lot(s), block(s), etc.

Item #11- Self explanatory.

Skip Items #12 to 16.

Item #17- Specify all necessary governmental approvals, including permits pending, approved or denied which are necessary. See Item #17 of the Individual Permit instruction sheet for further explanation.

Skip Item #18

Item #19- Submit an original and two (2) copies of the site plan and a copy or photocopy of a portion of the U.S. Geologic Survey (U.S.G.S.) 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, CN 417, Trenton, N.J., 08625) with the property clearly outlined, and a determination of the State Plane Coordinates for the center of the property. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects, the applicant shall provide State plane coordinates for the end-points of those projects which are 1999 feet or less, and for those projects which are 2000 feet and longer, additional coordinates at each 1000 foot interval;

Item #20-

a. Attach verification that a certified mail notice with return receipt requested and a complete copy of the application has been forwarded to the clerk of the municipality.

b. Attach verification that a certified mail notice with return receipt requested (white receipts or green cards are acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, municipal planning board, county planning board, municipal construction official, and landowners within 200 feet of the legal boundary lines of the property(ies) on which the proposed activity will occur. Applicant must also provide a list of landowners within 200 feet. The notice shall contain:

1. A description of the proposed activity;

2. A description of the location of the activity including county, municipality, lot(s), block(s), and a plan of the site detailing existing structures, wetlands boundaries and proposed structures or activities, or both; and

3. The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the New Jersey Department of Environmental Protection and Energy, Land Use Regulation Element for a Transition Area Waiver.

A Transition Area Waiver will allow the property owner to conduct certain activities in the transition area- an area immediately adjacent to a freshwater wetland.

The complete Transition Area Waiver application package can be reviewed at either the municipal clerk's office or by appointment at the Land Use Regulation Element office at the address listed below. The Department of Environmental Protection and Energy welcomes comments and any information that you may provide concerning the transition area or the wetlands immediately adjacent to the transition area on the referenced parcel. Written comments should be submitted to the Department within 15 days of receiving notice. Comments will be accepted until the Department

makes a decision on the application. Please submit your written comments along with a copy of this letter to:

New Jersey Department of Environmental Protection and Energy
Land Use Regulation Element
Bureau of Regulation
CN 401
5 Station Plaza
Trenton, New Jersey 08625
att: (County in which the property is located) Section Chief

As part of the review of this application, Department personnel may perform a site inspection on your property. This site inspection will involve only that area within a maximum of 150 feet from the border of the applicant's property. This site visit will involve a visual inspection and possibly minor soil borings using a 4" diameter hand auger. The inspection will not result in any damage to the vegetation or improvements on your property.

The Department will notify your municipal environmental commission, planning board and the municipal construction official, as well as the county planning board of the Department's approval or denial of the Transition Area Waiver application."

Skip Items #21 to 23.

Item #24- Signature. All permits applications and reports shall be signed as follows:

a. For a corporation, by a principal executive officer of at least the level of vice-president;

b. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

c. For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official;

d. By individual property owners of record; or

e. By a duly authorized representative or agent as specified in item #2 of this instruction sheet.

Item #25- This item must be completed if the applicant (Item #1) is different than the owner(s).

The NJDEPE, within 30 days of receipt of this application, shall review the application for completeness and make any necessary requests for additional information. The Department shall issue or deny a transition are waiver within 90 days of receiving a complete application. Decisions on Transition area waivers will be published in the DEPE Bulletin.

Appendix A

New Jersey Department of Environmental Protection and Energy Freshwater Wetlands Program

Summary of Freshwater Wetlands Program Regulations and Procedures

NOTE: This is only a summary. The complete, official rules can be found in the New Jersey Administrative Code at N.J.A.C. 7:7A.

The Freshwater Wetlands Protection Act, signed into law July 1, 1987, requires a permit from the New Jersey Department of Environmental Protection and Energy, Land Use Regulation Program, for most activities which alter or disturb land or water in or around freshwater wetland areas, and for the discharge of dredged or fill material into State open waters.

A freshwater wetland is an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions; commonly know as hydrophytic vegetation.

Effective July 1, 1988, individuals proposing to engage in a regulated activity (see list below) in a freshwater wetland or State open water area must obtain one or more of the following permits from the Land Use Regulation Program: a Statewide General Permit, an Individual Freshwater Wetlands Permit, an Open Water Fill Permit, or a Water Quality Certification. Until such time as the State assumes the 404 program as mandated by the Federal Clean Water Act, most projects will also need a 404 permit from the U.S. Army Corps of Engineers (ACOE) which will require that a separate, complete application and fee be submitted by the applicant for their review and approval in addition to these procedures.

Effective July 1, 1989, individuals proposing to engage in prohibited activities (see list below) in transition areas must obtain a transition area waiver from the Department. Transition areas of 50 feet and 150 feet are required adjacent to wetlands of intermediate and exceptional resource value wetlands, respectively.

Wetlands

Freshwater wetlands are identified using a three-parameter approach which examines hydrology, soils, and vegetation of a given site. The details of this method are

described in a publication entitled the "Federal Manual for Identifying and Delineating Wetlands." Some additional sources of information available to individuals investigating the presence or absence of wetlands within or adjacent to a site include: county soil surveys; flood hazard area maps; U.S. Fish and Wildlife Service National Wetland Inventory Maps; U.S.G.S. quadrangle maps; and local knowledge of site conditions. The Land Use Regulation Program is presently working to comprehensively map the state's wetlands to provide an additional source of information. At this time these maps are available for approximately 75% of the State. Copies of the completed maps have been sent to municipal clerks for review by interested parties.

State Open Waters

State open waters means those waters of the United States within the boundary of the State or subject to its jurisdiction that are not wetlands as described above.

Transition Areas

A transition area is an ecological zone adjacent to a freshwater wetland, extending from the freshwater wetlands boundary into the uplands for a specific distance. The transition area serves as a buffer to minimize the adverse impacts of human activities on the freshwater wetland and is also an integral component of the freshwater wetland ecosystem.

Sections 16, 17, and 18 of the Act establishes transition areas adjacent to freshwater wetlands of exceptional and intermediate resource value, prohibit certain types of activities in these transition areas, and provide in certain instances for waivers from the prohibitions. These provisions of the Act protect the integrity of the freshwater wetlands by creating an area adjacent to the wetlands which is subject to Department regulation. Within these transition areas, the rule provides strict controls on activities which would have an adverse impact on the freshwater wetlands ecosystem.

The rules establish standard transition area widths for freshwater wetlands based on the resource value classification of the freshwater wetlands. The determination of resource value classification of a freshwater wetland is described below. The standard transition area for freshwater wetlands of exceptional resource value is 150 feet while the standard transition area for intermediate resource value freshwater wetlands is 50 feet. Transition areas are not established for wetlands classified as ordinary resource value.

Wetland Resource Value

The Freshwater Wetlands Protection Act classifies wetlands according to their resource value as exceptional, intermediate, or ordinary. The resource classification of a particular wetland will be considered by the Program in assessing site alternatives, availability of certain Statewide General Permits, mitigation proposals and is used for the basis of determining the standard width of the transition area.

Regulated Activities in a freshwater wetlands

The following activities proposed in a freshwater wetland require a permit from the Land Use Regulation Program:

1. The removal, excavation, disturbance or dredging of soil, sand, gravel or aggregate material of any kind.

2. The drainage or disturbance of the water level or water table.

3. The dumping, discharging or filling with any materials.

4. The driving of pilings.

5. The placing of obstructions.

6. The destruction of plant life which would alter the character of a freshwater wetland.

7. The discharge of dredged or fill material into State open waters.

For the purposes of the Freshwater Wetlands Protection Act the following activities are not considered to result in the alteration of the character of a freshwater wetland and are therefore not regulated:

1. Surveying or wetlands investigation activities, for the purpose of establishing or reestablishing a boundary line or points, which use only hand held equipment and do not involve the use of motorized vehicles to either clear vegetation or extract soil borings. The clearing of vegetation along the survey line or around the survey points shall not exceed three feet in width or diameter respectively and shall not be kept clear or maintained once the survey or delineation is completed; and

2. The placement of temporary structures (those not requiring permanent foundations nor the deposition of fill

material) not to exceed 32 square feet for the purposes of observing or harvesting fish or wildlife. These activities include the construction of observation or waterfowl blinds and the placement of traps.

Prohibited Activities in transition areas adjacent to freshwater wetlands

The following activities proposed in a transition area adjacent to a freshwater wetlands require a transition area waiver from the Land Use Regulation Program.

1. Removal, excavation, or disturbance of the soil;
2. Dumping or filling with any materials;
3. Erection of structures;
4. Placement of pavements; and
5. Destruction of plant life which would alter the existing pattern of vegetation.

The rules further define a class of activities which are not prohibited in a transition area. They are:

1. Normal property maintenance. This class includes the maintenance and replacement of natural and artificial features including minor landscaping, maintenance of gardens up to 0.25 acres and existing humanmade structures;

2. Minor and temporary disturbances resulting from, and necessary for normal construction activities on land adjacent to the transition area; and

3. Erection of temporary structures covering less than 150 square feet.

Letters of Interpretation

A letter of interpretation is the means by which the Department documents the extent of wetlands on a given site. Individuals may request a letter of interpretation from the Land Use Regulation Program to determine the presence or absence of wetlands on a property, confirm the boundary of a specific wetland, or obtain a delineation of wetlands on properties which are one acre or smaller. For properties larger than one acre, the Program will verify boundaries delineated by a consultant but the Program does not do the delineation.

A complete listing of the information which must be submitted to obtain a letter of interpretation is provided in the Freshwater Wetlands Protection Act Rules, at N.J.A.C. 7:7A-8.

Exempted Activities

Activities that are part of an established, ongoing farming, ranching, or silviculture operation which are eligible for, or receive, a farmland assessment are exempt from the requirement of obtaining a freshwater wetland, State open water permit or transition area waiver provided the activities do not result in the conversion of a wetland to a non-wetland area.

These exemptions shall not apply to any discharge of dredged or fill material into freshwater wetlands or State open water incidental to any activity which involves bringing an area of freshwater wetlands or State open waters into a use to which it was not previously subject, where the flow or circulation patterns of the freshwater wetlands or waters may be impaired, or the extent or values and functions of freshwater wetlands or State open waters is reduced.

Examples of exempted activities are: plowing, seeding, cultivating, harvesting, upland soil and water conservation practices, minor drainage, construction or maintenance of farm ponds, irrigation ditches, farm and forest roads and the normal harvesting of forest products.

Minor drainage projects are limited to areas that are actively farmed. Drainage is not authorized for the conversion of a wetland to a non-wetland area, for the conversion of silviculture to farming, or for an activity which significantly modifies a wetland. See N.J.A.C. 7:7A-2 for the exact limits of exemptions.

Projects for which applications for preliminary site plan or major subdivision approval were submitted to a local review authority prior to June 8, 1987, and projects for which formal preliminary local approvals were given prior to July 1, 1988 are exempt from permit requirements of the Freshwater Wetlands Protection Act.

Projects for which the U.S. Army Corps of Engineers has issued an individual permit prior to July 1, 1988, are exempt from permit requirements under the Act. Specific activities authorized by Army Corps Nationwide Permits issued for a specific site which were applied for on or before June 10, 1988 are also exempt.

In addition projects for which municipal approval in the form of a preliminary or final site plan approval, or major subdivision approval have been approved between the dates of July 1, 1988 and July 1, 1989 shall not require transition areas.

These exemptions do not apply where significant changes occur to the approved plan, a project is inactive for a period of time, the major subdivision or site plan approval was given prior to the August, 1976, the effective date of the Municipal Land Use Law, or if the permit has expired. In addition, exemptions based upon municipal aproval shall be void as of the date of assumption of the 404 program by the State.

A person may obtain a letter from the Land Use Regulation Program certifying that an activity or project is exempt from the Act. A complete listing of the types of projects and activities exempted from the Act, as well as a listing of relevant information needed to support an exemption letter request, may be found in N.J.A.C. 7:7A-2.7 and 2.9.

Geographic Areas Exempted from Freshwater Wetlands permit requirements

Projects and activities in areas under the jurisdiction of the Wetlands Act of 1970 (N.J.S.A. 13:9A-1) will not require freshwater wetlands permits.

Also, activities and projects in areas under the jurisdiction of the New Jersey Pinelands Commission or the Hackensack Meadowlands Development Commission will not be subject to the requirements of the Act. However, as of the date of State assumption of the 404 program, regulated activitites conducted in areas of jurisdiction of the Pinelands Commission shall require a State administered 404 permit.

All projects requiring a Federal permit or license for the discharge of dredged or fill material into State open waters or freshwater wetlands will require a Water Quality Certificate.

For further information concerning the types of activities and the precise geographical areas regulated by the Pinelands Commission, call 609-894-9342. For information concerning the Hackensack Meadowlands Commission call 201-460-1700.

The exemptions noted above may be subject to the Federal 404 program administered by the ACOE and permits may be required by the ACOE for some activities exempted from State regulation.

Statewide General Permits

The Freshwater Wetlands Protection Act provides for the issuance of Statewide General Permits. Persons wishing to develop a parcel should try to avoid all wetlands or to

design a project to make use of the general permits if encroachment is absolutely necessary. The Statewide General Permits provide an expedited approval process for certain types of regulated activities subject to certain limitations. Many of the permits may be used in conjunction with one another and their use is strongly encouraged in order to avoid higher impact activities which would require individual permits.

An activity covered by a Statewide General Permit is permitted as long as an authorization letter is obtained from the Land Use Regulation Program prior to engaging in a regulated activity and provided that the conditions outlined in the general permit are satisfied. The Department's authorization for a Statewide General Permit automatically includes a Transition Area Waiver. Access through the transition area to the site of an authorized activity is allowed to the extent necessary to accomplish the activity. To obtain a Statewide General Permit approval for a particular site or project one must apply to the Land Use Regulation Program using the appropriate application form.

The following are a listing of the 17 Statewide General Permits issued at this time:

1. Maintenance of pre-existing structures, utilities, roads and drainage facilities;

2. Utility line crossings;

3. Discharge of sediments from dredging activities;

4. Oil and hazardous substances clean-up by the State or Federal government;

5. The removal of non-historic obstructions to navigation;

6. The placement of fill in wetlands which are not part of a surface water tributary system;

7. The placement of fill in ditches and swales in headwater areas;

8. Additions to existing residential structures requiring less than 750 square feet of fill; and

9. Certain state or federally funded road projects.

10. Minor road crossings;

11. Construction of stormwater outfalls;

12. Surveying and wetland investigations;

13. Lake maintenance or restoration activities;

14. Placement of scientific recording and monitoring devices;

15. Mosquito control projects;

16. Fish and wildlife management activities;

17. Trail and boardwalk construction;

18. Repair, rehabilitation, replacement, maintenance or reconstruction of any currently servicelble dam;

19. Construction of recreational and fishing docks piers and boat ramps;

20. Placement of erosion control materials in State open waters only;

21. Construction of above ground utility lines and structures;

22. Reserved

23. Reserved

24. Construction of bulkheads adjacent to human made lagoons;

25. Repair or alteration of malfunctioning individual subsurface sewage disposal systems.

You may obtain a complete listing of the Statewide General Permits by contacting the Land Use Regulation Programat the address below or by referring to the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-9.

The Department may approve activities covered by different general permits onsite, provided that the individual limits of each general permit are complied with and that the total area of wetlands, and State open waters disturbed or modified does not exceed one acre with the exception of Statewide general permit #17. For example, the Department could approve on-site a minor road crossing disturbing 0.25 acres, stormwater outfall structures disturbing a total of 0.25 acres, and the filling of 0.5 acres of a ditch.

<u>General Conditions for all Statewide General Permits</u>

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 below, as well as the conditions at N.J.A.C. 7:7A-13.1 and 13.2, the procedures in 7:7A-9.4 and Mitigation pursuant to 7:7A-14 where specified must be followed.

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;

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.

In addition the following conditions must be met in order for a regulated activity to be authorized under the Statewide General Permits:

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 NJ Division of Fish, Game and Wildlife. The total restriction period will not exceed 6 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

American Shad-For the Delaware River from the Delaware Bay to the Delaware Memorial Bridge, and tidal Maurice River

March 1-April 30 and October 1- November 30

All other waterways classified for anadromous fish

April 1 - June 30;

For waterways classified, on a case by case basis, as spawning areas for warm water fish

May 1- June 30.

4. During construction activities, all excavation must be monitored to check for the presence of acid-producing deposits pursuant to N.J.A.C. 7:13-5.10 of the Flood Hazard Area Control Rules. If any such deposits are encountered, the mitigation and disposal standards described in N.J.A.C. 7:13-5.10 must be implemented. If any such deposits are encountered, an annual post-planting monitoring program shall be established to ensure that the reestablishment of

vegetation in temporarily disturbed areas, shall have a minimum 85 percent plant survival and coverage rate after two complete growing seasons. Failure to achieve this survival rate will require implementation of additional corrective measures and/or reevaluation of the acid producing soils mitigation proposal to ensure the 85 percent survival rate requirement.

5. The activity will not result in a violation of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 or implementing rules at N.J.A.C. 7:13-1.

6. Best management practices shall be followed whenever applicable.

Individual Permits

Any regulated activity proposed in a freshwater wetland or State open water which is not authorized by a Statewide General Permit or which does not meet the conditions for the use of a General Permit will require an Individual Permit. Also, an application for an Individual Permit may be required 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.

The Freshwater Wetland regulations distinguish between projects that are water dependent and those that are non-water dependent. The Department will issue an Individual Permit only if it finds that the regulated activity has no practicable alternative which would not involve a freshwater wetland or State open water, or would have less adverse impact on the aquatic ecosystem. Also an alternative must not merely substitute other significant adverse environmental consequences for those of the original proposal. It will be a rebuttable presumption that there is a practicable alternative for any non-water dependent regulated activity.

In order to rebut the presumption established for non-water dependent activities when the activity will take place in a wetland of exceptional resource value or in State open waters that are trout production, an applicant must also demonstrate that there is compelling public need for the proposed activity and that denial of the permit would impose an extraordinary hardship on the applicant brought about by circumstances peculiar to the subject property. In addition, mitigation will be required for all individual permits. The Department's issuance of an Individual Permit automatically includes a Transition Area Waiver to conduct prohibited activities in the transition area to the extent necessary to accomplish the permitted activity and any required mitigation. For a detailed description of the

"General Standards for Granting Individual Freshwater Wetlands or Open Water Permits," see N.J.A.C. 7:7A-3.

Transition Area Waivers

The rule also provides criteria for reducing, eliminating a portion of, or modifying the shape of the transition area through the Department's approval of transition area waivers. The various types of waivers fit into three principal classes and are discussed below.

1. Transition area waiver, Reductions. This waiver may be approved on the basis of a finding that the proposed project or activity will not result in substantial impact to the adjacent wetland or that the waiver is necessary to avoid a substantial hardship. This waiver would allow the reduction in the standard width of the transition area without requiring expansion of the remaining transition area for compensation. The statutory criteria for the approval of this waiver are very strict; therefore, granting of this waiver will be very limited.

2. Transition area waiver, Special activities. This waiver may result in approval of the partial elimination of the transition area, again without compensation, only for the special activities listed below:

a. Stormwater management facilities. These facilities would include detention or retention basins, grassed swales, outfalls, etc. These waivers may be approved if the applicant can demonstrate that there is no feasible alternative onsite location for the facility.

b. Linear development. These facilities would include roadways, railroads, rights-of-way, pipelines or other transmission facilities. These waivers may be approved if the applicant can demonstrate that there is no feasible alternative location for the facility.

c. Activities permitted under specific Statewide general permits. In order to ensure consistency with the provisions of the Act all appropriate activities permitted under the Statewide general permits in wetlands may be authorized as special activity transition area waivers to be conducted in the transition area. The limitations associated with the Statewide general permits will also apply to the transition area waivers. These waivers may be approved if a project meets all of the appropriate criteria and is designed to minimize impacts on the freshwater wetlands. For example, a waiver may be issued for the activities defined under Statewide general permit # 10, minor road crossing, with the same limitations, for a proposed minor road crossing in a transition area

3. Transition area waiver, Averaging plan. This waiver may result in approval of a plan to modify the overall shape of the transition area without reducing the total square footage of the existing transition area. This waiver may be approved if the proposed averaging plan still provides the values and functions of a transition area as described in the Act. An averaging plan will be much easier to obtain than a straight reduction.

Water Quality Certification

As of July 27, 1988 the Land Use Regulation Program has been assigned the responsibility for implementing the Federal Clean Water Act, the Section 401 Water Quality Certification (WQC) program. All projects requiring a Federal permit or license for the discharge of dredged or fill material into State open water and/or wetlands will require a WQC. For example, permits issued pursuant to Section 404 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C.A. 1341 et seq. (1987) or licenses issued by the Federal Energy Regulatory Commission under the Federal Power Act, 16 U.S.C.A. 1791 et seq., will require a WQC. The purpose of the certification is to ensure that all such activities are consistent with New Jersey Water Quality standards, N.J.A.C. 7:9-4.1 and Department policies related to water quality management.

Individuals proposing projects which require a Water Quality Certificate should contact the Program on how to apply for a WQC. In general the Division's strategy to implement the Water Quality Certification program is to combine it with the existing regulatory review and permit applications and in doing so consolidate this process with the existing decision-making process. The Water Quality Certificate may then be issued in conjunction with other Land Use Regulation Program permits whenever possible, for example Individual Freshwater Wetland Permit/Water Quality Certificate, Open Water Fill Permit/Water Quality Certificate, CAFRA/Water Quality Certificate or Waterfront Development Permit/Water Quality Certificate. Individual Water Quality Certificates will be reviewed independently when no Land Use Regulation Program permits are required for the project.

Pre-Application Conference

An applicant may request a pre-application conference to obtain guidance from the Program regarding any of the required permits or waivers. This conference allows the Department and the applicant to discuss permit standards in relation to a particular site and proposed project. The Program requires submission of written information specified in N.J.A.C. 7:7A-10 prior to scheduling a conference.

Permit Conditions

There are standard conditions to all permits issued by the Bureau of Freshwater Wetlands. A complete listing of the conditions may be found in N.J.A.C. 7:7A-13. Other conditions may be attached to a permit on a case-by-case basis to ensure compliance with the rules.

Duration of Permits

Freshwater Wetland and Open Water Fill permits and transition area waivers will be effective for a fixed term not to exceed five years. A permit or waiver may be transferred to a new owner or operator by a formal modification of the permit. A more complete explanation of permit modifications and time limits can be found in N.J.A.C. 7:7A-1.

Emergency Permits or Waivers

The Department may issue a temporary emergency freshwater wetlands or, open water fill permit, or transition area waiver for an activity only if the following situations exist:

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 and other applicable State laws.

The issuanse of emergency permits or waivers is fully explained at N.J.A.C. 7:7A-5.

Wetlands Mitigation

When the Land Use Regulation Program approves an Individual permit or certain General permits, mitigation is required to compensate for the loss or disturbance of freshwater wetlands or State open waters. The Department will not consider a mitigation proposal in determining whether a project should be issued a permit. The Land Use Regulation Program distinguishes between four types of mitigation: restoration, creation, enhancement, and contribution. The ratio of mitigated land area to area of impacted wetlands will vary depending upon the type of mitigation proposed or required by law, but in no case will be lower than one acre disturbed to one acre mitigated. Contribution refers to the donation of money or land to the Mitigation Bank. The Department will permit the donation of land only after determining, in consultation with the USEPA,

that all alternatives to the donation are not practicable or feasible. Mitigation standards are contained at N.J.A.C. 7:7A-14.

Enforcement

The Act provides for substantial administrative, civil, and criminal penalties for violators. The penalties vary in monetary amount based upon the severity of violation and conduct of the violator. A maximum penalty of $10,000 per day per violation may be assessed. In calculating the civil administrative penalty, the Department may consider the amount of economic benefit gained the violator by engaging in a regulated activity without approvals. In addition, civil actions may be instituted in Superior Court for other types of relief including a temporary or permanent injunction, an assessment against the violator of costs incurred by the State for investigation and/or remediation of the violation, and a court order that a violator remove the illegal activity, and restore or rehabilitate a site. For information concerning violations and enforcement call the Department's Bureau of Land Use Enforcement at (609) 292-1240.

Additional Information

This program summary does not reflect the entire text of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B, et seq., nor of the Rules promulgated pursuant to the Act, N.J.A.C. 7:7A. For a complete copy of the Act, Rules, and permit application package, call or write to the Land Use Regulation Program at the address below:

New Jersey Department of Environmental Protection and Energy
Land Use Regulation Program
CN 401
501 East State Street
Trenton, New Jersey 08625
(609) 292-1235

SECTION: A-III

CHECKLIST FOR ADMINISTRATIVE COMPLETENESS

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY

FRESHWATER WETLANDS

CHECKLIST FOR ADMINISTRATIVE COMPLETENESS

These are the submission requirements for an administratively complete application package for an Individual Freshwater Wetlands Permit, Open Water Fill Permit, Statewide General Permit, or a Transition Area Waiver. Please read each section (general and specific) and check off each area after you have fully completed or compiled the information for each applicable requirement.

General Submission Requirements (ALL)

- ☐ 1. Completed FW#1 Application Form [See Instructions for appropriate application type(s).]
  Note: Pay special attention to providing a complete project description.
- ☐ 2. Permit Application Review Fee (See attached fee schedule), payable to **Treasurer, State of New Jersey**.
- ☐ 3. Certified Mail Return Receipts (must comply with requirements for each permit type per N.J.A.C. 7:7A et seq.)
  - a) Municipal Clerk (Notification shall include all material submitted to NJDEPE.)
  - b) Municipal Environmental Commission (if any)
  - c) Municipal Planning Board
  - d) Municipal Construction Official (not required for Individual Freshwater or Open Fill Permits.)
  - e) County Planning Board
  - f) All landowners within 200 feet of the property (Also provide a list of landowners within 200 ft.)
  - g) Mosquito Control Agency (Individual Freshwater Wetlands / Open Water Fill Permits only)
  - h) County Environmental Commission (Individual Freshwater Wetlands / Open Water Fill Permits only.)
  - i) Verification that the proposed activity has been published in a newspaper of local circulation. For projects proposing more than 10 acres of fill, notification shall also be published in a newspaper of regional circulation. (Individual Freshwater Wetlands / Open Water Fill Permits only)
  - j) Verification of publication in a newspaper of local and one of regional circulation for linear facilities, such as pipelines or roadways more than .5 miles in length may be substituted for notification of landowners within 200 feet of the property. (Letters of Interpretation, Transition Area Waivers and General Permits only)
- ☐ 4. Location Map (a copy or portion of a U.S.G.S. Topographic Quadrangle Map with the project site outlined and state plane coordinates)

Specific Requirements for Transition Area Waiver Applications

(3 Copies of All General And Specific Requirements)

- ☐ 1. Site Plan, Subdivision, or Out-Bound Survey Map (3 folded copies) clearly identifying all proposed activities on entire property, all existing structures, and the freshwater wetland boundary
- ☐ 2. Written Description of the total area to be modified by the entire project and the total square footage of the potentially affected transition area.
- ☐ 3. Specific Requirements for the four types of waivers may be found in N.J.A.C. 7:7A-7.6(c).
- ☐ 4. Wetlands Delineation Report [if no Letter of Interpretation was issued per N.J.A.C. 7:7A-8.3(a)]

Specific Requirements for Individual Freshwater Wetlands Permit, Open Water Fill Permit Applications

(10 Copies of All General And Specific Requirements)

- ❑ 1. Color Photographs (originals mounted with description and location of each view)
- ❑ 2. Wetlands Delineation Report (If no Letter of Interpretation was issued)
- ❑ 3. Site Plan or Subdivision Map (10 folded copies) showing:
  - a) all existing structures on lot and immediately adjacent lots
  - b) distances and dimensions of areas, structures, and lots including freshwater wetlands, state open waters, upland properties, roads, utility lines
  - c) a complete delineation of the wetlands boundary in accordance with the requirements of N.J.A.C. 7:7A-8.2. A Letter of Interpretation issued by the Department may be submitted to satisfy this requirement. Include a copy of a map or plan which depicts the approved line.
  - d) the area which will be used for the proposed activity or discharge
  - e) the general site location in relation to development in the region
  - f) the scale of the plan and a north arrow
  - g) the name of person who prepared the plan and the date of preparation
  - h) the name of the applicant, and municipal lot(s) and block number(s) of the project site
- ❑ 4. Alternative Analysis describing alternatives to the proposed activity per N.J.A.C. 7:7A-3
- ❑ 5. Description of All Sensitive Areas per N.J.A.C. 7:7A-11.1(b)13
- ❑ 6. Cross-sectional View of proposed fill areas per N.J.A.C.7:7A-11.1(e)

Specific Requirements for Statewide General Permit Applications

(3 Copies of All General And Specific Requirements)

- ❑ 1. Original Color Photographs of the portion of the property for which authorization is being applied for.
- ❑ 2. A Statement of Compliance to determine whether conditions of each general permit (listed in N.J.A.C. 7:7A-9.2) for which you are applying will be satisfied per N.J.A.C. 7:7A-9.5(a)2
- ❑ 3. Site Plan (3 folded copies) detailing existing structures, proposed structures or activities, and a delineation of the wetlands boundary for the area of proposed disturbance and wetland field data sheets including soil and vegetation information (no formal report required.)
- ❑ 4. A signed statement certifying that the proposed activity will not result in any direct or indirect adverse impacts to Swamp Pink (Helonias hullata) or its documented habitat in any of the municipalities listed in N.J.A.C. 7:7A-9.5(a)2iii(1)
- ❑ 5. A person proposing to engage in activities pursuant to N.J.A.C. 7:7A-9.2(a)25, repair or alteration of malfunctioning individual subsurface sewage disposal systems, shall submit written notice containing a description of the proposed activities to the Department at least 30 days prior to commencement of work. This notification shall include a description and plan of the activities and their location including municipality, county, block, and lot; and an approval from the Board of Health or its designated agent for the proposed activities. If the Department fails to notify the applicant within 30 days of receiving the notification, the activity shall be deemed to have been authorized, to the extent that the activity does not violate other statutes or regulations then in effect, and subject to any standard terms and conditions pursuant to N.J.A.C. 7:7A-9.3.

Regulatory Fee Schedule

STATE OF NEW JERSEY * DEPARTMENT OF ENVIRONMENTAL PROTECTION & ENERGY
LAND USE REGULATION PROGRAM * MARCH 1993

All fees shall be paid by check or money order; made payable "Treasurer, State of New Jersey" and submitted to:

Land Use Regulation Program
New Jersey Department of Environmental Protection & Energy
CN 401, Trenton, NJ 08625

The Program issues permits through specific State laws. They are:

1. The Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et.seq.)
2. The Flood Hazard Area Control Act (N.J.S.A. 58A:16A et. seq.)
3. The Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et. seq.)
4. The Waterfront Development Law (N.J.S.A. 12:5-3 et. seq.)
5. The Freshwater Wetlands Protection Act (N.J.S.A. 13:9B et. seq)
6. The Realty Improvement Act (N.J.S.A. 58:11-23 et. seq.)

For projects requiring more than one Program permit or waiver see Section 4 entitled "Multiple Permit".

Section 1 - Freshwater Wetlands

A fee is required pursuant to the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) of the review of permit applications, letters of interpretation and certain exemption requests.

Each check or money order must be marked to identify the nature of the submittal for which the fee is being paid and the name of the applicant.

1. Letter of Interpretation Fees

(a) To determine if wetlands are present or absent, the fee is $100;

(b) To determine if wetlands or transition areas are present or absent in a footprint of land, the fee is $200;

(c) For verification or delineation of a wetland boundary line for a parcel of land less than one acre, the fee is $250;

(d) For verification of proposed wetland boundary line on a parcel of one acre or more, the fee is $250 plus $35 per acre or any fraction thereof, with a total not to exceed $50,000; and

(e) For a request for the reissuance of a letter of interpretation, the fee is 25 present of the original fee or $100; whichever is larger,

(Note:NJDEPE does not delineate wetlands boundaries on properties of one acre or more, but will verify proposed lines.)

2. **Individual Freshwater Wetlands Permit Application Fees**

For any other regulated activity the fee is $1,000 plus $100 per one-tenth acre, or any fraction thereof, of the freshwater wetlands to be affected by the proposed activity.

3. **Open Water Fill Permit Application Fees**

For review of an individual Open Water Fill Permit application, the fee is $1,000 plus $100 per one-tenth acre, or any fraction thereof, of State open water affected by the proposed discharge of dredge or fill material.

4. **Statewide General Permit Fees**

(a) For review of proposed activity covered by a General Permit application, the fee is $250;

(b) If a proposed project requires more than one type of general permit authorization, the fee shall be $250 for the first general permit and $100 for each additional general permit;

(c) There is no fee for General Permit #25 (repair or alteration of malfunctioning individual subsurface sewage disposal systems)

5. **Exemption Letter Request Fees**

For the review and processing of a request for an exemption letter certifying that a project is exempt from freshwater wetlands or open water fill permit requirements, or from transition area requirements, the fee is $100

6. Transition Area Waiver Fees

Fee for the review and processing of a transition area waiver application:

(a) Projects with a completed Letter of Interpretation, either delineating or confirming the wetlands boundary.

1. For a property or right-of-way of one acre or less the fee is $100;

2. For a property or right-of-way over one acre the fee is $250 plus $20 per acre, or any fraction thereof, of the standard transition area proposed to be modified; and

3. For review of application for more than one type of Transition Area Waiver fee shall be $250 plus $20 per acre, or any fraction thereof, of the standard transition area proposed to be modified, plus $100 for each additional special activity waiver

(b) Projects with a Letter of Interpretation identifying only the presence or absence of wetlands, State open waters and/or transition areas: the acreage figures are based on the size of the project site.

1. For a property or right-of-way of one acre or less the, fee is $350.

2. For a property or right-of-way over one acre, the fee is $450 plus $40 per acre, or any fraction thereof, of the total property.

(c) Projects without a Letter of Interpretation. The acreage figures are based on the size of the project site.

1. For a property or right-of-way of one acre or less the fee is $350;

2. For a property or right-of-way over acre the fee is $450 plus $40 per acre, or any fraction thereof, of the total property; and

3. For the review of application for more than one type of Transition Area Waiver, the fee shall be $450 plus $40 per acre, or any fraction thereof, of the total property plus $100 for each additional special activity waiver

(d) Special Activity Waivers for activities covered by Statewide general permits.

1. For the review of a Special Activity Waiver pursuant to N.J.A.C. 7:7A-7.4(e) the fee is $250;

2. For the review of more than one Special Activity Waiver, the fee is $250 for the first Special Activity Waiver and $100 for each additional Special Activity Waiver.

7. Permit Modification

(a) Except for minor modifications pursuant to N.J.A.C. 7:7A-13.9 for which no fee is required, the fee is 25 percent of the original permit fee.

8. Inspection

If more than one inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed $1,000. No application for a letter of interpretation, approval, certificate or permit shall be reviewed or considered until this fee has been paid.

Section 2 - Stream Encroachment

The Land Use Regulation Program charges fees as established in N.J.S.C. 7:1C-1.5 for the review of permit applications according to the following schedule:

1. Minor Stream Encroachment

(a) For headwalls, utility crossings, stream cleaning, pond dredging the fee is $300 for each project element and includes projects within the New Jersey Flood Hazard Area that do not require the establishment of an encroachment line and all property outside the floodway, or those projects requiring the establishment of an encroachment line along a State Adopted Delineated Floodway.

(b) For Projects of Special Concern, in addition to the fee above, the fee is $200 including any minor stream encroachment that would constitute a Project of Special Concern. The project should be designed for the safe passage of the 100-year flood in accordance with N.J.A.C. 7:13.

(c) There is no fee for a minor project with local approval. This includes a project with a drainage area less than 320 acres and approved by the appropriate

municipal and/or county engineer. The project should be designed for the safe passage of the 100-year flood in accordance with N.J.A.C. 7:13.

2. **Major Stream Encroachment**

(a) For each project element including a retaining wall, bridge, culvert, channel improvement, channel relocation and other projects in or along the channel, or portion of the channel thereof, up to 1,000 feet, the fee is $2,000. The fee includes channel work for alignment purposes only 300 feet upstream and downstream of a bridge or culvert. The fee for each succeeding thousand feet segment or part thereof is $2,000

(b) For major project that consists of individual driveway culverts and fill associated for one single family residence, the fee is $1,000 for the culvert and $400 for the fill.

No additional fee shall be charged for projects involving fill associated with bridges or culverts.

(c) For structures and subdivisions - for each project or portion thereof up to 1,000 feet outside the channel within 100-year flood plain and requiring the establishment of an encroachment line, the fee is $2,000 for each 1,000 feet of activity part thereof. The fee for each succeeding 1,000 feet or portion thereof is $2000

(d) For fill or structures requiring review for compliance with 20 percent "net fill" limitation specified in N.J.A.C. 7:13-4.7(d), the fee is $2,000
(Exception to the 20 percent fill review fee: The fee for all bridges and culverts with a perpendicular crossing of the stream, and a single lot subdivision for construction of a single family dwelling shall be waived)

(e) For developments involving more than one acre in the flood plain for commercial use and subdivisions of more than 10 acres for residential use, the fee is $2,000

(f) For detention basin projects requiring review of storm water detention basin(s) for compliance with Stormwater Management Regulations N.J.A.C. 7:8, the fee is $2,000 per basin.

(g) There is no fee for a major project with local approval. This includes a project with a drainage area less than 150 acres and approved by the appropriate

municipal and/or county engineer. The project should be designed for the safe passage of the 100 year flood in accordance with N.J.A.C. 7:13.

3. Modifications

(a) The fee for a request of a major modification of an approved project shall be the greater of

1. One-half of the total permit fee attributable to that portion of the approved project to be modified; or

2. One-quarter of the total permit fee attributable to the entire approved project

(b) The fee for a minor modification shall be $75

Section 3 - Coastal Projects

The Land Use Regulation Program charges fees as established in N.J.A.C. 7:1C-1.5 for the review of permit applications according to the following schedule:

1. Waterfront Development

(a) Waterfront Development Permits waterward of the mean high water line the fee shall be:

(1.) The permit fee for residential site improvements for a single private residential unit or duplex, including without limitation: shore structures, piers and docks, walkways and activities associated with a single private residential unit or duplex shall be $250 plus one-half of one percent of the construction cost above $10,000

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

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

(b) For Waterfront Development Permits with work taking place landward of the mean high water line and do not qualify as a CAFRA facility based on size and use as defined in N.J.A.C. 7:2.1, the fees are:

1. Residential Facilities ...$500 for the first dwelling unit; $125 for each additional dwelling unit

2. Non-residential facilities...$700 plus one half of one percent of the construction costs, up to a maximum of $4,000

(c) The fee for Waterfront Development Permits with work taking place landward of the mean high water line and qualify as a CAFRA facility based on size and use as defined in N.J.A.C. 7:2.1 shall follow the CAFRA fee schedule as noted in item 3 below of this Section.

(d) For Waterfront Development Permits for any work requiring a general permit or consisting solely of capital repairs or reconstruction with all work taking place landward of the mean high water line or the identical structural replacement of piles or other supports in the same location, the fee is $250

2. Wetlands

(a) For a Wetlands Type "A" Permit the fee is one percent of the construction cost or a minimum of $250 for residential dock construction associated with a single family or duplex dwelling unit and $500 for all other regulated activities

(b) For a Wetlands Type "B" Permit the fee is one percent of the construction cost or a minimum of $250 for residential dock construction associated with a single family or duplex dwelling unit and $500 for all other regulated activities

3. CAFRA

(a) For a CAFRA Permit for a Residential Facility the fee is $3000 plus

1. $50 per dwelling unit for the first 300 units,
2. $40 per dwelling unit for units 301 to 600; and
3. $30 per dwelling unit for all units in excess of 600.

(b) For a CAFRA Permit for a Non-residential Facility the fee is $3,500 plus $500 per acre included in the site plan.

(c) The fee for mixed Residential and Non-residential Facilities shall be $3,500 plus $500.00 per Non-Residential acre included in the site plan plus a per unit fee calculated in accordance with (a) above. If the mixed-used facility has no separate and distinct district/building designated for Non-residential use(s), then the Non-residential acreage shall be the acreage of the entire site.

4. Additional Fees

Additional fees to engage essential expertise may be necessary for the processing and review of large-scale and complex projects. The applicant will be consulted before imposition of such fees. Where a public hearing is conducted, the cost of the hearing shall be borne by the applicant.

(Note: The term "construction cost" as defined at N.J.A.C. 7:1C-1.2 is the projected cost, not including financing or insurance charges, of that portion of a project which is subject to review for a construction permit.)

5. Modifications

Modification

(a) The fee for a request of a major modification of an approved project shall be the greater of

1. One-half of the total permit fee attributable to that portion of the approved project to be modified; or

2. One-quarter of the total permit fee attributable to the entire approved project

(b) The fee for a request of a minor modification to:

1. A CAFRA project or a waterfront development project qualifying as a CAFRA Facility based on size and use as defined in N.J.A.C. 7:7-2.1, the fee shall be $200

2. All waterfronts not qualifying as a CAFRA based on size and use, or all coastal wetlands permit, the fee shall be $75

Section 4 - Treatment Works Approvals

Fees for Treatment Works Approvals Applications are based on a percentage of the construction costs of the portion of the project that is to be covered by the Treatment Works Approval; however, the percentage to be used in computing the fee is linked to the Department's operating cost for implementing the Program.

All applicants shall pay one of the following fees based upon the construction cost of their project.

Category 1: Projects with a construction cost exceeding $1,000,000
Fee = 4P($250,000) + 2P($750,000) + P(C.C. - $1,000,000)

Category 2: Projects with a construction cost exceeding $250,000 but less than or equal to $1,000,000
Fee = 4P($250,000) + 2P(C.C. - $250,000)

Category 3: Projects with a construction cost less than or equal to $250,000
Fee = 4P(C.C.)

For all three categories P has been calculated to be equal to .0021, and C.C. is the construction cost of the portion of the project covered by the Treatment Works Approval.

Please note that the minimum fee for a Treatment Works Approval is $150.00 and the minimum fee for Treatment Works Approval modifications is $100.00. All extension of time requests must be accompanied by a $50.00 fee.

Section 5 - Multiple Permits

1. For projects under the jurisdiction of the Freshwater Wetlands Protection Act that require both Statewide General Permit(s) and Transition Area Waiver(s), a fee will be required for both actions. For projects requiring an Individual Permit and a Transition Area Waiver, only the highest of the required fees will be charged.

2. For projects which require more than one of the following permits: CAFRA permits; Waterfront Development permits; Coastal Wetlands permits; Stream Encroachment permits; or Freshwater Wetlands permits (including Individual permits, General permits, and Transition Area Waivers) issued under N.J.A.C. 7:7A. The permit fee

for all the project is equal to the sum of the following if the permit applications are submitted and processed simultaneously:

(a) The single highest fee for the above permits required for the project; and

(b) Seventy-five percent of the sum of the permit fees for all other permits required for the project.

3. If an applicant requests a Letter of Interpretation, separate from a Freshwater Wetlands permit or waiver, a fee based on the guidelines found in the Freshwater Wetlands Protection Act Rules will be required. If however, the Review Officer verifies a wetlands boundary in the context of a Coastal permit or a Stream Encroachment permit and an official Letter of Interpretation is not requested by the applicant, a fee will not be required.

4. There are two fee schedules for transition area waivers, one for projects with a completed Letter of Interpretation (LOI) and a second, higher schedule for projects without a completed LOI. For projects requiring a transition area waiver in the context of a Coastal permit or a Stream Encroachment permit, the applicant will be assessed the fee for a transition area waiver with a completed LOI.

5. Applications for Freshwater Wetlands permit require an FW-1 application form. Coastal and Stream Encroachment permits require a CP-1 application form. A project requiring permits from both Freshwater Wetlands and Coastal and/or Stream Encroachment will require both FW-1 and CP-1 application forms. Only one original CP-1 is required for any combination of Coastal and Stream Encroachment permits. However, the appropriate number of copies of this form will be required according to each program's requirements.

SECTION: A-IV

HOW TO OBTAIN A LETTER OF INTERPRETATION (LOI)

State of New Jersey
Department of Environmental Protection and Energy
Environmental Regulation
Land Use Regulation Element
CN 401
Trenton, NJ 08625-0401

Scott A. Weiner
Commissioner

Robert A. Tudor
Administrator

March 1992

RE: Freshwater Wetlands Protection Act Guidance
How to obtain a Letter of Interpretation

Dear Sir/Madam:

In response to your request for information on how to determine whether freshwater wetlands, State open waters, and/or transition areas occur on your property, the following guidance is provided. The Freshwater Wetlands Protection Act established the Letter of Interpretation (LOI) as the written instrument by which the Department documents its findings with regard to the occurrence of freshwater wetlands, State open waters and transition areas on a given parcel of land.

A copy of the Freshwater Wetland Protection Act Rules (N.J.A.C. 7:7A-1 et seq.) is enclosed. Subchapter 8 is devoted to the policies and procedures for Letters of Interpretation. Other portions of the rules will also apply if you are considering any regulated activities in freshwater wetlands, State open waters or prohibited activities in transition areas.

To make a preliminary investigation of your property for freshwater wetlands and State open waters, you should consult the New Jersey Freshwater Wetlands Maps (if completed for your area), U.S. Fish and Wildlife Service's National Wetland Inventory (N.W.I.) Maps and the U.S. Soil Conservation Service's County Soil Survey Maps. The municipal clerk's office should have the New Jersey Freshwater Wetlands and N.W.I. maps on file for examination, while the local Soil Conservation District has the County Soil Survey and can assist you with interpretating the survey. Due to the scale and methods used to compile both of these maps, they can be good indicators of the presence of freshwater wetlands and State open waters on or adjacent to a property, but they are not sufficiently accurate to meet the requirements of the Freshwater Wetlands Protection Act. The Act generally requires an onsite examination of vegetation, soils, and hydrology before the limits of freshwater wetlands or State open waters can be delineated.

The Department has four different types of Letters of Interpretation available which you can request to be performed, depending on your situation and the size of the property. All LOIs contain a notice of resource value classification if wetlands are present on or adjacent to your site. This information is used as the basis for determining the standard

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transition area width. If your property is less than one acre, we recommend that you request number III discussed below.

I. **Presence or absence determination**

The Department will investigate any property, regardless of the size, for the presence or absence of freshwater wetlands, State open water and transition areas. This type of LOI is usually performed when someone believes their property contains no freshwater wetlands, State open waters or transition areas and needs a letter from the State to verify this. The information required for this type of LOI is noted on the attached checkoff list, as well as at N.J.A.C. 7:7A-8.3(a), items 1 thru 11.

II. **Footprint of disturbance - Presence or absence determination**

The Department will investigate the "footprint" of a proposed development where the disturbances (clearing, grading and construction) are less than one acre in size on any size property to determine the presence or absence of freshwater wetlands, State open waters and transition areas in the footprint. This type of LOI is performed when someone is developing an area one acre or less in size on a property greater than one acre, and they want to know if where they are planning to develop contains any freshwater wetlands, State open waters or transition areas. The Department will investigate multiple applications for this type of LOI on a single Block or Lot or Right of way. The information required for this type of LOI is noted in the attached checkoff list, as well as at N.J.A.C. 7:7A-8.3(a), items 1 thru 11 and at N.J.A.C. 7:7A-8.3(b)1.

III. **Delineation of freshwater wetlands, State open waters and transition areas for property under one acre**

The Department will delineate freshwater wetlands, State open waters and transition areas on property less than one acre in size as defined by Block and Lot or Right of Way description on a tax map. The information required for this type of LOI is noted in the attached checkoff list, as well as at N.J.A.C. 7:7A-8.3(a), items 1 thru 11.

IV. **Regulatory line verification by the Department**

The Department will verify freshwater wetland, State open water, and transition area boundaries proposed by the applicant for any size property. This type of LOI is performed for properties greater than one acre in size to confirm the extent of State regulated freshwater wetlands, State open waters and transition areas. The limits of the parcel or right of way must be defined by municipal tax Block(s) and Lot(s) boundaries or municipal tax map right of way description. This LOI requires the delineation of the proposed freshwater wetlands boundary line using the three-parameter methodology (Unified Federal Method for Identifying and Delineating Jurisdictional Wetlands, January 1989), as well as State open waters, on and/or adjacent to a property (in order to identify the appropriate transition area onsite). You would then submit the required information to this

office as noted in the attached checkoff list, as well as at N.J.A.C. 7:7A-8.3(a), items 1 thru 11 and at N.J.A.C. 7:7A-8.3(b)2. The Department will then examine the proposed boundaries, usually through a site inspection, and confirm the extent of freshwater wetlands, State open waters and/or transition areas on the site.

The fees for Letters of Interpretation are described in the attached fee schedule, as well as at N.J.A.C. 7:7A-16. The fee for LOI number I is $100, $200 for LOI number II and $250 for LOI number III, while the fee for number IV is based on the acreage of the site.

If you have any questions about obtaining a Letter of Interpretation after reading the Rules, please contact the Land Use Regulation Program at the above address or at (609) 292-1235.

Sincerely,

Robert Tudor,
Administrator

Enclosures: LOI - Checkoff Lists for Information Required
Fee Schedule
Freshwater Wetlands Protection Act Rules

LETTERS OF INTERPRETATION
CHECKOFF LIST FOR INFORMATION REQUIRED

FOR FRESHWATER WETLANDS, STATE OPEN WATERS
AND/OR TRANSITION AREAS

GENERAL REQUIREMENTS FOR ALL TYPES OF LETTER OF INTERPRETATION

(a) The application for a letter of interpretation shall include the applicable fee for the review and processing of a letter of interpretation application specified at N.J.A.C. 7:7A-16.2 and three copies of the following information:

_____1. Name and address of owner(s) of the property, municipality, county, block and lot number(s) or ROW description;

_____2. A folded out-bound survey of the property or a folded site plan, if available. If the applicant is applying for a Presence or absence determination pursuant to N.J.A.C. 7:7A-8.2(a)1, a tax map may be substituted to satisfy this requirement. The survey or site plan should include all natural or human-made features such as structures, fences, streams, ponds, treelines, etc. In addition, the corners of the property boundary shall be visibly flagged and/or staked in the field to facilitate the on-site inspection.

_____a. For a letter of interpretation for a footprint of disturbance - presence or absence determination pursuant to N.J.A.C. 7:7A-8.2(a)2 the limits of all disturbance of any proposed regulated activities, including grading, shall be clearly indicated and labeled on an out-bound survey with a scale of one inch equals no more than 50 feet. These limits must encompass no more than one acre in total. In addition, the project limits shall be visibly flagged and/or staked in the field with numbered flags and referenced by matching numbers on the out-bound survey. The flags and/or stakes shall be set in relation to known points and landmarks if available, so that the limits can be reestablished. The Department may at its discretion require that the limits of disturbance be surveyed upon completion of the field inspection.

_____3. A copy of the current municipal tax map for the subject property.

_____4. A copy of the appropriate county road map or other local street map clearly indicating the location of the subject property.

_____5. A folded copy of the appropriate portion of a U.S. Geologic Survey Quadrangle Map for the parcel site with the boundaries of the parcel (defined by tax block and lot) or project (limits of disturbance) clearly outlined, and a determination of the State Plane Coordinates for the center of the parcel. The accuracy of these coordinates should be within 50 feet of the actual point. For linear projects, the applicant shall provide State plane coordinates for the end-points of those projects which are 1999 feet or less, and for those projects which are 2000 feet and longer, additional coordinates at each 1000 foot interval.

_____6. A copy of the appropriate United States Department of Agriculture, Soil Conservation Service County Soil Survey sheet, with the boundaries of the subject parcel (defined by tax block and lot) or project (limits of disturbance) clearly outlined. Include the sheet number of the Soil Survey.

_____7. For the copies of the applications submitted to the Department, clear color photographs of the property (a minimum of four views is recommended) with description and location of each view.

_____8. Verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a complete copy of the request for a letter of interpretation including all materials required by this subsection, have been forwarded to the clerk of the municipality in which the parcel or project is located.

_____9. Verification that certified mail notice with return receipt requested (white receipt or green card is acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, the planning board and the municipal construction official of each municipality, and the planning board of each county in which the parcel or project is located and landowners within 200 feet of the legal boundary line of the subject property or properties. Applicant must also provide a list of landowners within 200 feet. The written notices satisfying this item and item 9 above may be filed concurrently with notices required pursuant to N.J.S.A. 40:55D-1 et seq. (The Municipal Land Use Law), but should be mailed no sooner than two working days before the application package is delivered to the Department. This will allow ample time for the application to be processed to accommodate public review. The written notice shall include, at a minimum, the following information and statement:

_____a. The name(s) and address(es) of the property owner(s);

_____b. The property location described by block(s) and lot(s), municipality, county, and street address;

_____c. A description of the proposed project or the reason for applying for a letter of interpretation; and

_____d. The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the New Jersey Department of Environmental Protection and Energy, Land Use Regulation Element for a letter of interpretation.

A letter of interpretation is a legal document that establishes either the presence or absence or limits of wetlands, open water or transition areas on a subject property as defined at N.J.S.A. 13:9B-1 et seq. The width of the transition area adjacent to a wetland is determined by the resource value classification of the wetland. This information is also provided by a letter of interpretation. If any of these features are present on a parcel the Department will regulate many aspects of development on those areas as defined in N.J.A.C. 7:7A-1.4, Regulated activities.

The complete letter of interpretation application package can be reviewed at either the municipal clerk's office or by appointment at the Land Use Regulation Element office at the address listed below. The Department welcomes comments and any information that you may provide concerning the presence of wetlands, open water or transition areas on the referenced parcel. Written comments should be submitted within 15 days of receiving this letter. Comments will be accepted until the Department makes a decision on the application. Please submit your written comments along with a copy of this letter to:

New Jersey Department of Environmental Protection and Energy
Land Use Regulation Element
Bureau of Regulation
CN 401
5 Station Plaza
Trenton, New Jersey 08625
att: (County in which the property is located) Section Chief

As part of the Department's review of this application, Department personnel may perform a site inspection on your property. This site inspection will involve only land within 150 feet from the applicant's property line. This site visit will involve a visual inspection and possibly minor soil borings using a 4" diameter hand auger. The inspection will not result in any damage to vegetation or any improvements on your property.

The Department will notify the environmental commission, the planning board of the municipality and the municipal construction official of the Department's determination in the letter of interpretation."

_____e. If the proposed project involves a linear facility such as a pipeline or road of more than .5 miles, instead of notifying all landowners within 200 feet of the property(ies) lines, the applicant shall give public notice by publication of a display advertisement. The advertisement shall be a minimum of four column inches and be published in at least one newspaper of local circulation and one of regional circulation in the municipality. In addition, notice shall be given to owners of all real property within 200 feet of any above above surface structure related to the linear facility, such as pumping stations, treatment plants, power substations, grade separated interchanges or similar structures. This does not include utility support structures or conveyance lines.

_____10. Unconditional written consent by the owner of the subject property to allow access to the site by representatives or agents of the Department for the purpose of conducting a site inspection or survey of the freshwater wetlands, State open waters or transition areas thereon.

_____11. A fee pursuant to N.J.A.C. 7:7A-16, as indicated on the printed fee schedule which is available from the Department.

ADDITIONAL INFORMATION REQUIREMENTS FOR REGULATORY LINE VERIFICATION BY THE DEPARTMENT

_____1. The applicant shall provide a folded out-bound survey or folded site plan of the property. The scale of the survey shall be one inch equals no more than 100 feet. If the subject parcel is located in either Middlesex or Mercer County or north of these counties, the survey must include topography depicting contours at no greater than five foot intervals. For counties south of Middlesex and Mercer, the survey must include topography depicting, at a minimum, two foot contours.

_____a. The proposed wetlands and/or open waters boundary must be clearly indicated and labeled on the out-bound survey. The boundary must be accurate enough to allow Department personnel to locate the wetland boundary in the field. A surveyed line will only be required after the line has been verified by the Department and only for properties of five acres or more.

_____b. The locations of all soil borings or pits, if applicable, shall be indicated on the survey and numbered.

_____2. Soil logs should be presented with an indication of the depth to the seasonal high water table. Soil borings must be to a minimum depth of 24 inches on transects perpendicular to the wetlands boundary starting in the definite wetlands area and moving towards the uplands. In wetlands with atypical characteristics, or in wetlands which have been disturbed by human activities or as otherwise deemed appropriate, the Department may require deeper borings as needed.

_____3. Vegetative species, recorded at soil boring locations, and classified using United States Fish and Wildlife Service categories as listed under "R/IND" and "NAT-IND" (Regional and National Indicators) columns in the "National List of Plant Species that Occur in Wetlands: 1988-New Jersey" and amendments thereto, compiled by the USFWS, United States Army Crop of Engineers (Corps), USEPA and the United States Soil Conservation Service.

_____4. The wetlands and/or open water boundary line shall be visibly flagged and/or staked in the field with numbered flags, placed no greater than 75 feet apart, and referenced by matching numbers on the out-bound survey. The flags and/or stakes are to be set in relation to known points and landmarks if available, so that the boundary can be re-established

_____5. Name of the person who prepared the proposed wetland and/or open water boundary.

SECTION: A-V

AGRICULTURAL BEST MANAGEMENT PRACTICES FOR NEW JERSEY WETLANDS

AGRICULTURAL BEST - MANAGEMENT PRACTICES FOR NEW JERSEY WETLANDS

New Jersey's wetlands are a valuable natural resource that require protection from the damaging effects of modern society. In addition to providing a unique habitat for an abundance of wildlife, our wetlands insure a stable supply of high quality water by providing flood protection, shoreline stabilization, streamflow maintenance and groundwater recharge. Wetlands act as a biological filter to the surface waters entering their reach, trapping and stabilizing sediment and chemicals.

In recognition of the importance of wetlands, federal and state laws exist which are designed to protect our wetlands. The New Jersey Wetlands Task Force was established by Rutgers University in response to concerns expressed by the agricultural community and leaders of several agricultural support groups. The objective of the Task Force was to identify and describe agricultural management practices which can be used without adversely affecting the State's wetlands.

The work of the Task Force will produce a manual enumerating the best management practices, along with interpretations, clarifications and recommendations that have been developed for permits and exemptions. These will serve to promote agriculture and protect the State's wetlands and open waters.

This work when completed will be published, made available to the public and included in the Freshwater Wetlands Technical Manual.

SECTION: A-VI

BEST MANAGEMENT PRACTICES FOR MOSQUITO CONTROL AND FRESHWATER WETLANDS MANAGEMENT

BEST MANAGEMENT PRACTICES
FOR MOSQUITO CONTROL
AND
FRESHWATER WETLANDS MANAGEMENT

State Mosquito Control Commission
c/o N.J. Dept. of Environmental Protection
CN 400
Trenton, N.J. 08625

BEST MANAGEMENT PRACTICES FOR MOSQUITO CONTROL AND FRESHWATER WETLANDS MANAGEMENT

A Manual of Freshwater Wetland Management Practices for Mosquito Control in New Jersey

Authored and illustrated by: George O'Carroll, Middlesex County Mosquito Commission.

Edited by: Dr. Kenneth W. Bruder, Administrator, Office of Mosquito Control Coordination, N.J. Department of Environmental Protection

Cover Photo: Courtesy of Dr. Wayne J. Crans, Department of Entomology, Rutgers University

"It is always true that if you treat the land properly, you have to make two choices. The first is in the area of economics. It costs more money, at least at first, to treat the land well. The second choice is that it usually takes longer to treat the land properly. And these are the two factors that lead to the destruction of our environment: money and time - or to say it another way, greed and haste. The question is, or seems to be, are we going to have an immediate profit and an immediate saving of time, or are we going to do what we really should do as God's children?"

Francis A. Schaffer
FROM: Pollution and the Death of Man

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ACKNOWLEDGEMENTS

The author and editor gratefully acknowledge the assistance of Patricia Dreyer and Karen Stokes. Pat diverted considerable time from her duties as Administrative Secretary for the Middlesex County Mosquito Extermination Commission to patiently translate and type the early drafts of the "Management Practices".

Karen then worked diligently within the Office of Mosquito Control Coordination (NJDEP), providing the manual input for final editing and text organization. Their efforts and patience are much appreciated by the author and editor.

REVIEW COMMITTEE

Representatives from the following Federal and State agencies provided valuable review and comment during the development of these wetland management practices. This contribution of constructive criticism and recommendations by concerned natural resource professionals has served to assure that these Best Management Practices are consistent with the intent of the New Jersey Freshwater Wetlands Protection Act of 1987.

New Jersey Department of Environmental Protection
Office of Mosquito Control Coordination
Trenton, NJ

US Fish and Wildlife Service
Absecon, NJ

USDA Soil Conservation Service
Somerset, NJ

New Jersey Department of Environmental Protection
Division of Coastal Resources
Bureau of Freshwater Wetlands
Trenton, NJ

New Jersey Department of Environmental Protection
Green Acres/Recreation Program, Trenton, NJ

New Jersey Department of Environmental Protection
Division of Fish, Game and Wildlife
Trenton, NJ

New Jersey Department of Environmental Protection
Division of Parks and Forestry, Trenton, NJ

New Jersey Department of Environmental Protection
Division of Coastal Resources
Bureau of Floodplain Management, Trenton, NJ

US Army Corps of Engineers
Philadelphia, PA

US Environmental Protection Agency
Region II, New York, NY

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INTRODUCTION

Although wetland values have been recognized for many years, efforts to preserve freshwater wetlands through regulation are relatively recent. Public agencies such as the US Environmental Protection Agency are actively engaged in wetland research of a basic and applied nature. Private organizations like the Society of Wetland Scientists are actively engaged in the training of wetland managers through publications and seminars.

Both the US Environmental Protection Agency and the New Jersey Department of Environmental Protection have identified urban quality stormwater runoff as a major pollutant which often contains high concentrations of toxic materials. Large volumes of this pollutant are regularly flushed from developed areas into wetlands throughout much of the State. Sedimentation from both agricultural and construction activities has also been a major source of degradation of freshwater wetlands, particularly those situated within stream corridors.

A report on urban stormwater contaminants, by the New Jersey Department of Environmental Protection, concluded that stormwater runoff must be considered as a significant contributor to degradation of ground and surface waters and to the violation of water quality standards.* The report also identified pollution in stormwater runoff from urban and urbanizing areas as a major environmental problem. It is reasonable to conclude that repeated recharge of freshwater wetlands by urban type stormwater runoff will have a significant and cumulative adverse impact upon that wetland environment. These destructive impacts include the loss of natural mosquito predators, and fluctuating wetland water levels. These conditions often create mosquito producing habitat which may be in close proximity to residential areas. The preservation of healthy freshwater wetlands, unpolluted by excessive urban stormwater runoff and/or sedimentation, is therefore of vital concern to mosquito control agencies throughout the State.

Altered Wetland Hydrology

As upland areas adjacent to freshwater wetlands are developed, the natural hydrology of the wetlands is usually disturbed. First, existing ground infiltration is reduced by the

*NJDEP Draft Issue Paper Stormwater Management and Freshwater Wetlands

construction of impermeable surfaces such as sidewalks, parking lots and streets. Secondly, the radically increased surface runoff is released into a detention facility, or nearby wetland areas and streams. Consequently, there are predictable and pronounced impacts upon the wetland's hydrologic regimen. These impacts include:

1. sub-surface wetland recharge diminishes

2. the wetlands become dependent upon surface recharge sources and precipitation

3. water enters the wetlands from a few concentrated storm water discharge points

4. stormwater enters wetlands in surges often at increased rates and volume

5. the quality of the stormwater runoff is reduced, delivering toxic contaminants to the wetland.

Any one of these hydrological changes, in itself, is capable of degrading or altering the freshwater wetland environment and creating a mosquito producing habitat.

Preventative wetland protection realized through regulation of stormwater management design is, therefore, the most effective mosquito control procedure in urbanizing areas. Where an existing wetland system is already experiencing the degrading effects of urban runoff, management of the wetland hydrological regimen will provide an effective and environmentally responsible method of mosquito control without the use of pesticides.

The New Jersey Freshwater Wetlands Protection Act of 1987 will significantly reduce the extent of more physical encroachment and gross alteration in the State's wetlands. It appears likely, however, that in urbanizing areas the adverse impacts of stormwater runoff will continue to be a source of degradation and mosquito habitat production in both on-site and impacted off-site wetlands. Consequently, the demand from the general public for continued, and potentially increased, mosquito control water management in these impacted wetlands is anticipated. NJSA 26:9-1-31 provides the enabling legislation for mosquito control agencies in New Jersey. Operating under the mandates of Title 26, county mosquito control agencies have broad authority to undertake remedial action "which in its opinion, may be necessary for the elimination of mosquito breeding areas, or which will tend to exterminate mosquitoes within the county (NJSA 26:9-21)".

Ongoing research will hopefully provide continuing insights into wetland functions which will assist in the development of a better understanding of optimum wetland management technology. In the interim, mosquito control agencies are mandated to address wetland mosquito problems, utilizing presently available data, and the best management practices available.

Whether degraded by urban stormwater runoff or not, freshwater wetland mosquito habitat which impacts residential areas, will require attention. Pesticide usage will remain the dominant mosquito control option during the active mosquito season, between late March and October. However, encroaching development is making pesticide applications increasingly more difficult in these wetlands. Land development trends throughout the State indicate that effective mosquito control programs should include sensitive physical management of freshwater wetland mosquito habitat.

THE NEW JERSEY FRESHWATER WETLANDS PROTECTION ACT OF 1987 (N.J.A.C. 13:9b-1 et seq.)

The intent of the Freshwater Wetlands Protection Act is to preserve the purity and integrity of the freshwater wetlands of the State from random, unnecessary or undesirable disturbance. The ACT does not prohibit all wetland alteration, but does clearly establish three broad criteria by which any proposed wetland disturbance is to be evaluated. Any disturbance shall be:

1. planned, rather than random;

2. necessary, and

3. desirable.

Mosquito control management activities in freshwater wetlands must also satisfy these criteria. Proper planning, which includes documentation of both the necessity and desirability of wetland management for mosquito control, is a key factor of the Best Management Practices.

The Act mandates that freshwater wetland management for mosquito control shall be authorized under a general permit classification on a State-wide or regional basis (Section 23.c). This general permit category was created to expeditiously allow certain wetland activities of a public works, or public health nature, which are undertaken in the public interest, and which will have only minimal adverse impact upon wetlands.

ADMINISTRATIVE PROCEDURE FOR ISSUANCE OF GENERAL PERMITS FOR MOSQUITO CONTROL WETLAND MANAGEMENT

The application procedure includes the following steps:

STEP I: Submission of Proposed Project

A county mosquito control agency shall submit a brief description of the wetland area proposed for management, with supporting mosquito control documentation to the Administrator of the Office of Mosquito Control Coordination, within the Department of Environmental Protection. Following preliminary review by the Administrator, the county agency will be notified by letter whether to proceed with submission of an FW-1 application (Appendix 7) to the Department for final review.

Preliminary review information for proposed management sites should include the name of the municipality, pertinent location details, and a brief description of the nature and extent of the mosquito problem. A county agency may also submit a list of proposed wetland management areas to the Office of Mosquito Control Coordination for preliminary review. However, the same information should be provided for each site listed.

It is recognized that mosquito control records may be sparse in areas of new mosquito habitat. In general, however, an effort should be made to provide the most complete records in order to expedite preliminary project review.

STEP II: Submission of Site Specific Project Proposals

Following receipt of written preliminary approval of a proposed wetland project, the county mosquito control agency shall submit a completed FW-1 application to the Department of Environmental Protection, Division of Coastal Resources, Bureau of Freshwater Wetlands, CN 401, Trenton, NJ, for final review and approval.

The applicant agency will receive written notification of permit approval, or denial, within 30 days following receipt of the FW-1 application by the Bureau of Freshwater Wetlands. A General Permit, issued by the Bureau of Freshwater Wetlands, is required prior to commencement of each project.

Each General Permit is valid for a 5 year period unless rescinded by the Department (i.e., Bureau of Freshwater Wetlands). Refusal of a county agency to comply with the regulations and Best Management Practices will result in the suspension of an approved General Permit.

Each general permit application should contain the following:

1. USGS Quad Section with the wetland area marked in red.

2. Sketch plan of wetland area indicating:

   A. Approximate wetland area.

   B. Area within wetlands to be managed for mosquito control.

   C. Wetland recharge sources, (i.e. road drainage, ground water, storm drainage culverts, etc.).

   D. Proximity of proposed management area to residential, industrial, or commercial areas.

3. Type of freshwater wetland mosquito habitat:

   A. Stream corridor.

   B. Upland forested.

   C. Construction generated.

   D. Detention facility.

   E. Mitigation area.

   F. Other.

4. Quality of Wetland (NJAC 13:9b-1 et seq., Sect.7)

   A. EPA - Priority Wetlands (mosquito control management may be permitted under general permit)

B. Exceptional - (mosquito control management not permitted under general permit)

C. Intermediate

D. Ordinary

E. Severely impacted

F. Unknown

5. A description of the wetland mosquito problem, including the major species present, relevant surveillance data, and past chemical and/or water management activities.

6. A narrative description of the best management practices proposed for the area.

7. Verification of required notifications, fees, etc. as detailed in instructions for general permit applications.

GUIDELINES FOR PREPARATION OF A FRESHWATER WETLAND MOSQUITO CONTROL MANAGEMENT PLAN

A freshwater wetland management application for mosquito control should include not only a general description of the wetland, but enough site specific information to:

1. describe the mosquito producing conditions;

2. determine the appropriate best management practices to be employed; and,

3. facilitate an accurate and timely review of the proposed wetland activity by the N.J. Department of Environmental Protection.

The purpose of this section is to provide county mosquito control agencies with basic wetland information and guidelines to assist them in establishing the boundary and character of the freshwater wetlands as part of the mosquito control management planning process.

DELINEATION OF FRESHWATER WETLANDS

The New Jersey Freshwater Wetlands Protection Act requires that freshwater wetlands be identified by 3 parameters: wetland hydrology, hydric soil, and wetland vegetation.

Wetland Hydrology

Hydrology may be defined as a science dealing with the properties, distribution, and circulation of water on the surface of the land, in the soil and underlying rocks, and in the atmosphere. For the purpose of mosquito control wetland management planning, three wetland hydrologic features should be identified, and recorded on a plan drawing. This site data will assist in determining which mosquito control management practice will be most appropriate and effective for a particular site. These features are:

1. the area and depth of surface water or depth to groundwater within saturated wetland soils,

2. the locations of water entering the wetland, and

3. the routes (if any) by which water is discharged from the wetland.

Field studies are usually required to provide specific details of these site features. However, in many areas much valuable site information is readily available on existing maps. Time spent gathering and reviewing existing area mapping is a solid investment in the development of a sensitive and effective wetland management plan. Information relative to area roadways, drainage features, and residential development, is basic to an understanding of the dynamics which generate and influence wetlands in their urbanizing context. Sources of adverse wetland impacts which create and maintain mosquito habitat can often be identified through existing area map review.

Several map information sources are readily available. These include:

1. USGS Quadrangle maps, which contain topographic data, drainage features, and area roadways.

2. Aerial photography, which provides an overview of all land and drainage features. However, some experience in aerial photo interpretation may be necessary to utilize this resource.

3. Municipal and county topographical mapping is a valuable source of existing land and drainage features, usually providing land surface contours at 1-2 ft. intervals.

4. National Wetlands Inventory Mapping (US Fish and Wildlife Service) is a primary source of approximate wetland delineation and freshwater wetland typing.

5. Though not yet available, N.J. Department of Environmental Protection Wetlands Maps will be a source of accurate freshwater wetland delineation.

6. USDA soil conservation soil survey mapping and explanatory reports provide detailed information relative to the locations and types of wetland soils. Soil Survey Reports and mapping are usually available from the local SCS district.

The presence of surface water is not in itself a reliable indicator of the presence of freshwater wetland. For the purpose of mosquito control management within a confirmed wetland however, measurement of the observed area of surface water mosquito habitat should be one of the initial steps toward the development of a management plan. The area of surface water should, therefore, be determined and sketched onto a management plan drawing. Additionally, all sources of flow into the wetland, as well as discharge routes, should be added to the plan drawing.

Wetland (Hydric) Soils

Hydric soils develop naturally in wet depressions, on floodplains, on seepage slopes, and along the margins of inland waters. Hydric soil has been defined by the U.S.D.A. Soil Conservation Service as soil that is either saturated at or near the soil surface with water that is lacking free oxygen for significant periods during the growing season, or flooded frequently for long periods during the growing season. Hydric soils are separated into two major categories on the basis of soil composition. These include:

1. Organic Hydric Soils (Histosols) - Soils which originate from a build up of organic matter, subjected to long periods of flooding, or saturation. These saturated soil conditions impede aerobic decomposition of organic materials such as leaves, stems and roots, and encourage their accumulation as peat or muck, over time. Organic soils are consequently dark in color, poorly drained, and contain partially decomposed vegetative matter.

2. Mineral Hydric Soils - Soils which are predominately gray in color with variable "Mottling" of bright colors. A typical mineral hydric soil core is composed of a few inches of organic material at the surface underlain by gray, yellow or orange sands, progressing to sandy clay, and finally clay. The characteristic color mottling usually occurs as an orange or rust "Speckling" within the clay or sandy clay layer.

Hydric Soil Boundary and Depth

Although surface water, or wetland vegetation can provide observable evidence of a hydric soil condition, accurate soil boundary delineation requires some soil investigation. As previously noted, published soil surveys for each county in the State are available from the Soil Conservation Service. In these detailed soil reports, all soils are classified, assigned a name, described and their boundaries mapped. Those soils which tend to be poorly drained are identified. However, soil borings are needed to obtain site specific data such as the hydric soil boundary, its depth, character and depth to ground water.

The hydric soil boundary can be determined by taking hand auger soil borings near the edge of the observed wetland (i.e. wetland vegetation, surface water) and progressively at 5 or 10 foot intervals toward the upland. When a soil boring first indicates only upland soil characteristics, establish the hydric soil boundary midway between that boring and the one preceding it. (Figure 1)

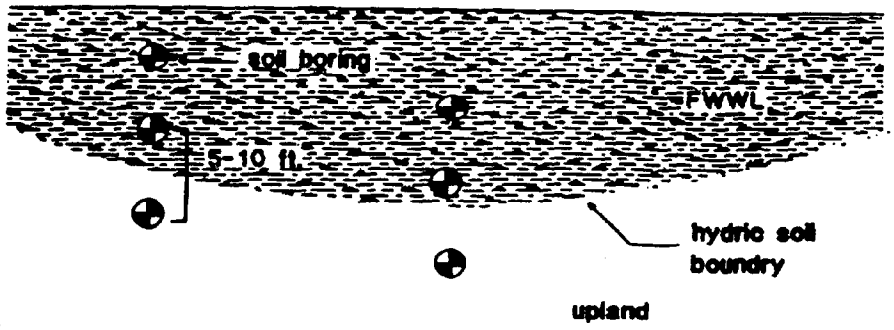


FIGURE 1. Hydric soil boundary determination.

The approximated hydric soil boundary is a useful element of a wetland management plan. More important however, are the depth of the hydric soil zone, and if the FWWL is not inundated, depth to groundwater or saturation. The hand auger boring can also provide this data with reasonable accuracy if auger soil samples are observed carefully and measured as they are taken. Ground water observation borings should be taken several hours prior to recording in order to obtain accurate soil saturation levels.

Wetland Vegetation Boundary

Wetland vegetation provides the most reliable observed evidence of freshwater wetland conditions. Wetland vegetation is dependent upon seasonal or permanent flooding or sufficiently saturated soils to give it a competitive advantage over upland plant species. Consequently, the wetland boundary is located at the outer limit of wetland vegetation growth. Unfortunately however, many wetlands do not have abrupt vegetation boundaries, but rather, there is a transition area of variable width wherein wetland and upland vegetation intermix. Accurate delineation of the freshwater wetland vegetation boundary requires identification of the existing wetland plants, determination of species density, and establishing the point at which these wetland species are no longer dominant. The mosquito control manager should be familiar with the common New Jersey hydrophytes and their associated plant communities in order to approximate freshwater wetland boundaries.

As part of the National Wetlands Inventory Program, the U.S. Fish and Wildlife Service has compiled a list of nearly 1,000 wetland plants found in the Northeast region of the country.

This list categorizes plants by their frequency of occurrence in wetlands. Those plants that require saturated soil or standing water and are always found in wetlands are referred to as "obligate" plants (obl.). Plants that can tolerate wet, or dry conditions, are termed "facultative" plants. Facultative plants are divided into three sub-groups:

1. facultative wetland species, (facw) usually found in wetlands (66-99% of the time),

2. facultative species (fac) found in either wetland or upland situations (found in wetlands 66-33% of the time), and

3. facultative upland species (facu), generally found in uplands, but occasionally found in wetlands.

Examples of these wetland associated plant types occurring in New Jersey can be found in Appendix 2.

The wetland boundary is established at the point where wetland indicator plant species no longer have a competitive advantage over upland species. Wetland and upland plants will mix together at this transition zone. When the intermixing of vegetation is an even gradient, the boundary is defined. The boundary line, therefore, is drawn at the mid-point of that zone.

In situations where predominately facultative plant species are found, the ecological association of that community must be examined to determine if the area is a wetland.

Soil Stabilization in Managed Wetland Areas

Minimum soil disturbance in freshwater wetlands should be a major objective of mosquito control wetland management practices. However, some disturbance will be inevitable, especially in stream corridor management where channel restoration is undertaken.

Restoration of severely impacted channels in urban or agricultural areas may require both sediment removal, and "resculpting" of natural channel meanders. Both procedures

generate considerable spoil volume. Where excavated materials cannot be feasibly removed from the floodplain, they should be regraded to a depth of no greater than four inches. Since a considerable area may be disturbed by the regrading process, stabilization of these areas is crucial, especially in stream corridors subject to the scouring effects of periodic flooding.

Usually, indigenous floodplain vegetative species will revegetate the disturbed areas. However, natural revegetation may require considerable time. It is good practice, therefore, to supplement the natural revegetation process with the establishment of hardy, soil binding, species of grass capable of thriving in saturated soils. Wetland tolerant grasses serve two purposes:

1. they provide soil binding root/rhizome systems, and

2. they provide food and cover for wildlife.

Several species of grass have been designated by the USDA Soil Conservation Service as being particularly effective wetland soil binders and good wildlife food and cover. A list of the grasses recommended by the USDA for soil conservation in the northeast US is provided in Appendix 3. A mosquito control agency may find it necessary to experiment with varying mixtures of these and other grasses, in order to find the best blend for site specific conditions.

The following blend, developed by the Rutgers University Turf Management Department, has proven very successful for stabilizing fresh cut stream banks and graded spoil, and provides excellent wildlife cover.

60% Perennial Rye Grass
8% Kentucky Blue Grass
8% Penn Red Fescue
4% Red Fescue (creeping)
20% Reed Canary Grass

The proper scheduling of wetland management projects is also a very important soil stabilization factor. Excavation, and regrading of the excavated spoil should be completed early enough in the growing season to allow adequate time for germination and establishment of new vegetation. In the absence of adequate soil stabilization, stream corridors, subject to floodplain scouring, may suffer considerable winter erosion.

Vegetation Disturbance

Wetland waterway restoration, as well as floodplain wetland management, may entail a moderate amount of vegetative disturbance. Any wetland management plan must place a high priority on the preservation of existing vegetation. Particular attention should be directed toward the protection of the larger woody species. As a general management principle, the preservation of all trees should be a primary objective. Though selective removal of some smaller trees (4" diameter or less) will often be necessary, cutting should not be done randomly. Wetland management practices should attempt to limit vegetation disturbance to the grasses and understory shrub-scrub plant varieties.

Excavation Equipment

Removal of sediment from impacted waterways usually requires excavation equipment with a maximum reach capability. Adequate reach capability is especially desirable in wetland management projects where channel resculpting may require reaching over, or around, vegetative stands, as well as the selective placement of spoil beyond a 15 foot top of bank buffer. Wetland management equipment should also be relatively light so as to minimize soil compression and root damage to the surrounding vegetation.

ENDANGERED AND THREATENED SPECIES OF NEW JERSEY

The Freshwater Wetlands Protection Act classifies wetlands into 3 categories:

1. exceptional resource value
2. intermediate resource value
3. ordinary resource value

One criterion of an exceptional resource value wetland shall be that endangered or threatened plant species are present, or it is a documented habitat (determined by the Department to be suitable for breeding, resting or feeding) for threatened or endangered wild fowl or animal species. The other criterion is that it discharges into FW-1 waters and FW-2 trout production waters and their tributories.

Often, wetland wildlife or plants attain their endangered or threatened status as a direct result of human encroachment and physical stress upon their habitat. Continued industrial and residential development throughout the State will likely place additional stress upon these plants and animals as it also contributes to the formation of mosquito habitat.

County mosquito control agencies should be aware of and concerned about any endangered or threatened species within their counties and the potential impact mosquito control activities may have upon them.

A list of the New Jersey flora and fauna presently considered threatened or endangered is provided in Appendix 3 and 4.

Additional information on New Jersey's endangered and/or threatened species may be obtained from the following New Jersey State agencies:

New Jersey Department of Environmental Protection
Division of Fish, Game & Wildlife
Office of Endangered and Threatened Species
CN 400
Trenton, NJ 08625
(609) 292-9400

New Jersey Department of Environmental Protection
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
Trenton, NJ 08625
(609) 984-1339

New Jersey Department of Environmental Protection
Division of Coastal Resources
Bureau of Freshwater Wetlands
CN 401
Trenton, NJ 08625
(609) 984-0853

BASIC PRINCIPLE OF WETLAND MANAGEMENT FOR MOSQUITO CONTROL

The Freshwater Wetlands Protection Act mandates that freshwater wetlands be identified and delineated by using the 3 parameter approach (hydrology, soils and vegetation) as established by the US Environmental Protection Agency.

The Act defines a freshwater wetland as an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and does normally support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. This definition indicates clearly that standing surface water is not a necessary feature of freshwater wetland hydrology, since sub-surface ground water saturation will also support some hydrophytic vegetation.

The Best Management Practices for combined mosquito control and freshwater wetland management have been developed upon the principle of converting mosquito producing surface inundated wetlands to ground saturated wetlands. This management principle provides for both the elimination or reduction of mosquito producing surface water, while preserving the essential saturated wetland character and function. This management principle has little in common with traditional land reclamation practices.

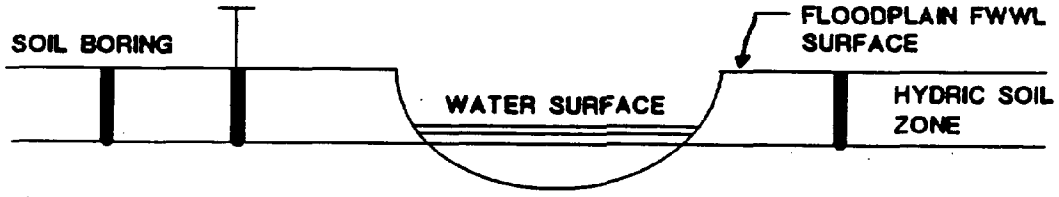
These Best Management Practices are intended to serve as an alternative to continued pesticide usage for the control of mosquitoes in the State's freshwater wetlands, particularly in those wetlands being impacted by urban development.

BASIC PRACTICES FOR FRESHWATER WETLAND MOSQUITO CONTROL MANAGEMENT

Shallow Channel Restoration

The impact of accumulated sediment within the stream channels of a wetland system may require restoration of the waterway prior to management of the floodplain mosquito habitat. The removal of up to 2 feet of channel sediment (as per NJDEP Stream Encroachment Regulations, N.J.A.C. 7:13) is generally a reasonable standard for wetland waterway management.

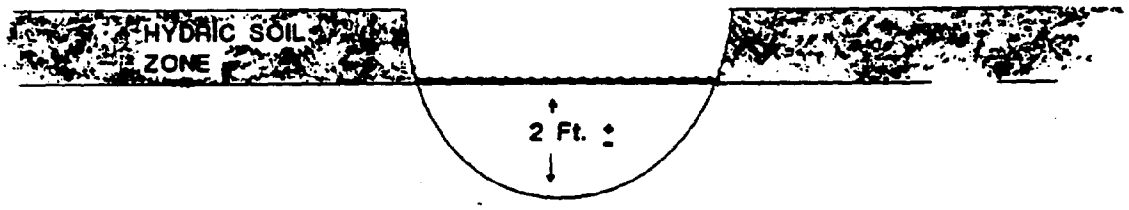
The primary objective of wetland channel restoration for mosquito control is to restore flow within the stream banks, while maintaining the channel water level within or near the hydric soil zone of the floodplain. (Figure 2.) The hydric soil zone depth can be reasonably estimated on the basis of soil data obtained from shallow soil borings taken near the channel.



Establish Channel Water Level Within or Near Hydric Zone

FIGURE 2. Cross section of channel showing water level within or near hydric zone.

Some creativity may be required to establish and maintain adequate water depth within a newly restored channel. This is largely due to the fluctuations in flow normally experienced by small waterways during storm events or drought conditions. Also, as small watersheds experience urbanization, these fluctuations naturally increase. Care should be taken to establish the desired channel water level during a period of normal flow so that the adjusted water level will be sustained adequately to ensure the integrity of the wetlands. A minimum channel water depth of two feet is suggested for small streams in order to restore or enhance fish habitat. (Figure 3).



2 Ft Channel Water Depth

FIGURE 3. Cross section of stream channel showing recommended minimum water depth.

The Drainage Swale

The swale (Figure 4) is an effective wetland management tool because of its ability to accomplish the same objectives as a drainage ditch, but with a greater degree of sensitivity to its surrounding environment. Lacking defined banks, the drainage swale can be fashioned to blend into the wetland topography, while accomplishing its management functions of concentrating and removing accumulated surface water.

Freshwater wetland management swale design will naturally be adapted to accommodate site specific conditions. However, the following swale design guidelines are recommended for typical mosquito control management sites.

1. The bottom of the swale (swale invert) should be set as high in the hydric soil zone as site grade limitations allow. In general, a swale depth of between 6-12 inches is recommended.

2. Swales should be constructed in meandering paths, avoiding vegetative stands and trees whenever possible.

3. All excavated material should be regraded on-site and stabilized with moisture tolerant grass varieties. Site stabilization or re-vegetation may also include planting of wetland shrubs or small trees which are indigenous to the area.

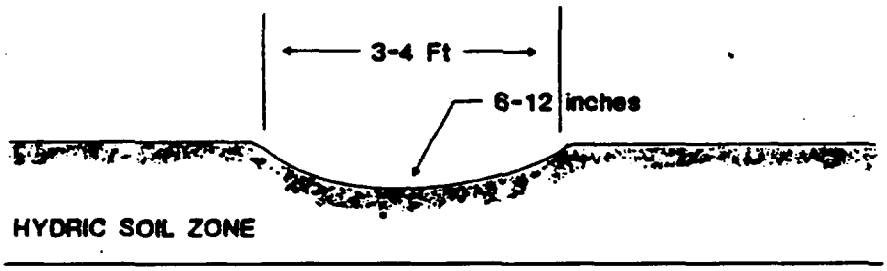


FIGURE 4. Cross section of typical recommended freshwater wetland management swale.

The Low Level Management Sill

Topography, hydrology, or soil conditions may make it difficult to maintain adequate ground water saturation within managed wetlands. Excessive dewatering of the hydric soil zone may occur as a result of the following conditions:

1. general lowering of ground water due to storm drainage alterations, such as storm sewer installation, etc.

2. the presence of permeable organic hydric soils (peat)

3. wetland surface gradients exceeding 1%.

A "low level sill", or weir (Figure 5) is a simple structure of wood, stone, or concrete which can be installed in a management swale to assist in stabilizing soil saturation. Creative combinations of shallow swales and low level management sills can be used to "fine tune" the wetland management water balance process of converting inundated wetlands to saturated wetlands.

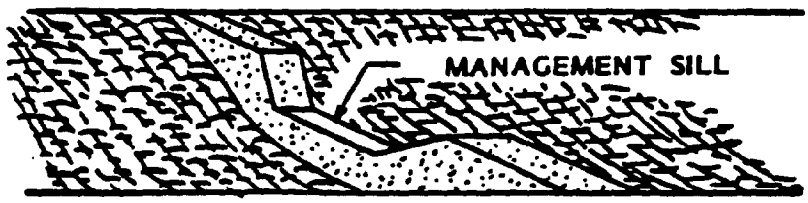


FIGURE 5. A typical management swale sill installation.

Sill installation depth should be deep enough to restrict surface flow within the management swale and also impede movement of sub-surface flow within the wetland soil. Optimum installation depth is determined by the site soils and hydrology, as well as the desired depth of water to be retained within the swale. Some experimentation may be necessary to determine the best installation. The depth to ground water, and hydric soil zone (depth) should be determined and the sills installed to create the desired ground saturation level.

A general recommendation is to install management sills so as to provide a flow barrier extending between 12 and 14 inches below the swale bottom. (Figure 6).

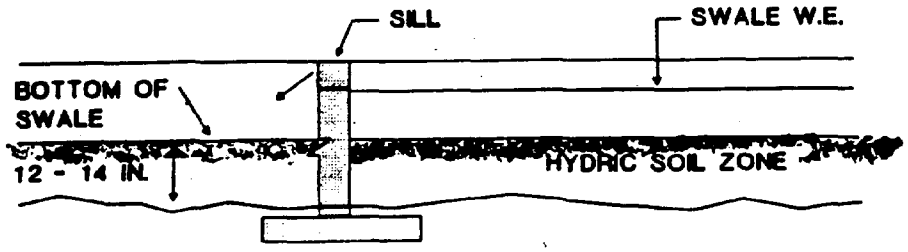


FIGURE 6. Recommended swale sill and flow barrier.

Where wetland surface grade will cause even a shallow swale to excessively dewater the hydric soil, multiple management sills can be used to lower the water table in steps while maintaining soil moisture in the higher elevations of the wetland system. Surface gradient in excess of 2% will likely require the use of tandem sills. (Figure 7).

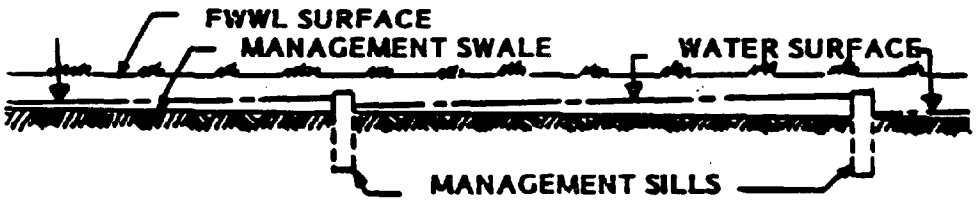


FIGURE 7. Multiple management sill installation in FWWL's with 2 percent or more surface grade.

Wetland management sills and swales in urbanizing areas may be subject to periodic surges from stormwater culverts. Damage to the sills may occur in the form of washouts or undercutting of the sill.

Wetland management systems installed in unstable organic soils, and those receiving runoff from large culverts will likely require additional stabilization protection. Figure 8 illustrates the use of a crushed stone apron and sill base support to minimize water damage to the system.

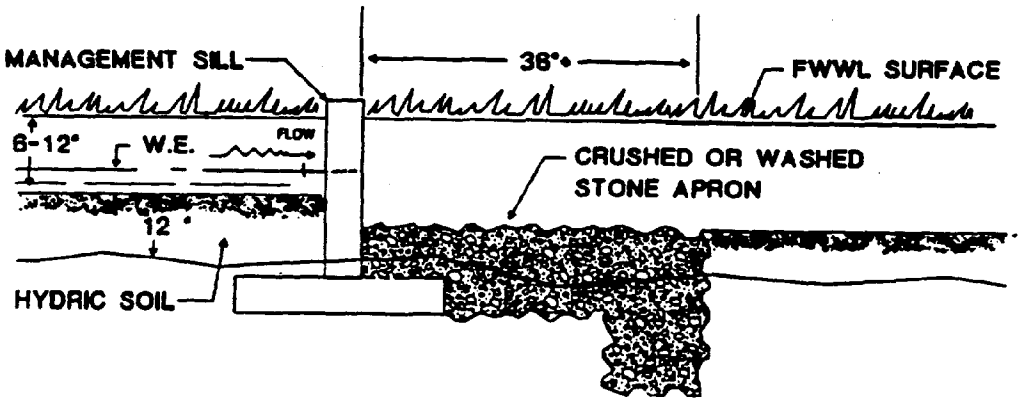


FIGURE 8. Typical sill installation showing stone apron to reduce swale erosion.

APPLIED BEST MANAGEMENT PRACTICES FOR
MOSQUITO CONTROL IN:

STREAM CORRIDOR WETLANDS
PALUSTRINE WOODED WETLANDS
DETENTION FACILITY WETLANDS
CONSTRUCTION DISTURBED WETLANDS
ISOLATED WETLANDS
MITIGATION WETLANDS

Stream Corridor Wetland Management

Sediment choked channels artifically elevate floodplain water levels, which reduces the flood storage capacity of the floodplain, contributes to road flooding, and often generates extensive mosquito habitat.

Restoration of stream channels may therefore be necessary prior to management of the floodplain wetlands. It should be emphasized that the objective of mosquito control stream corridor management is not primarily to improve channel flood passage. It is rather to return normal stream flow to an inbank condition in order to then convert inundated wetlands to soil saturated wetlands. The following stream corridor management practices and guidelines are to be applied with sensitivity and creativity toward that objective.

1. Minimum Vegetative Disturbance - The wetland management plan should require minimum feasible vegetation disturbance.

   A. Initial goal is no tree cutting at all. Whenever possible, limit disturbance to grasses, and under story of woody shrubs such as Huckleberry, Honeysuckle, Alder, etc.

   B. A compromise selective cutting of trees under 4" diameter may be necessary. The management plan should designate where larger trees are proposed for removal.

   C. Where feasible, clear one bank only. On meandering channels, alternate the bank cleared, preserving larger trees and vegetation on the outside of channel bends.

2. Sediment Containment - Place sediment screens in channel prior to restoration work as indicated below.

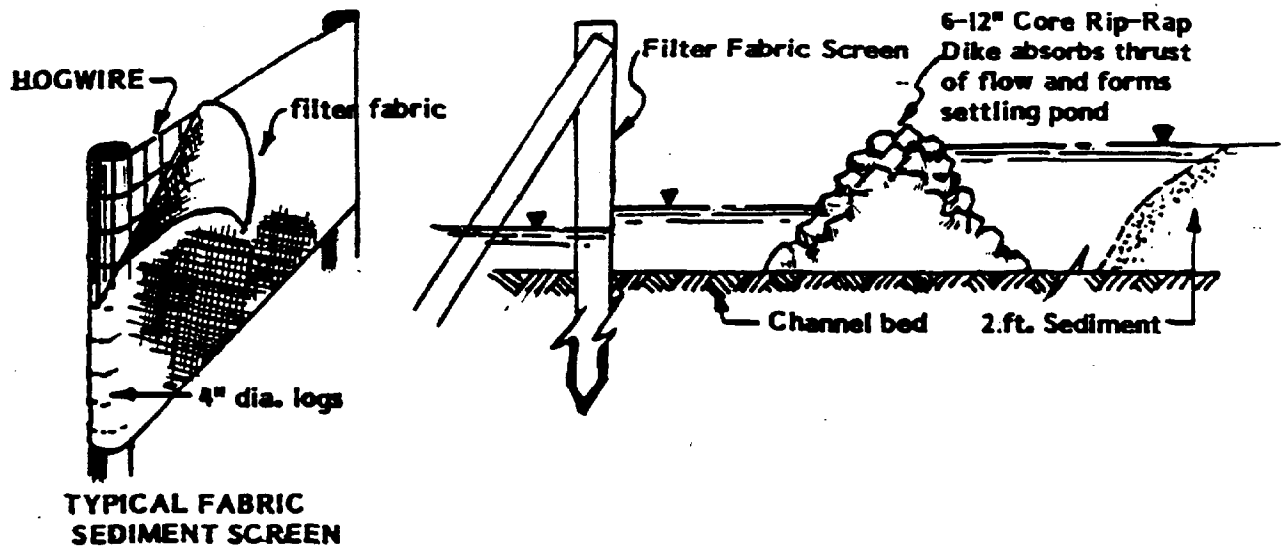


FIGURE 8a. Typical channel sediment screen with protective rip-rap dike.

A. The channel volume flow, and amounts of suspended sediments, will dictate the most effective type of sediment screens to be employed. In the presence of substantial flow, crushed stone or timbers placed upstream of the sediment screen may be necessary to absorb the thrust of channel flow. Multiple screens of variable fabric texture are recommended for channels experiencing heavy sediment drift.

Hog wire or an equally rigid fence material is recommended for support of the filtering fabric. Where substantial channel flow is anticipated, additional timber supports should be added to buttress the filter frame. Numerous filter fabrics are available, but care should be taken to select one which is capable of passing the anticipated normal channel flow. Burlap has been found to be a good filter fabric for general channel usage.

B. Sediment screens should be installed a reasonable distance downstream of excavation equipment in order to take advantage of natural settling of suspended material. This distance should vary with site conditions, and the anticipated rate of equipment progress. Sediment screens should be inspected daily, and the filter fabric replaced when clogged with sediment "fines".

C. Where possible, utilize road culverts and bridge abutments to anchor sediment screens. Such structures should not be used without approval of the appropriate authority.

D. The filter fabric should always be removed from its frame when <u>significant</u> precipitation is anticipated, or the sediment screen may cause increased flooding. Removal of the entire frame should be considered when <u>major storm events</u> are predicted.

3. <u>Channel Restoration</u> - The following procedures are recommended for restoration of waterways damaged by the impacts of urbanization or agricultural sedimentation.

Some procedures, such as sediment containment, and restabilization of disturbed areas are applicable to all management sites.

The creation or restoration of channel meanders, however, will usually be more limited due to site conditions and regulatory restrictions. The objective of wetland channel restoration is to create a naturalistic waterway, which will then facilitate reduction of floodplain mosquito habitat with minimum floodplain wetland disturbance. Recommended channel restoration procedures include:

A. Prior to channel restoration, determine depth of floodplain saturated soils. The various soil horizons can be determined by taking hand auger borings throughout the floodplain.

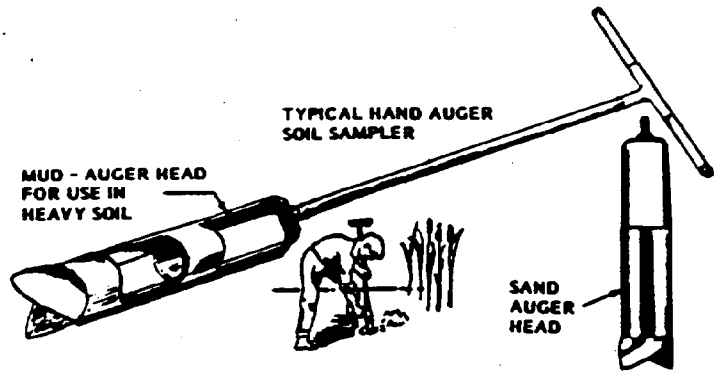


FIGURE 8b. Hand auger soil borings to determine hydric soil depth.

B. Sediment removal operations should proceed downstream trapping sediments ahead of excavation.

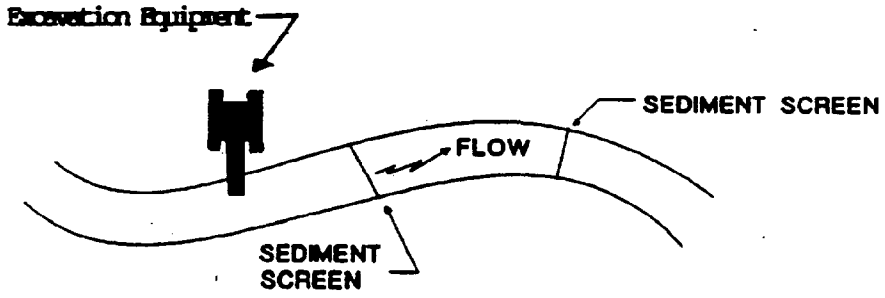


FIGURE 8c. Channel desilting proceeds downstream.

C. The restored channel water level should be established and maintained within the range of the floodplain hydric soil zone.

FIGURE 8d. Restored channel water level.

D. Natural channel meanders should always be preserved. Further, where natural meanders have been lost as a result of channelization or heavy sediment, their restoration should be attempted as indicated below.

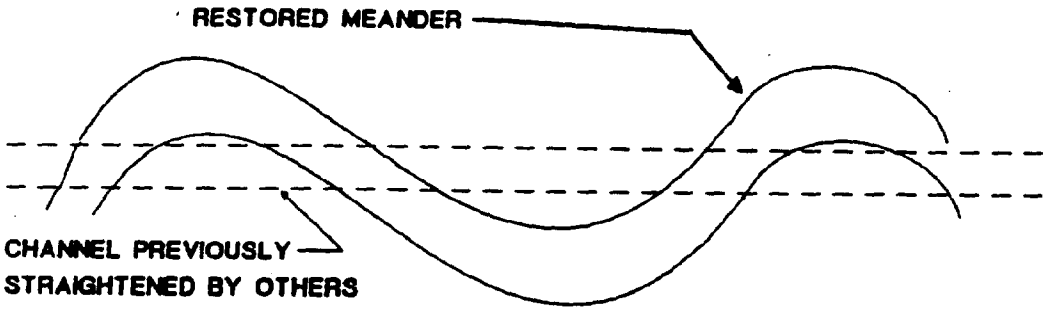


FIGURE 8e. Restored channel meanders.

E. Where soil conditions and stream bed gradient allow, construct a pool-riffle configuration within the restored channel bed. Alternating pools and riffles within a channel bed combine the benefits of both shallow moving water and the more stable deep water fish habitat.

A pool-riffle pattern should not be established randomly within a restored channel, but should be integrated into the natural variations of flow velocity within stream meanders, and the straighter runs between them.

Technical assistance for channel restoration practice is available through the USDA Soil Conservation Service, and some municipal or county engineering agencies.

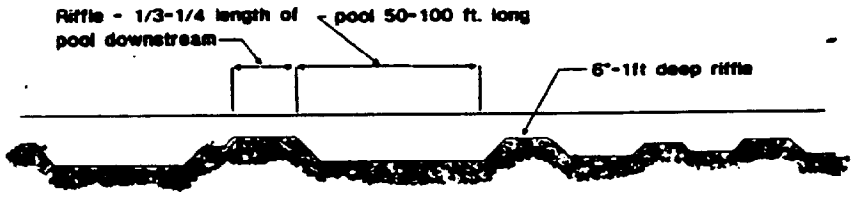


FIGURE 8f. Profile of Fishway (courtesy of Soil Conservation Service).

F. Regrade and stabilize excavated materials. Regraded excavated materials should be no more than 4 inches deep. Seed disturbed areas with wetland tolerant grasses.

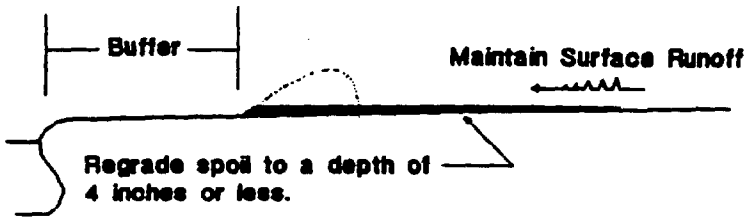


FIGURE 8g. Regrade and stabilize spoil.

4. Floodplain Mosquito Habitat Management

The procedures for management of productive floodplain mosquito habitat include:

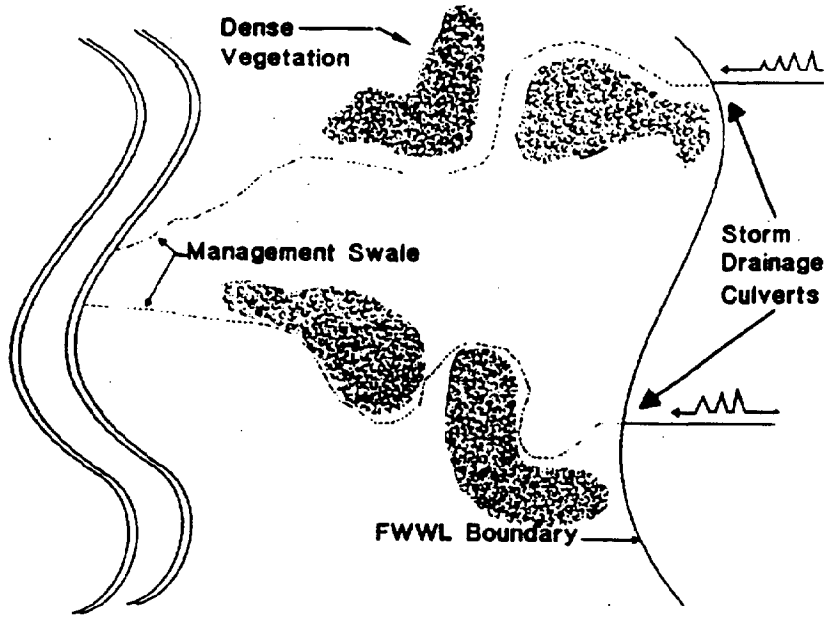
1. Excavate shallow swales (6 to 12 inches) to convey surface water to stream channel.

2. Install low level sills within swales to maintain hydric soil saturation as required.

3. Minimize vegetative disturbance. Utilize light excavation equipment or hand labor in very sensitive areas, meandering swales around trees and dense woody vegetative stands.

4. Extend swales to each wetland recharge source i.e., storm drainage culverts and natural gullies.

5. Regrade and stabilize excavated areas with wetland tolerant grass species.



TYPICAL FLOODPLAIN MANAGEMENT PLAN

FIGURE 8h. Schematic Floodplain Management Plan.

Palustrine Freshwater Wetland Management

The management of mosquito habitat in Palustrine freshwater wetlands employs the same basic practices utilized in floodplain wetlands. However, root systems of the larger and more dense vegetation common to forested wetlands may considerably impede the construction of shallow swales. Management of some forested wetlands may be accomplished more effectively by improving existing deteriorated woodland ditches or swales, and connecting them to drainage culverts discharging from developing areas. This management procedure may prove more efficient as well as less destructive to the root systems of wetland vegetation than would new swale excavation.

Retention of hydric soil saturation may be enhanced by the installation of management sills within the restored woodland ditches, or within naturally formed swales as illustrated in Figure 9.

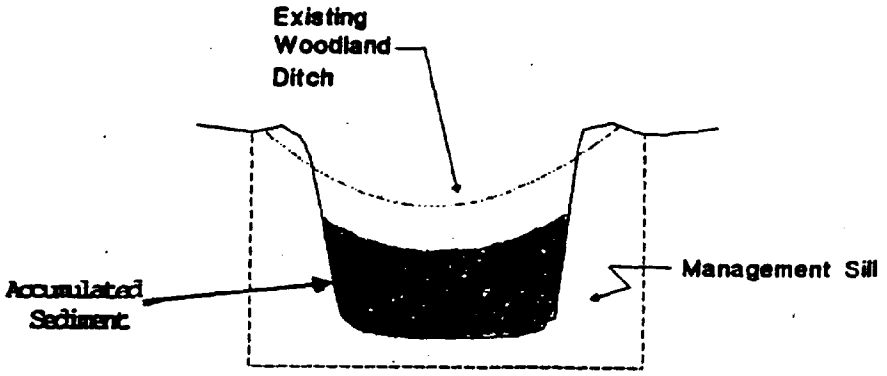


FIGURE 9. Retention of hydric soil saturation by use of management sill within restored woodland ditches.

1. Enhancement of Existing Drainage Systems

   A. Locate sources of water entering forested wetlands; such as road culverts, farm ditches, ground springs, detention basin discharges, etc.

   B. Locate existing discharge routes.

   C. Undertake enhancement of forest discharge routes utilizing low level sills to regulate the discharge from the wetland.

   D. Regrade and stabilize disturbed areas with moisture tolerant grass.

2. Creation of New Swale System

   A. Determine discharge point from wetland.

   B. Utilizing hand soil borings, establish depth of hydric soil zone.

   C. Establish lowest elevations throughout the wetland.

   D. Excavate swale (6" - 12" depth) from discharge point and through low elevations.

      - extend swales to each inlet culvert or gully.
      - meander swales around large trees or woody bushes and shrubs.

   E. Install low level sills to regulate flow in swales and enhance soil saturation.

F. Regrade disturbed soil and stabilize with wetland tolerant grass species.

Management of Isolated Freshwater Wetlands

An isolated wetland is one which has no known drainage outlet to a stream or another nearby wetland area. It may be desirable to manage an isolated wetland due to the presence of mosquito habitat which impacts nearby residential areas. The "adjusted resource value" of an isolated wetland in, or near, a developing area may be assessed on the basis of three criteria:

1. the area of wetland,
2. the quality of the wetland,
3. the extent of the wetland's mosquito impact upon area residents.

Isolated Wetland Management Practices

1. Standard Surface Culvert Outlet

   A. provide culvert outlet through confining high ground, roadway, utility easement, etc.

   B. establish culvert outlet invert 12"-14" below the wetland surface, using the hydric soil zone depth as a guide,

   C. excavate shallow tributory swales to each storm drainage culvert recharging the wetlands in order to relieve existing standing surface water,

   D. regrade and stabilize disturbed areas.

2. Infiltration Enhancement (Perched System)

   If the ground water level is low enough, infiltration from an isolated freshwater wetland may be enhanced by lateral outlets to pervious upland soils outside of the wetland soil boundary, or by vertical outlets to subsoils.

Lateral Drainage:

A. use hand borings to establish depth of hydric soil and depth to ground water.

B. provide controlled outlet to permeable sub-soil. (Figures 9a, 9b)

C. excavate shallow swales to wetland recharge culverts.

D. restabilize disturbed areas.

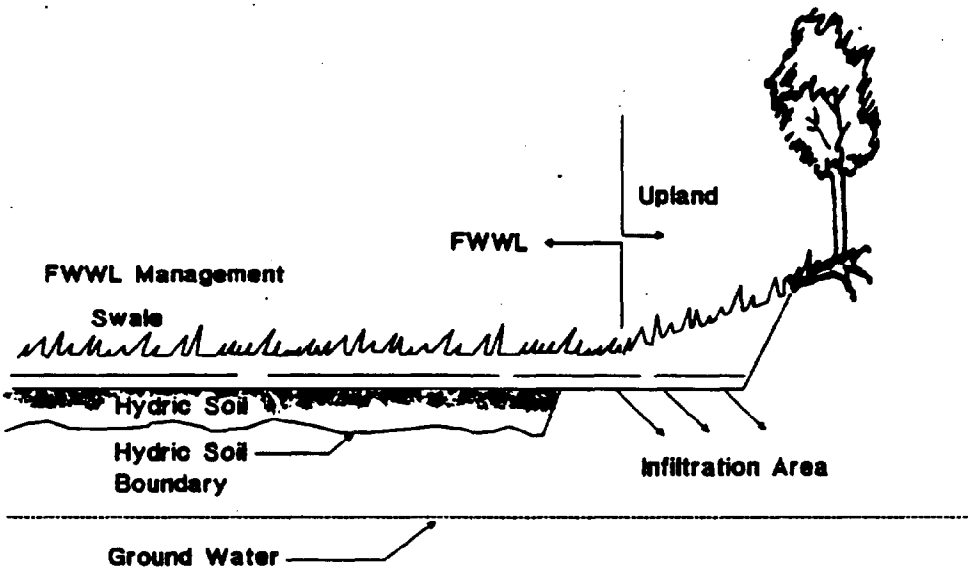


FIGURE 9a. Section view of hydraulic connection of management swale to pervious upland soil.

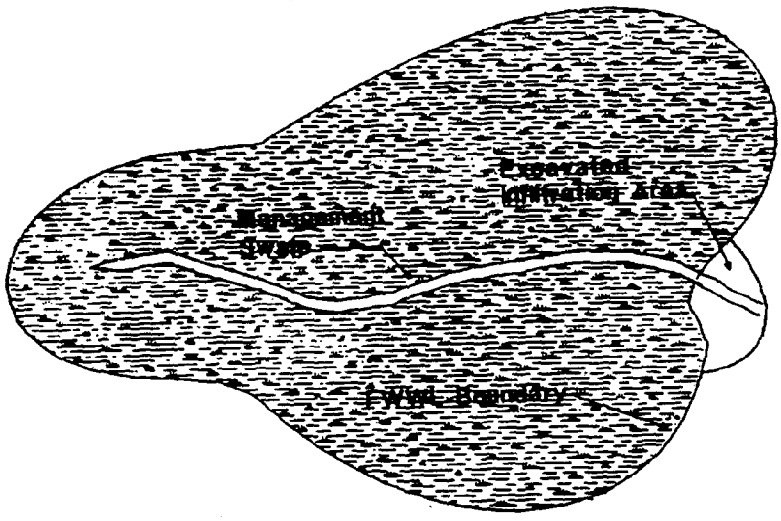


FIGURE 9b. Plan view showing management swale hydraulic connection to upland soil.

Vertical Drainage:

A hydraulic connection between a confirmed wetland and underlying pervious soils may be established by installing vertical drainage pipes through the hydric soil strata (Figure 10). The upper end of the pipe should be used to maintain the desired ground water saturation level within the wetland.

NOTE: Care should be taken to "repack" the impervious soil around the vertical discharge pipe in order to prevent excessive dewatering of wetland.

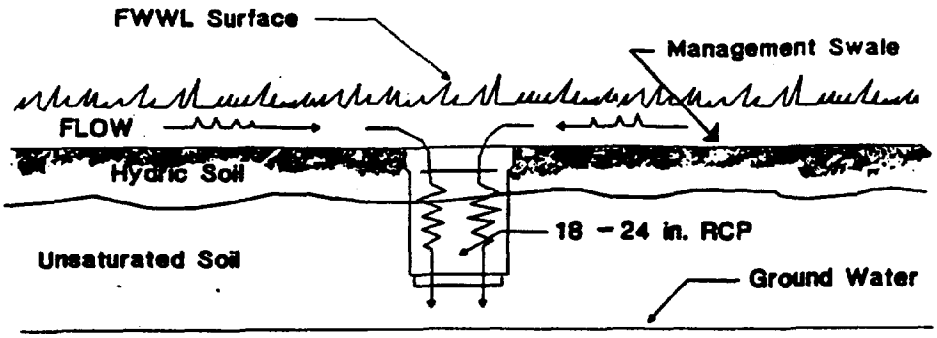


FIGURE 10. Section view showing vertical hydraulic connection from isolated freshwater wetland to unsaturated sub-soil.

Construction Disturbed Freshwater Wetland Management

NOTE: The wetland degrading impacts of construction encompass a broad spectrum ranging from the subtle concentration of heavy metals and hydrocarbons, to the obvious sediment loading or filling of streams and waterways. Also, some adverse impacts exist as potential damage, in the form of proposed site development stormwater management plans. Mosquito control agencies have generally reacted in a "janitorial role" to clear the sediment and debris from waterways, thus making possible remedial mosquito source reduction within stream corridors and wetlands.

Though remedial mosquito control is necessary where wetlands have already been impacted, preventative mosquito control has been demonstrated to be an effective method of mosquito control for areas where FWWL's are under the stress of urbanization.

Consequently, Part B of this section is considerably more detailed in order to provide guidance in the development and implementation of a preventative mosquito control program for freshwater wetlands.

1. Post Construction Management (Remedial Management)

Recommended procedures for wetland management for mosquito control in construction impacted areas:

A. Identify the sources of the following wetland degradation agents.

(1) sedimentation

(2) "filling"
site development
linear development
(a) road bed construction
(b) sanitary sewer, utility, installations

(3) poor water quality:

urban quality storm runoff
septic leachate
other point or non-point sources

B. Develop a management plan which includes:

(1) sketch plan of wetland area.
sketch details onto municipal tax maps (scale 1" = 100' or 200')

(2) brief description of:
(a) wetland impacts
(b) existing mosquito problems
(c) proposed management practices

C. Implement wetland management practices to reduce mosquito habitat.

(1) Stream corridor (channel restoration, and floodplain management).

(2) Upland wooded or scrub-shrub freshwater wetlands

- modify existing drainage ways
- use swale management procedure.

(3) Restabilize management area

(a) wetland grasses, or
(b) replant native vegetative species.
(c) utilize crushed stone to stabilize areas subject to scouring.

2. Pre-construction Review (Preventative Management)

The efficient management of freshwater wetlands for mosquito control begins with minimizing adverse wetland impacts before they occur. Experience has shown that properly located, designed, constructed and maintained stormwater management facilities help to reduce the degrading impacts upon wetlands adjoining developed areas.

As previously noted, the U.S. Environmental Protection Agency maintains an active research program for the purpose of developing wetland restoration and creation guidelines. Also being researched, is the use of wetlands as treatment mechanisms for urban stormwater runoff. One study (EPA - 600/S2-28-82-086 Nov. 1982), concluded that in nearly all instances, wetlands do act to renovate or improve water quality to some extent. Pollution removal efficiencies are extremely variable, however, and questions of treatment capacity and long term impacts on wetlands remain unanswered. The study concluded that "indiscriminate discharge of wastewaters to wetland ecosystems is not advised." It should be noted that indiscriminate discharge of urban storm runoff to wetland ecosystems is common practice today. And, the continuing discharge of contaminant-laden stormwater into freshwater wetlands is having a significant, immediate as well as cumulative impact upon mosquito production in urbanizing areas. In view of this situation a pre-construction, site plan review procedure, should logically be a part of an integrated mosquito control program in New Jersey.

A. Sub-division and Site Plan Review Program

When correctly, and consistently implemented, a site plan review program will be a very effective mosquito control procedure. In New Jersey, mosquito control agencies do not possess

direct land use regulatory authority for control of stormwater management practices on development sites. However, NJSA 26:9 grants authority for county mosquito commissions to perform all acts which in their opinion will exterminate mosquitoes or which will tend to exterminate them. Mosquito commissions are also endowed with the same authority as municipal boards of health in matters relative to mosquito control. However, mosquito commissions can also effectively utilize the authority of county and municipal planning and engineering agencies by joining a site plan review team.

Mosquito agencies possess a unique perspective, as agencies which regularly respond to the immediate and cumulative public health impacts of construction stormwater management practices. When able to articulate this perspective, mosquito agencies can contribute valuable, fresh insights to planners and engineers. More quality mosquito control can often be accomplished with one site plan review report than by months of expensive remedial field work. Consequently, the disciplined review of stormwater management systems on proposed development sites is a recommended best management practice.

B. Establishing a Review Program

The following procedure is recommended for initiating and administering a site development plan review program for mosquito control.

(1) Inform the county planning agency of the mosquito agency's desire to provide advisory input on the mosquito related impacts of proposed stormwater management systems. This initial communication should emphasize that the objective of this advisory input is to enable the mosquito agency to more effectively protect the health and comfort of the public, and protect our water resources. A review program can be initiated at the municipal level rather than with the county. A county level program is preferable, however, since the county planning agency's jurisdiction boundaries coincide with those

of the mosquito agency, and most major development plans are normally forwarded to the county from its municipalities. Municipal relationships may naturally develop as the county reports reflect mosquito agency comments which will be of interest to local environmental commissions or engineers.

(2) Request a set of preliminary site development plans for each proposed development. These plans contain the proposed stormwater management information necessary for mosquito agency review.

(3) A written site review report should be forwarded to the county planning agency, identifying:

(a) existing on-site mosquito problems

(b) existing mosquito problems on adjoining property.

(c) potential mosquito problems generated by the proposed stormwater management plan (SWMP) or site grading.

(4) The review report should suggest modifications to the proposed SWMP which will either reduce or eliminate the potential mosquito problem.

(5) Provide the county planning board site plan review staff with a county map identifying areas of major existing mosquito problems which will be sensitive to development impacts. Major areas of freshwater wetlands and deteriorated stream corridors should be designated as "mosquito sensitive".

C. The Site Plan Review Report

Site plan review for mosquito control should concentrate upon proposed stormwater management practices and structures, and involve other aspects of the site plan only as they may affect mosquito control.

The site plan review report should evaluate the following:

(1) On-site and adjoining waterways

-their existing condition
-potential impacts of any proposed alteration

(2) On-site floodplains

-existing mosquito habitat
-presence of FWWL
-potential impacts on mosquito production by stormwater discharges or filling

(3) Area topography

-potential impounding of surface runoff upgrade of site
-potential inundation of downgrade areas by site discharge

(4) Detention facilities

Basin design
-potential in-basin mosquito habitat
-provisions for maintenance

Basin location
-relative to ground water table
-subject to excessive sedimentation
-quality of incoming water

Relative to FWWL's
-potential dewatering of FWWL
-direct discharge to FWWL (contaminant impacts)
-water level fluctuations in wetlands
-general FWWL damage

Discharge of basin
-adequate rate to prevent mosquito habitat
-adequate rate to allow maintenance
-outlet protection for small orifice i.e., trash rack

(5) Freshwater Wetlands (on-site and off-site)

-existing mosquito problem
-stormwater impacts upon mosquito production

FWWL Mosquito Habitat Management Within Detention Facilities

In the absence of design and maintenance standards, many stormwater management facilities (SWMF) throughout the State have developed into freshwater wetlands. Many such basins are completely unmaintainable, being overgrown with aquatic vegetation, and often recharged by contaminant-laden urban or industrial quality storm runoff.

These basins often provide ideal habitat for mosquitoes. Mosquito productive stormwater management facilities (SWMF) are placing a continually increasing burden upon county mosquito control agencies. New construction, in the absence of regional stormwater management planning will require the construction of additional on-site detention facilities.

A New Jersey Department of Environmental Protection funded study of the social, and public health impacts of existing New Jersey detention facilities was completed in 1988. Standards for detention facility design, construction, and maintenance, have been generated by this study, and are now available to developers, engineers and planning agencies. These standards provide guidance for the construction and maintenance of new facilities and the upgrading of existing problem basins.

Stormwater management facility nomenclature, functions, and failures

There are three types of detention facilities:

1. detention basins, designed to be dry between storm events;

2. retention basins or permanent ponds; and

3. recharge basins, designed to percolate storm runoff into underlying soils.

To function efficiently, a detention facility must:

1. Be correctly designed for the intended function.

2. Be correctly sited relative to the area hydrology and soil types.

3. Be constructed according to the engineering plan.

4. Be adequately maintained for continued functioning.

Freshwater wetland mosquito habitat will seldom develop in a detention facility which has been correctly designed, situated, constructed, and maintained.

However, many facilities are mosquito problems, placing an increasing burden upon county mosquito control agencies larvicide programs. Major basin modifications may be necessary to eliminate standing water. In many facilities, however, minor grading or installation of low flow channels may remedy the condition.

1. Detention Facility Mosquito Management Procedure

   A. Evaluate public need for mosquito management

      (1) Basin location

          residential area
          commercial area
          industrial area

      (2) Mosquito species produced

      (3) Public opinion regarding the problem basin

      (4) Assess existing temporary control procedures

          larvicide frequency
          access to basin
          effectiveness of pesticide applications

   B. Determine cause of basin failure: (i.e., failure to completely discharge, or discharge too slowly, aquatic vegetation, overgrowth, etc.)

(1) Design

inadequate floor gradient
outlet elevation to high
no inlet stabilization
no trash rack protection

(2) Siting

high ground water table
receding ground water table
excessive sedimentation
basin floor "sealed" (recharge basin)
heavy pollutant loading (retention or recharge basin)
off-site receiving system inadequate
inadequate recharge

(3) Construction

basin floor grading
depressions, inadequate gradient in basin floor
incorrect low flow channel grade
basin discharge elevation lower than receiving stream
basin water depth too shallow (retention)
soil recharge enhancement needed

(4) Maintenance

excessive sedimentation
sealed percolation basin floor
heavy vegetation (retention basin)
frost heave damage to low flow channel or outlet debris accumulation
vandalism

C. Select mosquito abatement option

(1) Continue pesticide applications

(2) Evaluate feasibility of facility modifications (steps 2 through 5).

D. Establish basin ownership

(1) Public ownership - municipal

(2) Private ownership - commercial, industrial

(3) Homeowners Association - condominiums, apartments

(4) Public agency ownership - N.J. Department of Transportation, (highway basins)

E. Research existing maintenance contracts, agreements, bonds or escrow accounts for potential management funding.

2. Detention Basin Modification

Mosquito control agencies do not normally perform regular periodic maintenance of stormwater facilities. However, modification of existing mosquito producing detention facilities may be a practical option to continuing pesticide control measures, particularly where basin conditions, or location, limit the effectiveness of the larvicide effort.

Basin modification plans should be developed in cooperation with other public agencies such as the municipal engineers office and the Soil Conservation District. Within a cooperative plan, however, the focus must be kept upon mosquito abatement as the priority objective. Potential cooperating agencies include:

A. municipal engineering department

B. municipal health department

C. U.S. Soil Conservation District

D. N.J. Department of Environmental Protection

The New Jersey Wetlands Protection Act provides that the maintenance and repair of stormwater management facilities which contain freshwater wetlands shall be authorized by a General Wetland Permit (Section 23:C.8).

Stormwater Facility Management Procedure

1. Remove impediments such as sediment and debris to restore complete basin discharge flow (Figure 11)

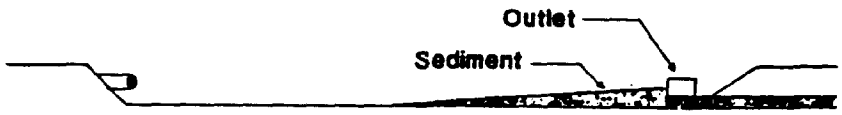


FIGURE 11. Sediment obstructing detention basin outlet.

2. Reconstruct basin floor

   (a) establish low flow swale from inlets to discharge point (Figure 12)

   (b) stabilize low flow channel with crushed stone or reinforce concrete Min. 1-2% (grassed 3%) (Figure 12)

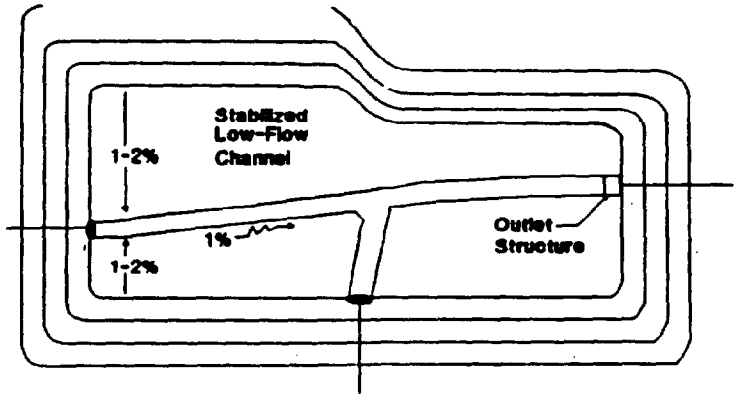


FIGURE 12. Plan view - low flow channel.

(c) establish lateral floor gradient 1-2% from toe of side slope to low flow channel (Figure 13)

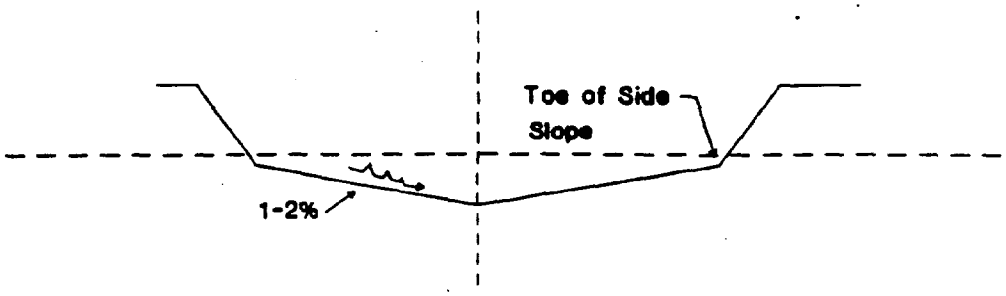


FIGURE 13. Transverse basin floor grade.

(d) provide stabilization at inlets with crushed stone and stabilize basin floor with grass seeding (Figure 14)

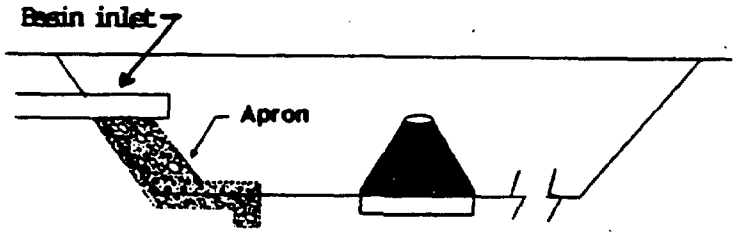


FIGURE 14. Crushed stone erosion protection at basin inlets.

3. Where basin retains shallow water due to a high watertable as in Figure 14a, there are two remedial options.

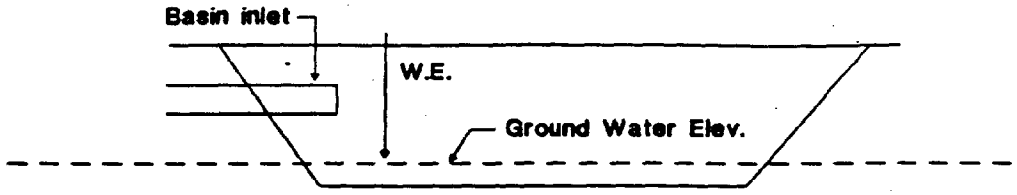


FIGURE 14a. Mosquito productive basin due to high water table.

(a) site conditions allowing, raise floor of basin to at least one foot above ground water elevation and modify facility to function as dry basin (Figure 14b).

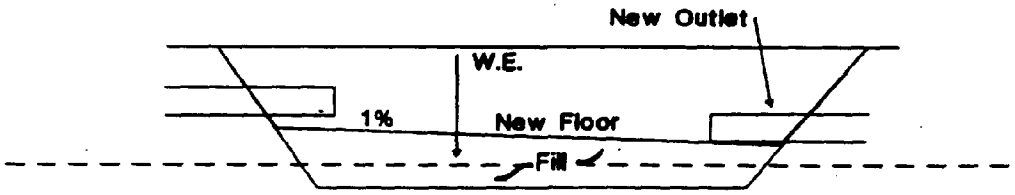


FIGURE 14b. Basin floor raised above ground water table.

(b) deepen basin

(i) to minimum 5 foot permanent water depth (Figure 14c)
(ii) establish predaceous fish population

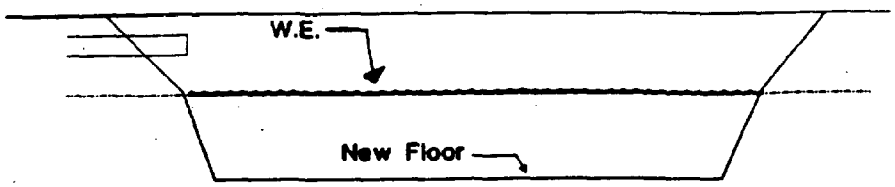


FIGURE 14c. Deepen basin to provide adequate water depth for fish habitat.

4. Where recharge basin floor has "sealed"

   (a) "scarify" basin floor to restore percolation to subsoil
   (b) clean or replace seepage pits
   (c) install recharge enhancement trenching in graded floor (Figure 15)
   (d) fill trench with clean stone, replace vegetative stabilization

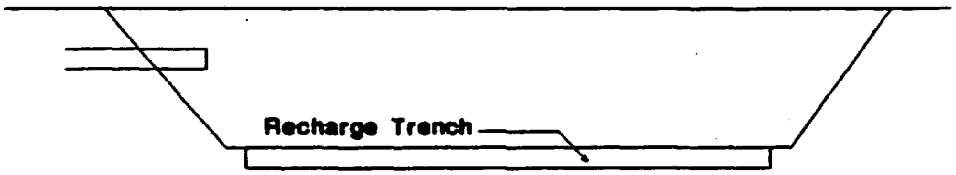


FIGURE 15. Modified basin floor with recharge enhancement added.

5. In residential areas, where off-site basin discharge is possible, install small diameter outlet pipe with gate valve control (Figure 16)

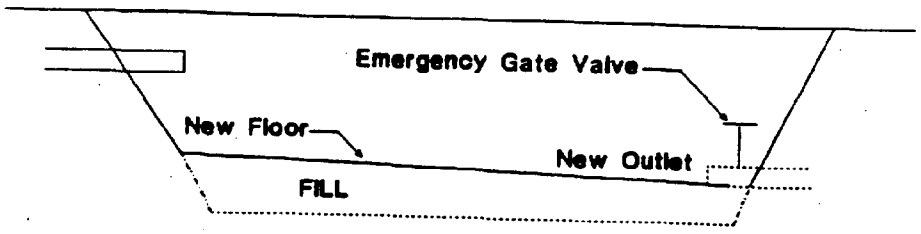


FIGURE 16. Modified basin floor with valve control outlet.

Mitigation Wetland

With recognition that some freshwater wetland loss may accompany land development, the Freshwater Wetlands Protection Act requires the creation or restoration of wetlands of equal ecological value. Such compensatory wetlands are created to mitigate or reduce the ecological impact of freshwater wetland loss within the system.

Mitigation wetlands are of special concern to mosquito control agencies for three reasons:

1. The art of freshwater wetland creation is a relatively new practice, and some developers are unfamiliar with correct procedures.

2. FWWL replacement obligations may be imposed on a 2 to 1, or 3 to 1 ratio. That is, three acres of man made wetland are required to compensate the one acre of natural wetland lost. Under pressure to satisfy mitigation obligations, land developers may construct new wetlands incorrectly, resulting in new mosquito habitat near residential areas.

3. A balanced freshwater wetland ecosystem, which encourages mosquito predaceous species, may take years to become established.

These factors indicate that there is presently a high potential for mosquito problems in man-made wetlands. A first step toward addressing this potential problem requires that any

proposed new wetland construction in or near to residential areas should be reviewed very carefully by local public health and mosquito control agencies. In order to encourage and assist such review, the Freshwater Wetlands Protection Act Rules in NJAC 7:7A-11.1 requires that copies of all individual Freshwater and Open Water Fill permit applications be forwarded to the county mosquito control agency.

The Bureau of Freshwater Wetlands will also be forwarding copies of permit applications to the Office of Mosquito Control Coordination for their review and comment.

The county mosquito control agency in cooperation with the municipal or county health department should:

1. Establish a file of proposed mitigation wetland activities within their jurisdiction.

2. Request adequate time to review mitigation construction plan proposals prior to permit or site plan approval.

3. Become familiar with basic mitigation techniques, utilizing available professional assistance if needed.

4. Develop in-house capability to evaluate wetland construction plans, and aggressively request modifications which in its opinion, will prevent the development of mosquito habitat.

Interim mitigation wetland research findings are released periodically by the U.S. Environmental Protection Agency's Environmental Research Laboratory. For current information, and to be placed on the program mailing list, contact:

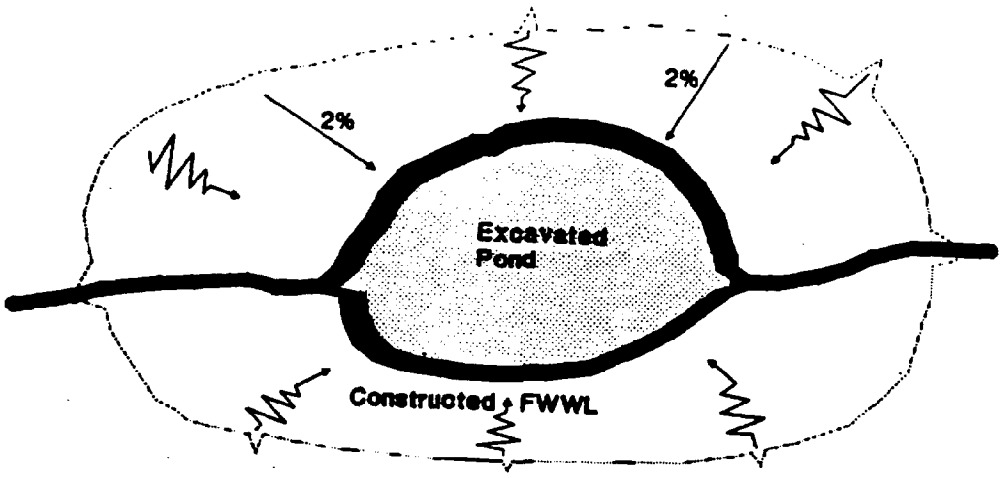
Wetland Research Program
Environmental Research Laboratory
200 S.W. 35th Street
Corvallis, Oregon 97333
Phone: (503) 757-4666

In the absence of detailed mitigation guidelines, the following design criteria are recommended to minimize potential mosquito production in man made FWWL wetland creation projects:

1. Proposed wetland should have adequate surface gradient to prevent standing surface water accumulations. A 2% grade is recommended.

2. Provide diversity within the wetlands by creating or improving an open water receiving area, such as a pond or stream. The open water should have adequate depth to support predaceous fish species and shallows (1 ft. ±) to encourage waterfowl usage.

3. Utilize wetland grass species and shrub plantings to stabilize new wetland surface.



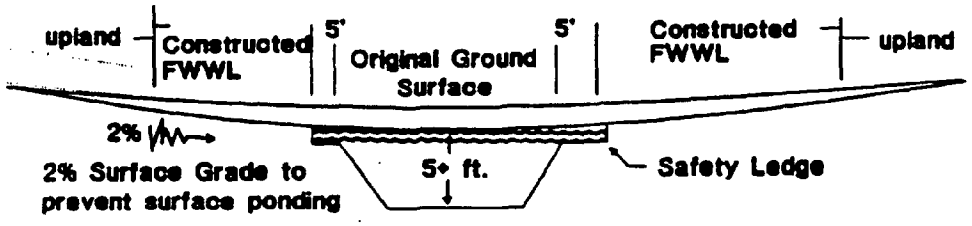


FIGURE 17. Created FWWL design for mosquito control.

APPENDIX 1

DEFINITIONS

Channel Restoration - removal of sediment and debris from a waterway in order to return normal stream flow to within the banks. Preservation of existing channel meanders is required, and where feasible, creation of meandering alignments is recommended.

Channelization - refers to the straightening, deepening, and enlarging of a waterway to allow increased flood water passage. Channelization may also include creation of a trapazoidal channel section stablized by concrete.

Cumulative Adverse Impacts - means the destructive effects resulting from the repetition of minor damage.

Delineated Wetland (FWWL) - freshwater wetland for which the boundaries between its characteristic wetland soil and vegetation, and the adjoining upland have been established and recorded.

Endangered Species - those species whose prospect for survival in the state are in immediate danger because of a loss or change of habitat, over exploitation, predation, competition or disease. Immediate assistance is needed to prevent extinction.

FW-1 Waters - means those fresh waters that originate and are wholly within Federal or State Parks, forests, fish and wildlife lands, and other special holdings, that are to be maintained in their natural state of quality (set aside for posterity, and not subjected to any wastewater discharges of human origin), as designated in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4.

FWWL - shall mean protected freshwater wetlands.

Hydric Soil - a soil that in its undrained condition is saturated, flooded, or ponded long enough during the growing season to develop anerobic conditions that favor the growth and regeneration of hydrophytic vegetation.

Hydric Soil Zone - the depth of hydric, or wetland soil.

Hydrophytic Vegetation - plants adapted to growth and reproduction under periodically saturated root zone conditions during at least a portion of the growing season.

Infiltration - means the movement of water from the land surface into underlying soils.

Mitigation Wetland - freshwater wetland which is either created, restored, enhanced or deeded to public ownership, as compensation for wetland destroyed.

Saturated Soil - soil lacking free oxygen due to sustained surface inundation, or ground water saturation at or near the ground surface.

Stormwater Contaminants - refers to the dissolved or suspended substances commonly present in stormwater runoff from urbanized or active agricultural areas. Typical urban source contaminants include hydrocarbons in various forms, road salts, pesticides, and heavy metals. Agricultural source comtaminants include pesticides, animal waste and sediment.

Stream Corridor - the channel, banks, and floodplain of a flowing stream.

SWMF - shall mean stormwater management facility. Usually reference is to a detention basin.

The Act - shall mean the New Jersey Freshwater Wetlands Protection Act of 1987 (N.J.A.C. 13:9b-1 et seq.).

The Department - shall mean the New Jersey Department of Environmental Protection.

Threatened Species - are those who may become endangered if conditions surrounding the species begin or continue to deteriorate.

Urban stormwater runoff - refers to surface drainage water from the paved streets, driveways, parking lots and commercial sites within developed areas.

Wetland Hydrologic Regimen - refers to the movement of surface or ground water into, within, or from a wetland area.

APPENDIX 2

FRESHWATER WETLAND PLANT TYPES OCCURRING IN NEW JERSEY

1. Wetland trees

Red Maple (Acer rubrum)
Willows (Salix spp.)
Black Spruce (Picea mariana)
Swamp White Oak (Quercus bicolor)
Red Ash (Fraximus pennsylvanica)
Black Ash (Fraximus nigra)
Silver Maple (Acer saccharinum)
American Elm (Ulmus americana)
Larch (Larix laricina)

2. Wetland shrubs

Alder (Alnus spp.)
Buttonbush (Cephalanthus occidentalis)
Bog Rosemary (Andromeda glaucophylla)
Dogwoods (Cornus, sp.)
Leatherleaf (Chamaedaphne calyculata)

3. Emergent vegetation

Cattails (Typha spp.)
Pickerelweed (Pontederia cordata)
Bulrushes (Scirpus spp.)
Arrow Arum (Peltandra virginica)
Arrowheads (Sagittaria spp.)
Reed (Phragmites cummunis)
Wild Rice (Zizania aquatica)
Bur-reeds (Sparganium spp.)
Purple loosestrife (Lythrum salicaria)
Swamp-loosestrife (Decodon verticillatus)
Water plantain (Alisma plantage-aquatica)

4. Rooted, floating leaved vegetation

Water-lily (Nymphaea oderata)
Water shield (Brasenis schreberi)
Spatterdock (Nuhar spp.)

5. Free-floating vegetation

Duckweed (Lemna spp.)
Big duckweed (Spirodela polyrhizia)
Water meal (Wolffia spp.)

6. Wet meadow vegetation

Sedges (Carex spp.)
Rushes (Juncus spp.)
Cattails (Typha spp.)
Rice cut-grass (Leersia oryzoides)
Reed Canary Grass (Phalaris arundinacea)
Swamp loosestrife (Decodon verticillatus)

7. Bog mat vegetation

Sphagnum mosses (Sphagnum spp.)
Bog rosemary (Andromeda glaucophylla)
Leatherleaf (Chamedaphne calyculata)
Pitcher plant (Sarracenia purpurea)
Cranberries (Vaccinium macro carpon)

8. Submerged vegetation

Pondweeds (Potamogeton spp.)
Naiads (Najas spp.)
Bladderworts (Utricularia spp.)
Wild celery (Vallisneria americana)
Coontail (Ceratophyllum demersum)
Water milfoils (Myriophyllum spp.)

APPENDIX 3

GRASSES FOR CONSERVATION IN THE NORTHEAST
USDA = SOIL CONSERVATION SERVICE

1. **Tall Fescue (Festuca arundinacea, Schreb.)**

   (Kentucky 31 and Alta)

   A robust, long-lived, deep-rooted, bunchy grass often with short rhizomes. Useful for stabilization of waterways, slopes, banks, fills and spoils. Foliage is eaten by geese, deer, and cottontailed rabbits. The plant also provides nesting and fall winter cover for birds.

2. **Reed Canarygrass (Phalaris arundinacea L.)**

   An excellent grass for stabilizing waterways, healing and controlling gullies, and protecting shorelines of ponds and reservoirs from wave action. Reed canarygrass is a long-lived clumpy perennial with coarse rhizomes.

3. **Switchgrass (Panicum virgatum, L.)**

   Switchgrass is a valuable soil stabilization plant on strip-mine spoil. Switchgrass provides excellent nesting and fall winter cover, for pheasants, quail, and rabbits. It is sod forming, stiff stalked, and leafy.

4. **Perennial Ryegrass (Lolium perenne L.)**

   A short-lived perennial, this bunchy grass grows from 1 to 2 feet tall. It is used extensively for erosion control, soil improvement, and cover crops.

5. **Orchard Grass**

   Common variety in the Northeastern States, is long-lived with dense, bunch type tufts. Used for soil improvements, silage, and erosion control.

6. Red Fescue (Festuca rubia L.)

An excellent soil binder, this variety is used extensively for stabilizing waterways, slopes, banks, cuts, and fills. Occurs in the creeping and bunch types, with the creeping red fescue spreading by short underground stems that form a tight, uniform sod. This grass is hardy, wear resistant, and shade tolerant. It is drought resistant, and adapts to both sandy and acid soils. Creeping Red Fescue has been an outstanding soil binder in poorly drained areas.

7. Redtop (Arostis alba L.)

A wide spread grass throughout the Northeast, this soil binder will grow under a wide variety of soil and moisture conditions. It seems no other grass will tolerate so great a variety of conditions as this grass. It grows on very acid soild and poor clayey soils of low fertility. It is drought resistant and is also a wetland grass. Redtop is a Rhizomalous perennial grass that makes a coarse but fairly dense turf.

8. Annual Lespedeza (Lespedeza striata)

Another soil tolerant specie, this grass and its varieties will grow in soil testures ranging from sands to clays, and at fertility levels from low to high. Used for erosion control and general soil improvement, the Lespedezas also provide wildlife food.

9. Kentucky Bluegrass (Poa pratensis L.)

This long-lived perennial grass forms a dense sod, and is used extensively for lawns, playgrounds, etc. It is also used for stabilizing waterways, slopes, banks, and fills. It is the most common pasture grass in the Northeast, providing food for ruffed grouse, turkeys, deer, and rabbits.

APPENDIX 4

ENDANGERED/THREATENED FAUNA OF NEW JERSEY

The following species are listed as endangered on the New Jersey State list as of July 20, 1987.

AMPHIBIANS

Tremblay's Salamander	Ambystoma tremblayi
Blue-spotted Salamander	Ambystoma laterale
Eastern Tiger Salamander	Ambystoma tigrinum tigrinum
Pine Barrens Treefrog	Hyla andersoni
Southern Gray Treefrog	Hyla chrysocelis

REPTILES

Atlantic Hawksbill Turtle[1]	Eretmochelys imbricata
Atlantic Loggerhead Turtle[1]	Caretta caretta
Atlantic Ridley Turtle[1]	Lepidochelys kempi
Bog Turtle	Clemmys muhlenbergi
Timber Rattlesnake	Crotalus horridus horridus
Corn Snake	Elaphe guttata guttata

BIRDS

Bald Eagle[1]	Haliaeetus leucocephalus
Peregrine Falcon[1]	Falco peregrinus
Cooper's Hawk	Accipter copperii
Least Tern	Sterna albifrons
Black Skimmer	Rynchops niger
Northern Harrier	Circus cyaneus
Short-eared Owl[2]	Asio flammeus
Pied-billed Grebe[2]	Podilymbus podiceps
Upland Sandpiper	Bartramia longicauda
Cliff Swallow[2]	Petrochelidon pyrrhonota
Sedge Wren[2]	Cistothorus platensis
Henslow's Sparrow	Ammodramus henslowii
Vesper Sparrow[2]	Pooecetes gramineus
Piping Plover[1]	Charadrius melodus
Roseate Tern[1]	Sterna dougallii
Loggerhead Shrike	Lanius ludovicianus

FISH

Shortnose Sturgeon	Acipenser brevirostrum

The following species are listed as threatened species on the New Jersey State list as of July 20, 1987.

AMPHIBIANS

Long-tailed Salamander	Eurycea longicauda
Eastern Mud Salamander	Pseudotriton montanus

REPTILES

Wood Turtle	Clemmys insculpta
Northern Pine Snake	Pituophis melanoleucus melanoleucus
Atlantic Green Turtle[1 & 3]	Chelonia mydas

BIRDS

Osprey	Pandion haliaetus
Great Blue Heron	Ardea herodias
Red-shouldered Hawk	Buteo lineatus
Merlin	Falco columbarius
Red-headed Woodpecker	Melanerpes erythrocephalus
Bobolink[2]	Dolichonyx oryzivorus
Savannah Sparrow[2]	Passerculus sandwichensis
Ipswich Sparrow[2]	Passerculus sandwichensis princeps
Grasshopper Sparrow[2]	Ammodramus savannarum
Yellow-crowned Night Heron	Nyctanassa violacca
American Bittern	Botaurus lenginosos
Black Rail	Laterallus jamaicensis

FISH

Brook Trout	Salvelinus fontinalis

1 - Also on the Federal List.
2 - Status designation applicable to breeding populations only.
3 - Does not nest regularly in New Jersey.

APPENDIX 5

NEW JERSEY PLANTS UNDER REVIEW FOR FEDERAL LISTING AS ENDANGERED SPECIES**

Common Name	Scientific Name
Sensitive Joint Vetch	*Aeschynomene virginica*
Sea-beach Pigweed	*Amaranthus pumilus*
Sand Grass	*Calamovilfa breviplis*
Long's Bitter Cress	*Cardamine longii*
Barrett's Sedge	*Carex barratii*
Variable Sedge	*Carex polymorpha*
Parker's Pipewort	*Eriocaulon parkeri*
Pine Barrens Boneset	*Eupatorium resinosum*
Darlington's Spurge	*Euphorbia purpurea*
Pine Barren Gentian	*Gentiana autumnalis*
Eaton's Quillwort	*Isoetes eatonii*
New Jersey Rush	*Juncus caesariensis*
Boykin's Lobelia	*Lobelia boykinii*
Nuttall's Micranthemum	*Micranthemum micranthemoides*
Torrey's Muhly	*Muhlenbergia torreyana*
Bog Asphodel	*Narthecium americanum*
Hirst's Panic Grass	*Panicum hirstii*
Jacob's Ladder	*Pelemonium vani-bruntiae*
Awned Meadow Beauty	*Rhexia aristosa*
Knieskern's Beaked Rush	*Rynchospora knieskernii*
Curly Grass Fern	*Schizaea pusilla*
Chaffseed	*Schwalbea americana*
Long's Bulrush	*Scirpus lingii*
Spreading Globe-flower	*Trollius laxus laxus*

FEDERALLY THREATENED SPECIES*

Swamp Pink	*Helonias bullata*

*The Swamp Pink was listed as a federally threatened species on September 9, 1988.

**Further information about rare plants is available through the Office of Natural Lands Management, N.J. Department of Environmental Protection, CN 404, Trenton, NJ 08625.

APPENDIX 6

FRESHWATER MANAGEMENT PONDS

The retention of adequate soil saturation within managed wetlands may prove difficult even with the use of management sills. Ponds (5 ft.+ in depth) with controlled outlet elevations may prove useful for stabilizing wetland ground water elevations in adjoining wetlands.

The employment of open water ponding within wetlands has not been designated a primary best management practice because of the extensive land disturbance normally associated with pond excavation. Additionally, some regulatory agencies view the creation of new ponds in wetlands as a loss of wetland values and function. Nevertheless, the use of ponding to increase wetland habitat diversity should not be abandoned.

The creative use of open ponds within a wetland management plan is particularly appropriate in urbanizing areas where:

1. Pond excavation will require negligible wetland disturbance beyond the pond perimeter.

2. Soil and ground water conditions indicate that the pond water will help to maintain hydric soil saturation.

3. The pond will perform a "buffering" function upon urban stormwater runoff prior to its release into a wetland or waterway.

The most significant impact characterizing such "interface" areas is the repeated discharge of contaminant-laden stormwater into the wetland environment. Among the positive features of wetland management ponds near the wetland-upland boundary are:

1. Ready access to the upland would allow pond excavation and spoil haulage with little or no wetland disturbance beyond the pond edge and stormwater discharge culverts.

2. The pond can be situated on-line with shallow wetland management swales and stormwater discharge culverts.

3. The swales and pond are situated so as to absorb and dilute urban storm water runoff contaminants prior to their entering waterways or wetlands.

Pond Design

A portion of the proposed pond should be shallow (approx. 1 ft.) in order to create an area of emergent wetland and to provide habitat for wading birds and wildfowl. The larger portion of the pond should be at least 5 feet deep, however, in order to create stable fish habitat, and a volume of water capable of "buffering" the adverse impacts of urban stormwater contaminants.

Wetland ponds should be flexibly and creatively designed to affect water quality enhancement, while blending into the site vegetation and topography. The filtering or biochemical buffering capacity of an urban wetland pond is largely governed by its volume and the quality of water it receives from the upland. The following pond design and site parameters are suggested:

1. Pond size - approximately 1/8 acre or larger. (50' x 100')

2. Water depth - 4-5 ft. minimum, main body
   1+ ft. emergent vegetation area

3. Minimum tree removal

4. Retain buffer areas

5. Restore spoil haulage route and stabilize

6. Provide predaceous fish stocking within pond

A properly designed and sited wetland "buffer" pond will also provide:

1. Increased adequate habitat diversity

2. Waterfowl resting or habitat area

3. Recreation use.

New Jersey Department of Environmental Protection, Division of Coastal Resources
Office of Freshwater Wetlands

FW-1

Freshwater Wetlands Permit Application

FOR: Freshwater Wetlands Permit (NJSA 13:9B, NJAC 7:7A), Water Quality Certification (NJAC 7:7A), and Open Water Fill Permit (NJSA 58:10A, as amended by NJSA 13:9B-31, and NJAC 7:7A.)

This form is to be used to apply for a Statewide General Freshwater Wetlands Permit, an Individual Freshwater Wetlands Permit, Open Water Fill Permit, and a Water Quality Certificate. Activities covered by Statewide General Permits are described in the Freshwater Wetlands Protection Act Rules (Specifically, NJAC 7:7A-9). All activities regulated under the Freshwater Wetlands Protection Act, P.L. 1987, c. 156 which are not explicitly covered by a Statewide General Permit, require an Individual Permit. Two sets of instructions are attached, one set explains how items need to be completed for Individual Permits, and one set explains which items need to be completed for a Statewide General Permit. All items must be completed for an individual Permit. For more detailed information, and procedures for obtaining permit approvals, see NJAC 7:7A.

Information provided on this form will be used in evaluating the application for a permit, and shall be a matter of public record. Disclosure of the information requested is voluntary. If necessary information is not provided, the permit application cannot be processed nor can a permit be issued.

This application should be submitted to the NJ Department of Environmental Protection, Division of Coastal Resources, Office of Freshwater Wetlands, CN 401, Trenton, NJ 08625 (Street address: Station Plaza 5, 501 East State Street, Trenton). An original and two (2) copies are needed for a proposed activity covered by a Statewide General Permit. An original and nine (9) copies of this completed application form, along with ten (10) copies of all support documents specified below, must be submitted for an Individual Freshwater Wetlands Permit or Open Water Fill Permit Application. If additional space is needed to complete this application, use plain bond paper and attach it to the application form. Please reference the application form item numbers for all such additions.

FOR NJDEP USE ONLY
Application number:

Fee received: $_____
By: _____ Date: _____

Type or print all information

1. Name and address of applicant:

Telephone number during business hours:
Residence ( ) _____ - _____
Work ( ) _____ - _____

2. I have an authorized agent to act on my behalf relative to this application. __ Yes __ No
(See instruction sheet item #2)
Name, address and title of agent, if any.

Telephone number during business hours:
Work ( ) _____ - _____
Statement of Authorization: I hereby designate and authorize _____
to act on my behalf as my agent with regard to this permit application and to furnish, upon request, supplemental information in support of this application.

_____ _____
Signature of Applicant Date

3. This application is for:

___ Approval of activities covered by a Statewide General Permit Number(s) _____
___ Individual Freshwater Wetlands Permit
___ Individual Freshwater Wetlands Permit and Water Quality Certificate
___ Individual Open Water Fill Permit and Water Quality Certicate
___ Water Quality Certificate

See Program Summary in Appendix A for applicable permit descriptions and numbers.

4. Fee Attached: $ _____

(See Attached fee schedule in Appendix B.)

5. Provide a written description of the proposed regulated activity including the total area to be used, filled, or modified; the total area of freshwater wetland or State open waters potentially affected; and if applicable, how conditions of a Statewide General Permit will be satisfied.

6. Describe the purpose and use of the proposed regulated activity.

7. Describe in detail the discharge of dredged or fill material, if such a discharge is part of the proposed project.

8. List the names and addresses of adjoining property owners, lessees and holders of easements on properties directly adjacent to the property which is the site of the proposed project.

9. List the name of adjacent waterbodies, or location on the waterbody where the activity is proposed.

10. Location where the activity is proposed:

Address: _____
Street, Road, Route or other descriptive location

_____
Municipality State Zip

_____ _____ _____
Block(s) Lot(s) County

11. Is any portion of the activity for which authorization is sought now completed? ___ Yes ___ No

If answer is "Yes", give month and year the activity was completed and indicate the existing work on the drawings.

12. Provide a description of alternatives.

13. Describe any potential adverse environmental impacts.

14. Describe the wetland plant community, special aquatic sites, etc. as specified in item #14 of instruction sheet.

15. Describe potential human health or welfare impacts from the proposed regulated activity.

16. Describe mechanisms to minimize adverse environmental impacts.

17. For any structure, construction, discharges or other activities described in this application, indicate below all approvals, certifications or denials received from any federal, interstate, state or local agencies.

- In Column A, indicate application status: (pending, approved, denied, or other - explain other).
- In Column B, indicate application , permit, or docket number.

DCR Programs	A	B		A	B
CAFRA			Water Quality Certificate		
Waterfront Development			Open Water Fill		
(Tidal or Coastal) Wetlands			Stream Encroachment		
Statewide General Freshwater Wetlands			Dam Construction or Repair		
Individual Freshwater Wetlands			Tidelands (Riparian) Conveyance		
Freshwater Wetlands Transition Area Waiver					

Other Programs					
Purchase Water Diversion			Sewer System: Extension Collectors, pumpstations, etc.		
Divert Water Supply for Public Use			Exemption from Sewer Ban		
Divert Surface Waters for Private Use			NJ Pollution Discharge Elimination System		
Divert Subsurface or Percolating Water for Private Use			Solid Waste Permits (Specify)		
Well Drilling			Air Quality Permits (Specify)		
Permanent Water Lowering			D&R Canal Certificate		
Temporary Water Lowering			Pinelands Certificate		
Construct, Modify or Operate Public Potable Water Works			Other State (Specify)		
Connection between approved and Non-approved water supply			Local Permits (Specify)		
			Federal Permits (Specify)		

18. Provide a list of plants, fish, etc. as described in item #18 of the instruction sheet.

19. For an Individual Permit attach an original and nine (9) copies of the following: site plan, a subdivision map if available, and vicinity map. (See instruction sheet item #19.)

For Statewide General Permit attach an original and two (2) copies of site plan and vicinity map. (See General Permit instruction sheet item #19).

20. Attach verification that notices have been forwarded by registered mail to all parties specified in item #20 of instruction sheet.

21. Attach a newspaper notice, or notices, if required (See instruction sheet item #21).

22. Attach photographs of the site of the proposed activity as described in item #22 of the instruction sheet.

23. Have you attached a separate mitigation proposal as described in item #23 of the instruction sheet?
___ Yes ___ No

24. Signatures - I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are penalties for submitting false information including the possibility of fines and imprisonment. I hereby authorize the staff of the NJDEP to conduct such on-site inspections of the parcel(s) which are the subject of the application as are necessary to review this application and to ensure compliance with the requirements of the New Jersey Freshwater Wetlands Protection Act (N.J.S.A. 13:9B- et seq.) and implementing rules (N.J.A.C. 7:7A-1 et. seq.).

Signature of Applicant _____ Date _____ Signature of Agent _____ Date _____

25. Property Owner's Certification - (Complete if applicant is different than property owner).

I hereby certify that I am the owner of the property upon which the proposed work is to be done, and I grant permission to conduct the proposed activity. A portion of the proposed activity will _____ will not _____ take place within an easement, and no _____ some _____ part of the proposed activity will take place on property owned by the State of New Jersey.

_____ _____
_____ Signature of Owner(s)
_____ _____
Type or Print Name and Address of Owner, if different from applicant Date

Attachments: I have attached supplemental information for the items checked below:

Item #1. _____	Item #6. _____	Item #11. _____	Item #16. _____	Item #21. _____
Item #2. _____	Item #7. _____	Item #12. _____	Item #17. _____	Item #22. _____
Item #3. _____	Item #8. _____	Item #13. _____	Item #18. _____	Item #23. _____
Item #4. _____	Item #9. _____	Item #14. _____	Item #19. _____	Item #24. _____
Item #5. _____	Item #10. _____	Item #15. _____	Item #20. _____	Item #25. _____

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SECTION: A-VII

POLICY MEMORANDA

March 27, 1992

M E M O R A N D U M

TO: All permitting staff

FROM: Policy and Planning Unit

THRU: Bob Tudor

SUBJECT: Letters of concurrence with ACOE Jurisdictional Determinations

Please be advised that the Program is no longer accepting wetland delineations or verifications (Jurisdictional Determinations) performed by the Army Corps of Engineers. On August 9, 1991 the Department and the ACOE signed a Local Operating Procedure that clearly states that the Department will be the lead agency in identifying the jurisdictional limits of Waters of the United States within the State of New Jersey. Therefore, the Program will no longer issue Letters of Concurrence and applicants will be required to obtain a Letter of Interpretation to identify jurisdictional limits.

Should you have any questions on this matter please contact Ernie Hahn.

lopacoe

M E M O R A N D U M

April 10, 1992

TO: All Regulatory Staff

THRU: Bob Tudor

FROM: Planning and Policy Unit

RE: Determining the presence of transition areas on a property as result of wetlands on an adjacent property

It has come to our attention that some project review officers may not be checking adjacent properties to determine whether they contain wetlands which may result in the presence of a transition area on the property in question. When an LOI is issued, it should inform an applicant of all regulated features on the property, that is, wetlands, State open waters and transition areas.

A presence/absence determination or footprint of disturbance should tell the applicant whether any wetlands, open waters or transition areas are present or absent on the property or footprint.

If you determine that wetlands exist on an adjacent property, you obviously will have to determine whether they are exceptional or intermediate resource value in order to know whether or not they affect the property you are reviewing.

The **applicant** is responsible for the delineation of all wetlands affecting his/her property, including offsite wetlands resulting in transition areas on the subject property! Upon reviewing a wetland delineation and identifying wetlands on the adjacent parcels that will result in transition areas on the subject parcel, you should inform the applicant to delineate the transition area on the subject parcel. Your field inspection of the adjacent parcels will confirm the accuracy of the transition area line.

If you have any questions about this guidance please see your Supervisor.

M E M O R A N D U M

April 10, 1992

TO: All regulatory staff

THRU: Bob Tudor

FROM: Policy and Planning Unit

RE: Partial LOIs

With the adoption of the amendments to the rules on March 16, 1992, the Land Use Regulation Program will no longer accept any applications for partial letters of interpretation. Previously we had been accepting them for a very limited group of public projects. However, since the new regulations have formalized the "footprint of disturbance" LOI, and since we will allow more than one footprint per property, we will no longer accept any requests for partial LOIs. The applicant still has the option of subdividing a property if they need a partial delineation confirmation.

If you have any questions regarding this guidance, please contact your Supervisor.

State of New Jersey
Department of Environmental Protection and Energy
Environmental Regulation
Land Use Regulation Program
CN 401
Trenton, NJ 08625-0401

Scott A. Weiner
Commissioner

Robert A. Tudor
Administrator

May 26, 1992

TO: All Regulatory Staff

THROUGH: Robert Tudor

FROM: Planning and Policy Unit

SUBJECT: Model deed restriction for modified transition area

Attached is a model deed restriction that may be distributed to the regulated public for compliance with the amended Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-7.1(g). This deed restriction has been reviewed and approved for use by the Attorney General's office. Therefore, individual review of restrictions following this format are not needed.

Based on discussions with the Attorney General's office during the adoption of the March 16, 1992 amendments it was agreed that the Department would use discretion in requiring deed restrictions of an entire parcels. It was agreed that it was appropriate in every instance that the entire remaining transition area on the subject parcel be deed restricted where the Department granted a straight reduction under N.J.A.C, 7:7A-7.2 and 7.3. The Department will use its discretion in requiring deed restrictions for large lots when an averaging plan pursuant to N.J.A.C. 7:7A-7.5. For example if an applicant modifies only a five acres of a 100 acre lot through an averaging plan, the Department would only require the restriction of the modified areas (both reduction and addition) and the immediate areas. In cases where the applicant is modifying greater than 60 percent of medium sized and smaller lots (less than 20 acres) the entire transition area onsite should be deed restricted. Please consult with your Section Chief before informing an applicant of your decision on this matter.

Should you have any further questions on these matters please contact the Planning and Policy Unit.

P-DEEDTA.DOC Disk #6

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Prepared by:

NJDEPE
File No. _____ _____

DECLARATION OF RESTRICTION FOR MODIFIED TRANSITION AREA

THE DECLARATION of Deed Restriction is made this _____ day of _____, 199_, by _____, having an office at or residing at _____, _____ hereinafter referred to as "Declarant."

W I T N E S S E T H

WHEREAS, the Declarant is the owner of certain real property located in the Township of _____, _____ County, New Jersey, designated as Lot ____, Block ____, on the official Tax Map of the Township of _____ (hereinafter "the Property"); and

Whereas, wetlands play a significant role in the maintenance of environmental quality on a community, regional, and statewide level; and

Whereas, wetlands transition areas are integral portions of a freshwater wetlands ecosystem; and

WHEREAS, the Declarant has obtained a Freshwater Wetlands transition area waiver ("TA waiver"), #____-__-____._, which establishes a modified transition area from the New Jersey Department of Environmental Protection & Energy ("DEPE") pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et. seq.; and

WHEREAS, the TA Waiver issued to the declarant is conditioned upon the Declarant's recording of a Department approved deed restriction, pursuant to N.J.A.C. 7:7A-7.1(g), for the modified transition area more particularly described on attachment A (hereinafter meets and bounds description of the "Modified Transition Area"), and upon the imposition by the Declarant of a deed restriction to preclude subsequent development of the Modified Transition Area without prior Department approval as outlined below; and

WHEREAS, the Declarant desires and intends to restrict subsequent development of the Modified Transition Area in accordance with the covenants, conditions, and restrictions set forth herein;

NOW THEREFORE, in consideration of the facts recited above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the Freshwater Wetlands Act, N.J.S.A. 13:9B-1 et seq., and associated regulations, N.J.A.C. 7:7A-1, the declarant, for itself, its successors and assigns, hereby covenants and agrees with the State of New Jersey, Department of Environmental Protection and Energy that the modified transition area is hereby made and declares to be subject in perpetuity to the following covenants and restrictions:

1. The following activities shall not occur within the Modified Transition Area, unless the Department makes the findings specified below.

    1. Removal, excavation, or disturbance of the soil;
    2. Dumping or filling with any materials
    3. Erection of structures
    4. Placement of pavements; and
    5. Destruction of plant life which would alter the existing pattern of vegetation.
    6. Any other activities constituting a prohibited activity under N.J.A.C. 7:7A-6.2, as amended

2. These activities shall only occur if the Department finds:

(a) There is compelling public need for the activity greater than the need to protect the modified transition area;

(b) That the activity has no practicable alternative which would;

i. Not involve a transition area;

ii. Involve a transition area but would have less adverse impact on the transition area and the adjacent wetland; and

iii. 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.

3. The covenants restrictions set forth herein shall run with the land and be binding in perpetuity upon the Declarant, its successors and assigns, in perpetuity, and all parties having or acquiring any right, title or interest in the property or any part thereof. Notice of this deed restriction shall be given to all holders of any easements in the Modified Transition Area by the Declarant within 30 days of recording by the County Clerk.

4. It is the purpose of the Declaration to assure that the modified transition area will be maintained as such and to prevent any disturbance or development of the property. To carry out this purpose, the following rights are granted to the State of New Jersey, Department of Environmental Protection and Energy, by this Declaration:

(a) To enter upon the property in a reasonable manner and at reasonable times so as to assure compliance with the provisions of said restrictions.

(b) In addition to the exercise of any other statutory or common law right, to enjoin any activity on, or use of, the property that is inconsistent with the purpose of these conservation restrictions and to enforce the restoration of such areas or features of the property that may be damaged by inconsistent activity or use.

5. The Declarant intends that enforcement of the terms and provisions of the deed restriction shall be at the discretion of the State of New Jersey and that any forbearance on behalf of the State of New Jersey to exercise its rights hereunder in the event of any breach hereof by the Declarant, it successors or assigns, shall not be deemed or construed to be a waiver of the State's rights granted hereunder in the event of any subsequent breach. This shall be true regardless of the number of breaches of the restriction, condition or covenant which occur, or the length of time it remains unenforced.

6. The Declarant reserves to itself, its successors or assigns, all rights as to owners of the property, including the right to engage in all uses of the property not inconsistent with the purpose of these restrictions and the right to the property in accordance with N.J.A.C. 7:7A-6.2(b).

7. No additional right of access by the general public to any portion of the property is conveyed by this instrument.

8. The Declarant agrees to bear all costs and liabilities of any kind related to the operation, upkeep and maintenance of the property. The Declarant shall be responsible for acts of its own negligence consistent with the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:8-1 et seq.

9. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor in interest.

10. The Declarant agrees that the terms, conditions, restrictions and purposes of this instrument will be inserted in any subsequent deed, lease, sub-lease or other legal instrument by which the Declarant divests itself of any interest in the property.

11. The NJDEPE agrees that it will assign its rights under this instrument only to another governmental body or a charitable conservancy, and only in accordance with N.J.S.A. 13:8B-1 et seq. and N.J.S.A. 13:9B-1 et seq.

12. Notwithstanding anything contained herein to the contrary, any modification or termination of this Declaration shall require the prior written approval of the NJDEPE, its successor or assign.

13. If any provision of this Declaration or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Declaration, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

TO HAVE AND TO HOLD unto the New Jersey Department of Environmental Protection and Energy, its successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed with this declaration shall not only be binding upon the Declarant but also upon its agents, personal representatives, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the property.

IN WITNESS WHEREOF, the Declarant has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the _____ County Clerk.

(Declarant)

_____

Attest:

_____
, Secretary

_____
(signature names, and title)

[Seal]

STATE OF)
: **SS.:**
COUNTY OF)

BE IT REMEMBERED that on this _____ day of _____, 199_, before me, the subscriber, a Notary Public of **New Jersey**, personally appeared: _____

_____

and he thereupon acknowledged that he signed the foregoing instrument in such capacity, optional language to be inserted if the deed restriction is being filed by a corporation (that the seal affixed to said instrument is the corporate seal of said corporation), and that said instrument is the voluntary act and deed of said corporation or person, optional language to be inserted if the deed restriction is being filed by a corporation (made by virtue of authority from its Board of Directors).

_____
( )
A Notary Public of_____
My commission expires _____

deedtaw - disk #6 5/92

State of New Jersey
Department of Environmental Protection and Energy
Environmental Regulation
Land Use Regulation Program
CN 401
Trenton, NJ 08625-0401

Scott A. Weiner
Commissioner

Robert A. Tudor
Administrator

June 2, 1992

TO: All Regulatory Staff

THROUGH: Robert Tudor

FROM: Planning and Policy Unit

SUBJECT: Model deed restriction for mitigation sites

Attached is a model deed restriction for mitigation sites that may be distributed to the regulated public for compliance with any of the Land Use. This deed restriction was originally drafted and approved by Ray Nichols and DAG Gary Brower. That original version has been modified to include mitigation under any of the Land Use statutes and the recent Freshwater Water Wetlands rule amendments. This model has been reviewed and approved for use by the Attorney General's office. Therefore, individual review of restrictions following this format are not needed.

Should you have any further questions on these matters please contact the Planning and Policy Unit.

(PDEEDMIT.DOC Disk #6 5/92)

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Prepared by:

NJDEPE
File No._____ _____

DECLARATION OF RESTRICTION FOR MITIGATION SITE

THIS DECLARATION of Deed Restrictions is made this day of _____, 199_, by the (NAME OF THE PROPERTY OWNER), having an office at or residing at

_____
_____ hereinafter referred to as "Declarant."

W I T N E S S E T H

WHEREAS, the Declarant is the owner in fee simple of certain real property, designated as Block __#__, Lot __#__, on the Tax Map of the (MUNICIPALITY), _____ County, New Jersey, (hereinafter the "Property") and

WHEREAS, wetlands and surface waters play a significant role in the maintenance of environmental quality on a community, regional, and statewide level, and

WHEREAS, the New Jersey Department of Environmental Protection and Energy (hereinafter "Department") is authorized by N.J.S.A. 13:1D-9 to formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State; and

WHEREAS, the Declarant has obtained an authorization from the Department approving the disturbance of wetlands and or State open waters and requiring mitigation for the loss of those area. Such authorization shall include settlement documents, licenses, permits, or certificates which disturb wetlands or State open waters pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et. seq., the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., the New Jersey Water Pollution Control Act, N.J.S.A. 58:A-1 et seq. or the Waterfront Development Act, N.J.S.A.12:5-3.; and

WHEREAS, the Declarant desires to create a wetlands and/or State open water habitat area and associated transition area within said Property, and as a condition of a Department approved authorization, is required to create such a habitat and associated transition area, as shown on

the plan entitled "_(PLAN NAME)_ ", prepared by _____and dated _____, last revised _____, a copy of which is attached hereto and incorporated herein as Exhibit A (hereinafter referred to as the "Mitigation Site"); and

WHEREAS, the said Mitigation Site is _(#.##)_ acres in size, and is the subject of a metes and bounds description contained in Exhibit B, which is attached hereto and incorporated herein by reference; and

WHEREAS, Declarant desires and intends that once the freshwater wetlands and /or State open water habitat and associated transition area has been created within the Mitigation Site, then the Mitigation Site shall be maintained as a natural area in perpetuity, and that the property shall be used, occupied, conveyed and transferred subject to, and benefited by, the mitigation area and the covenants hereinafter set forth;

NOW, THEREFORE, in consideration of the facts recited above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to The New Jersey Conservation Restriction and Historic Preservation Restriction Act (N.J.S.A. 13:8B-1 et seq.), the Declarant, for itself, its successors and assigns, hereby voluntarily covenants and agrees with the State of New Jersey, Department of Environmental Protection and Energy that the Mitigation Site is hereby made and declared to be subject in perpetuity, to the following covenants, restrictions and easements, of the nature and character and to the extent hereinafter set forth:

1. The Mitigation Site shall be maintained as a natural area in perpetuity, including retaining the vegetation planted in this area pursuant to the mitigation plan approved by the Department in accordance with the Department approved authorization #____-__-____._, and any naturally occurring vegetation. The following activities shall not occur within the Mitigation Area, unless the Department makes the findings specified below.

(a) Removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregrate material of any kind;

(b) The drainage or disturbance of the water level or water table;

(c) The dumping, drainage or filling with any materials;

(d) The driving of pilings;

(e) The destruction of plant life which would alter the character of a wetland, including teh cutting of trees;

(f) Any other activities constituting a regulated or prohibited activity under N.J.A.C. 7:7A-2.3 or N.J.A.C. 7:7A-6.2, as amended;

(g) The legal or de facto subdivision of the property for any purpose;

(h) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation;

(i) Any agriculture uses; and

(j) Any other disturbance of the property or acts or uses detrimental to the retention of land or water areas according to the purposes of the approving statutes.

2. These activities shall only occur if the Department finds:

(a) There is compelling public need for the activity greater than the need to protect the modified transition area;

(b) That the activity has no practicable alternative which would;

i. Not involve a wetland or State open water;

ii. Involve a wetlands or State open water but would have less adverse impact on the aquatic ecosystem; and

iii. 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.

3. It is the purpose of this Declaration to assure that the Mitigation Site will be developed and maintained as a freshwater wetland and/or State open water habitat and to prevent any disturbance or development of the property not consistent with that use. To carry out this purpose, the following rights are granted to the State of New Jersey, Department of Environmental Protection and Energy, by this Declaration of Conservation Restrictions:

(a) To enter upon the property in a reasonable manner and at reasonable times so as to assure compliance with the provisions of said restrictions.

(b) In addition to the exercise of any other statutory or common law right, to enjoin any activity on, or use of, the property that is inconsistent with the purpose of these conservation restrictions and to enforce the restoration of such areas or features of the property that may be damaged by inconsistent activity or use.

4. The Declarant intends that enforcement of the terms and provisions of the conservation restriction shall be at the discretion of the State of New Jersey and that any forbearance on behalf of the State of New Jersey to exercise its rights hereunder in the event of any breach hereof by the Declarant, its successors or assigns, shall not be deemed or construed to be a waiver of the State's rights granted hereunder in the event of any subsequent breach. This shall be true regardless of the number of breaches of the restriction, condition or covenant which occur, or the length of time it remains unenforced.

5. The Declarant reserves to itself, its successors or assigns, all rights as to owners of the property, including the right to engage in all uses of the property not inconsistent with the purpose of these conservation restrictions.

6. No additional right of access by the general public to any portion of the property is conveyed by this instrument.

7. The Declarant agrees to bear all costs and liabilities of any kind related to the operation, upkeep and maintenance of the property and does hereby indemnify and hold the State of New Jersey harmless therefrom.

8. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor in interest.

9. The Declarant agrees that the terms, conditions, restrictions and purposes of this grant will be inserted by it in any subsequent deed, lease, sub-lease or other legal instrument by which the Declarant divests itself of any interest in the property.

10. The covenants and restrictions set forth above shall run with the land and be binding, in perpetuity, upon all parties having or acquiring any right, title or interest in the property or part thereof.

11. The Department agrees that it will assign its rights under this instrument only to another governmental body or a charitable conservancy, and in only accordance with N.J.S.A. 13:8B-1 et seq.

12. Notwithstanding anything contained herein to the contrary, any modification or termination of this Declaration shall require the prior written approval of the Department, its successor or assign.

13. If any provision of this Declaration or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Declaration, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

TO HAVE AND TO HOLD unto the New Jersey Department of Environmental Protection and Energy, its successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed with this declaration grant shall not only be binding upon the Declarant but also its agents, personal representatives, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the property.

IN WITNESS WHEREOF, the Declarant has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the _____ County Clerk.

(Declarant)

_____

Attest:

_____ , **Secretary**
and

_____
(signature names, title)

[Seal]

STATE OF)
: **SS.:**
COUNTY OF)

BE IT REMEMBERED that on this _____ day of _____, 199_, before me, the subscriber, a Notary Public of **New Jersey**, personally appeared:

_____

_____

and he thereupon acknowledged that he signed the foregoing instrument in such capacity, the following optional language to be inserted if the deed restriction is being filed by a corporation (that the seal affixed to said instrument is the corporate seal of said corporation), and that said instrument is the voluntary act and deed of said corporation or person, the following optional language to be inserted if the deed restriction is being filed by a corporation (made by virtue of authority from its Board of Directors).

_____
( )
A Notary Public of_____
My commission expires _____

REQUIRED ATTACHMENTS:

EXHIBIT A:

Site plan of Property, with Survey Plat information

EXHIBIT B:
Metes and Bounds Description of Property

(DEEDMIT.DOC 5/92 Disk #6)

State of New Jersey
Department of Environmental Protection and Energy
Environmental Regulation
Land Use Regulation Program
CN 401
Trenton, NJ 08625-0401

Scott A. Weiner
Commissioner

Robert A. Tudor
Administrator

June 9, 1992

TO: All regulatory and enforcement staff

THROUGH: Robert Tudor

FROM: Land Use Planning and Policy Unit EPH

SUBJECT: Regulatory jurisdiction and permitting requirements of State open waters

This guidance is provided to give clear direction on the Department's jurisdiction in State open waters under the Freshwater Wetlands Protection Act and the administrative procedure as to permits will be required for encroachment into these areas.

The Freshwater Wetlands Protection Act rules derive statutory authority from N.J.A.C. 13:9B-1 et seq., the Freshwater Wetlands Protection Act and N.J.A.C. 58:10A-1 et seq., New Jersey Water Pollution Control Act. State open waters are specifically regulated under the Water Pollution Control Act. The rules at N.J.A.C. 7:7A-1.4 define "State open waters" as those waters of the United States within the boundary of the State or subject to its jurisdiction that are not wetlands as defined in this section. "Waters of the United States" are further defined in the rules and include all bodies of water including interstate and tidal waters. Specific examples range from inland farm ponds and streams to tidally flowed rivers such as the lower portions of the Delaware and Hudson Rivers. Based on these definitions all water bodies except for those specifically exempted (some artificially created impoundments for water treatment) are considered "State open waters" and legally require an Open water fill permit for the discharge of dredge or fill material. These areas should be labeled as State open waters on Letters of Interpretation.

TIDAL STATE OPEN WATERS

In order to avoid statutory overlap and duplicative paper work, an administrative decision has been made to require only Waterfront development or CAFRA permits and not require Open water fill permits for the discharge of dredge or fill material into water bodies below the head of tide. Head of

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tide information is available from either Enforcement or Tidelands.

OPEN WATER FILL/STREAM ENCROACHMENT PERMITS

Conversely, all discharges of dredge or fill material into State open waters above the head of tide (inland) will require an Open water fill permit (either a Statewide general or Individual Permit). It has been past practice in some occasions not to require an Open water fill permit for projects requiring a Stream encroachment permit involving only State open waters. In order to comply with the Federal transfer regulations for state assumption of the 404 program this distinction will no longer be permitted and all projects requiring a Stream encroachment permit and involving the discharge of dredge or fill material into State open waters will also require an application, notices and fee for an Open water fill permit (either Statewide general or Individual).

Should you have any questions on this matter please discuss with your Section Chief or the Planning and Policy Unit.

c. J Weingart
J Cromarty
L Cattaneo

(SOW-JURI.DOC Disk #27)

State of New Jersey
Department of Environmental Protection and Energy
Environmental Regulation
Land Use Regulation Element
CN 401
Trenton, NJ 08625-0401

Scott A. Weiner
Commissioner

Robert A. Tudor
Administrator

October 1,, 1992

M E M O R A N D U M

TO: Distribution List

FROM: Robert Tudor, Administrator

SUBJECT: Distribution of Land Use Program Policies

During the course of day to day implementation of the broad array of programs the Land Use Regulation Program (LURP) administers, periodically requires the clarification of regulatory issues. These clarifications deal only with issues that are addressed in the existing administrative regulations and are in need of further explanation. These clarifying interpretations of existing rules or "policies" are necessary to ensure that these issues are dealt with on a consistent basis by all LURP staff. These policies are only an interim step. The program will, on a periodic basis, when the nature of the policy dictates it, formalize these policies into a rule proposal for public comment followed by a formal adoption as an administrative rule.

In order to increase public awareness of these interim policies so that applicants may be fully aware of how the Program is interpreting a particular issue, this and all future policies will be distributed to those individuals and organizations on the attached list. Please share these policies with any other interested parties. Should you have any recommended additions to the distribution list please send them to Mr. Ernest Hahn at the above address.

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Land Use Regulation Program Distribution List
for Policy Memoranda

Land Use Regulation:
- Assistant Commissioner
- Administrator
- Managers
- Supervisors
- All Staff

Enforcement:
- Administrator (Trenton)
- Manager (Toms River)

External Distribution:
- New Jersey Builders Association
- National Association of Industrial and Office Parks
- Association of New Jersey Environmental Commissions
- New Jersey Audubon
- New Jersey Conservation Foundation
- Passaic River Coalition
- New Jersey Society of Professional Engineers
- Rutgers Environmental Law Clinic
- New Jersey Environmental Federation
- New Jersey Environmental Lobby

(POL-DIST.DOC Disk #2)

SECTION A-VIII

MEMORANDA OF UNDERSTANDING AND AGREEMENTS

WITH OTHER STATE AND FEDERAL AGENCIES

MEMORANDUM OF UNDERSTANDING

BETWEEN

NJ DEPT OF TRANSPORTATION

AND

NJ DEPT OF ENVIRONMENTAL PROTECTION AND ENERGY

CONCERNING

THE REMOVAL OF OBSTRUCTIONS

AT NEW JERSEY AERONAUTICAL FACILITIES

The Department of Transportation is statutorily charged with the responsibility to maintain the public safety and the safety of those participating in aeronautics. In that regard the DOT causes the removal of any obstructions which interfere with the approach and departure paths, or with operational lines of sight required at aeronautical facilities.

The Department of Environmental Protection and Energy is statutorily charged with the responsibility of protection of New Jersey's freshwater wetlands. In that regard, the DEPE requires permits for the removal, alteration or destruction of plant life which would alter the character of a freshwater wetland.

Both Departments recognize the need to accomplish the removal or alteration of certain vegetation to protect the public safety and the safety of those participating in aeronautical activities; and recognize the requirements to maintain New Jersey's freshwater wetlands. This Memorandum of Understanding is prepared to furnish a vehicle to expeditiously accomplish both of those requirements.

Department of Transportation

The Department of Transportation, Office of Aviation will periodically inspect aeronautical facilities. In addition, Airport Sponsors may have airport areas surveyed to determine if any obstructions exist. The Director of Aviation will be notified of any obstructions which are found on or around an aeronautical facility.

The Director of Aviation shall review such information to determine if these obstructions are caused by vegetation located in approach or departure paths, or by vegetation causing operational line of sight interference. If the Director of Aviation finds that to be the case, he will advise the Airport Sponsor that vegetative obstructions exist.

Department of Transportation
(continued)

The notification shall be by means of a letter, and a standard form, "Notice of Obstructions At An Aeronautical Facility", (which is attached as Exhibit A to this Memorandum). The form will include an application for a Statewide General Permit as required by the DEPE, and will include information regarding the procedure to be followed in preparing and submitting the application to DEPE.

DOT Bureau of Environmental Analysis and Office of Aviation personnel will be available to meet with DEPE staff to discuss issues which arise during the permitting process. In the event a permit is denied, these personnel will meet with DEPE staff to resolve problems in an effort to allow the removal of the obstructions.

Department of Environmental Protection & Energy

The Department of Environmental Protection & Energy will provide the standardized application form for use by the New Jersey Department of Transportation Office of Aviation or by aeronautical facility sponsors to request an authorization under Statewide General Permit No. 1, for the removal or alteration of vegetation which has been determined to be an obstruction by the New Jersey Department of Transportation Office of Aviation.

The DEPE will set the fee for such application in accordance with the Freshwater Wetlands Rules at N.J.A.C. 7:7A-16.4. A single permit will be issued for all obstructions at a specific aeronautical facility as indicated on the Office of Aviation form, "Notice of Obstructions At An Aeronautical Facility".

The General Permit will be specifically issued for obstruction removal. For the specific purpose of obstruction removal, all areas containing obstructions will be assumed to be wetlands, and a formal delineation will not be required. In addition, consistent with the provisions of Statewide General Permit No. 1, no mitigation will be required.

The Permit may include provisions, where appropriate, that: prohibit clear cutting of an area; require selective cutting or topping to enhance habitats as well as eliminate obstructions; prohibit excessive disturbance to the rest of the area being worked; allow alterations which encourage the growth of acceptable wetlands vegetation which will not become an obstruction.

Department of Environmental Protection & Energy
(continued)

The General Permit will not include any provision which would cause an unsafe condition to be created, nor will it include any provision which would in any way decrease the level of safety of the operations of the aeronautical facility.

The DEPE will expedite the review process for such applications, and will authorize a permit or render a negative decision within 60 days of receipt of the application. Because of the critical safety issues involved, the DOT Office of Aviation will be furnished a copy of any permit decision within 3 days of such action.

Within 2 weeks of any permit denial, representatives of DEPE and DOT will meet to review the matter, in an attempt to resolve disparate issues, and in some way allow removal of the obstructions. In the event that agreement cannot be reached regarding the permit denial, the applicant may proceed with an application for an Individual Permit, and/or an appeal of the General Permit denial.

Actions To Be Taken By The Airport Sponsor
(Not a part of this agreement, shown for clarification only)

It shall be the responsibility of the Aeronautical Facility Sponsor to make application to DEPE for the necessary permit to remove or alter the obstructing vegetation, as indicated on "Notice of Obstructions At An Aeronautical Facility" form. A copy of that application is to be sent to the DOT Office of Aviation.

The Airport Sponsor is responsible for the removal of such obstructions in accordance with the provisions of the General Wetlands Permit issued by the DEPE.

The Airport Sponsor shall notify the DOT Office of Aviation when such activity has been completed, and before the permit has been terminated, to allow for an inspection to ensure all obstructions have been totally abated.

This Memorandum Of Understanding has been reached on September 17, 1992 for the respective Departments by:

Christine M. Johnson
Assistance Commissioner
State of New Jersey
Dept of Transportation

John R. Weingart
Assistant Commissioner
State of New Jersey
Dept of Environmental
Protection and Energy

9/17/92

The following Memoranda of Agreement between the New Jersey Department of Environmental Protection and Energy and the Pinelands Commission, U.S. Environmental Protection Agency, and the U.S. Army Corps of Engineers are entered into to enable the State of New Jersey to carry out the policies, regulations and procedures necessary to administer the permit program established pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344, the "404 program." These agreements do not create any substantive standards relating to any aspect of the permit program or impose any legal obligations on the public.

These agreements shall be executed by the Commissioner and the respective Administrators and shall become effective at the time the NJDEPE's authorization to administer the 404 program takes effect, which shall be the date set out in the Federal Register of EPA's decision to approve the State's application to administer the 404 program.

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MEMORANDUM OF AGREEMENT

BETWEEN

THE NEW JERSEY DEPARTMENT OF

ENVIRONMENTAL PROTECTION AND ENERGY

AND THE

NEW JERSEY PINELANDS COMMISSION

CONCERNING THE REGULATION OF WATERS OF THE UNITED STATES

WITHIN THE PINELANDS AREA

I. PURPOSE

This Memorandum of Agreement between the New Jersey Department of Environmental Protection and Energy (hereinafter referred to as "Department") and the New Jersey Pinelands Commission (hereinafter "Commission") is established to enable the Department to fulfill the requirements of 40 C.F.R. Part 233 (1988) in order to assume the Section 404 program of the Federal Clean Water Act (hereafter referred to as the CWA) and to establish a framework for the continued protection of wetlands within the "Pinelands Area," the boundaries of which are defined at N.J.S.A. 13:16A-11, as required by the Pinelands Comprehensive Management Plan (CMP), N.J.A.C. 7:50-1.1 et seq.

This agreement does not create any substantive standards under which wetlands and waters will be regulated in the Pinelands Area or impose any legal obligations on the public. It is solely intended to describe and allocate pre-existing areas of regulatory responsibility to avoid unnecessary duplication between the Commission and Department.

The Pinelands Commission which was mandated by the National Parks and Recreation Act of 1978 Public Law 95-625 and which was created by the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., was required to develop and implement a comprehensive management plan to protect, preserve and enhance the land and water resources of the Pinelands Area.

The Commission is the entity authorized to exercise all

powers and duties to effectuate the purposes and provisions of the Pinelands Protection Act of 1979, N.J.S.A. 13:18A-1 et seq. In accordance with N.J.S.A. 13:18A-6, the Commission is permitted to enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the Commission or to carry out any power expressly given in the Pinelands Protection Act. The Department is authorized to enter into this agreement pursuant to N.J.S.A. 13:9B-1 et seq, and to 13:1D-9.

II. MUTUAL AGREEMENTS

A. The Department and the Commission agree to the following definitions for the purposes of implementing this MOA:

"Person" means an individual, corporation, partnership, association, the Federal government, the State, municipality, commission or political subdivision of the State, or any interstate body.

"State Program" means the State program which has been approved by EPA under Section 404 of the Clean Water Act.

"Waters of the United States" means all waters and wetlands including wetlands, wetlands soils, submerged lands, and inland and coastal wetlands as defined at N.J.A.C. 7:50-2.11, N.J.A.C. 7:50-6.3, N.J.A.C. 7:50-6.4 and N.J.A.C. 7:50-6.5. These definitions are inclusive of all areas defined as "waters of the United States" as defined by the Department at N.J.A.C. 7:7A-1.4.

B. REGULATORY SCOPE All waters of the United States within the Pinelands Area are covered by this agreement with the exception of those waters over which the Army Corps of Engineers retains jurisdiction.

C. REGULATED ACTIVITIES

In accordance with State and Federal law, the discharge of dredged or fill material pursuant to 33 CFR Part 323 and 40 CFR Part 232 shall not occur in waters of the United States without the issuance of a State Program permit unless determined by the Department to be exempt from the CWA, Sections 404(f)1(A), (C) and (E) and the Freshwater Wetlands Protection Act pursuant to N.J.S.A. 13:9B-4a and 4e (ongoing farming, ranching, and silvicultural operations). Pursuant to State and Federal law, the State Program permit is required in addition to any application and approval required pursuant to the provisions of the Pinelands Comprehensive Management Plan, and any other State or Federal approval.

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III. ESTABLISHMENT OF BOUNDARIES OF WATERS OF THE UNITED STATES

A. The Commission shall be the lead agency within the Pinelands area to verify the extent of Waters of the United States in accordance with the procedural requirements at N.J.A.C. 7:50-4.71 and the notice requirements at N.J.A.C. 7:7A-8. This process enables a person to obtain a Letter of Interpretation verifying the limits of waters of the United States which occur within a parcel of land or right of way, or within proximity to a public development project.

B. If at any time in the future there is a change to the methodology for verifying the extent of Waters of the United States which results in differences between the extent of Waters of the United States as defined at N.J.A.C. 7:7A-1.4, and the extent of wetlands as defined at N.J.A.C. 7:50-2.11, 6.3, 6.4, and 6.5, the Letter of Interpretation will state these differences.

C. The delineation and verification of the extent of waters of the United States established in the Letter of Interpretation issued by the Commission shall be accepted by the Department for a five year period after the Letter of Interpretation takes effect.

D. If there is disagreement or an unusual circumstance concerning a jurisdictional determination, the parties to this agreement retain authority to independently or jointly establish jurisdictional boundaries.

IV. PERMITS FOR DEVELOPMENT REQUIRING AN APPLICATION TO THE PINELANDS COMMISSION

A. The Commission, on behalf of the Department, shall administer a process which may authorize regulated activities in waters of the United States in accordance with the Statewide General Permit program at N.J.A.C. 7:7A-9. The Commission on behalf of the Department may authorize these regulated activities within the Pinelands Area, in accordance with the requirements of the Pinelands Protection Act, Pinelands Comprehensive Management Plan and the rules adopted pursuant to the Freshwater Wetlands Protection Act.

1. The Department will provide the Pinelands Commission with standard forms to be used when authorizing or denying a regulated activity under the Statewide General Permit program.

2. The Pinelands Commission will provide the Department with a monthly report describing all permit activity. In addition, the Pinelands Commission will provide copies of denials of permit authorizations to the Department upon issuance of the denial.

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3. An applicant or other affected party may request reconsideration by the Commissioner of the Department, pursuant to N.J.A.C. 7:7A-12.7 of the Freshwater Wetlands Protection Act (FWPA) rules, on any decision to issue or deny an authorization made by the Pinelands Commission staff, provided that the request is limited solely to issues that arise under the FWPA rules. In accordance with N.J.S.A. 13:18A-10c and the CMP, no approval shall be granted or other action taken as a result of any such appeal to authorize any regulated activity which would be inconsistent with the CMP, and any challenge to any decision to issue or deny an authorization made by the Pinelands Commission staff which is based on the consistency of the proposed development with the CMP shall be made in accordance with the provisions of the CMP.

B. According to State law, a person seeking to engage in regulated activities in waters of the United States which cannot be accomplished in accordance with the requirements noted at N.J.A.C. 7:7A-9 is required to obtain an Individual State Program permit from the Department prior to the commencement of any construction activities. The Department shall administer the application process for any Individual State Program permit within the Pinelands. In accordance with N.J.A.C. 7:50-1 et seq., the Department shall not consider as administratively complete any permit application which involves the development of any waters of the United States within the Pinelands Area unless the applicant has obtained a Certificate of Filing, Certificate of Compliance, Public Development Approval or other document from the Commission which indicates that an application has been completed with the Pinelands Commission. The Commission shall transmit to the Department a copy of any Certificate of Filing, Certificate of Compliance, Public Development Approval or other document issued for a project which would require an Individual State Program permit as outlined in this section. In accordance with N.J.S.A. 13:18A-10c and the CMP, the Department shall not grant any approval, issue any certificate, or take any other action to authorize any regulated activity which would be inconsistent with the CMP.

V. PERMITS FOR DEVELOPMENT NOT REQUIRING AN APPLICATION TO THE PINELANDS COMMISSION

According to State and Federal law, persons seeking to conduct activities for which an application to the Commission is not required but which are regulated by the State Program within the Pinelands Area, i.e. dredged or fill material into Waters of the United States pursuant to 33 CFR Part 323 and 40 CFR Part 232, shall obtain a State Program permit and the associated Water Quality Certificate from the Department prior to the commencement of any regulated activities. The Commission shall notify all

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counties and municipalities within the Pinelands Area of this requirement and shall provide assistance to local review agencies and the public in making determinations as to the types of development which are subject to this provision.

VI. EMERGENCY ISSUANCE OF PERMITS

Persons seeking emergency authorization to conduct regulated activities in waters of the United States to prevent or reduce immediate threats to life, severe loss of property, or severe environmental degradation shall contact the Department to request verbal authorization according to N.J.A.C. 7:7A-5. For an activity requiring an application to the Commission, no work may commence unless it has been approved pursuant to the provisions of the Pinelands Comprehensive Management Plan.

VII. VIOLATIONS OF THE STATE PROGRAM WITHIN THE PINELANDS AREA, PINELANDS COMMISSION LEAD IN ENFORCEMENT ACTIONS

According to State and Federal law, no person or other entity shall engage in an activity regulated pursuant to the State Program, as enumerated in II C above, without a permit. Any person or other entity which conducts a regulated activity without the benefit of a permit, or in a manner that is not in accordance with permit terms and conditions, is in violation of the State Program and is subject to the provisions of the program as noted at N.J.A.C. 7:7A-15 and N.J.A.C. 7:7A-17. Except for development activities that do not require an application to the Commission pursuant to N.J.A.C. 7:50-4.1, the Commission shall be primarily responsible for the initial investigation of any alleged violation of the State Program within the Pinelands Area. For those activities which require an application to the Department only, the Department shall be primarily responsible for the investigation. Upon receiving the necessary information from the Commission regarding a potential violation, the Department shall be responsible for issuing all Notices of Violation and for the assessment of civil administrative penalties, the filing of an action for civil penalties, and the petitioning of the Attorney General to bring a criminal action pursuant to N.J.S.A. 13:9B-21, N.J.A.C. 7:7A-15, N.J.A.C. 7:7A-17, and N.J.A.C. 7:14-8.

VIII. REIMBURSEMENT OF THE PINELANDS COMMISSION

The Department shall reimburse the Commission from the fees received by the Department for the administration of Letters of Interpretation and the Statewide General Permit program by the Commission in the Pinelands Area in accordance with the Budget and Appropriations Act.

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IX. RESOURCE DATA AND PERMIT REPORTING

The Department and Commission agree to jointly develop a process to record, track, and quantify information about regulated activities authorized by the Commission, violations of the State Program, and any other information deemed necessary by the U.S.E.P.A in order for the Department to assume Section 404 of the CWA.

X. SEVERABILITY

If any section or clause of this agreement, or application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgement shall be confined in its operation to the section, clause or application directly involved in the controversy in which such judgement shall have been rendered, and it shall not affect or impair the remainder of this agreement or the application thereof to other persons.

XI. REVISIONS

Revisions and amendments to this MOA may be made when deemed necessary by the Department or Commission. Any such revisions or amendments to this document shall become effective upon the mutual agreement of the Commissioner of the Department or his designee and the Commission.

XII. EFFECTIVE DATE AND DURATION

A. This Memorandum of Agreement shall become effective upon the approval of the State Program by the Administrator of the EPA and subsequent to approval by the authorized representatives of both parties and after the conclusion of the Governor's review period of the Commission's minutes.

B. This agreement shall remain in effect until otherwise amended or terminated by either party upon sixty (60) days written notice.

XIII. SIGNATURES

Date: 1/14/93 By: [signature]

Scott A. Weiner, Commissioner
State of New Jersey
Department of Environmental Protection
and Energy

Approved as to form By: [signature] 1/14/93

Deputy Attorney General

Date: 2/5/93 By: [signature]

Terrence D. Moore, Executive Director
Pinelands Commission

Approved as to form By: [signature]

Deputy Attorney General

Date: 2/17/93

(1/7/93)

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RESOLUTION OF THE NEW JERSEY PINELANDS COMMISSIO.

No. PC4-93-21

TITLE: Authorizing the Executive Director to Sign a Memorandum of Agreement with the New Jersey Department of Environmental Protection and Energy Concerning the Regulation of Waters of the United States Within the Pinelands Area.

Commissioner Ashmun moves and Commissioner Chavooshian seconds the motion that:

WHEREAS, the New Jersey Pinelands Commission was established by the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.) as a public body, corporate and politic to prepare and administer the Pinelands Comprehensive Management Plan to protect the resources of the Pinelands Area of the State of New Jersey; and

WHEREAS, the Pinelands Protection Act designates the Pinelands Commission as the Planning Entity to exercise the authority granted under Section 502 of the National Parks and Recreation Act of 1978; and

WHEREAS, Section 6 of the Pinelands Protection Act authorizes the Pinelands Commission "to enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the Commission to carry out any power expressly given in this act"; and

WHEREAS, the New Jersey Department of Environmental Protection and Energy wishes to assume the administration of the Section 404 program of the Federal Clean Water Act; and

WHEREAS, the New Jersey Department of Environmental Protection and Energy must establish a Memorandum of Agreement with the Pinelands Commission to fulfill the requirements of 40 C.F.R. Part 233 (1988) in order to assume the administration of the Section 404 program of the Federal Clean Water Act; and

WHEREAS, the Pinelands Commission and the New Jersey Department of Environmental Protection and Energy desire to minimize duplicative review of applications and to ensure protection of wetlands within the Pinelands Area according to the requirements of the Pinelands Comprehensive Management Plan, N.J.A.C. 7:50-1.1 et seq.; and

WHEREAS, the Environmental Protection Agency and the Corps of Engineers have recognized certain activities as being water dependent and therefore permitted in wetlands; and

WHEREAS, current Section 404 Nationwide Permits and Regulatory Guidance Letters will not be available to applicants after the assumption becomes effective; and

WHEREAS, nothing in this agreement is intended to require the Pinelands Commission to interfere with compatible agricultural activities in wetlands which are consistent with the Pinelands Comprehensive Management Plan; and

WHEREAS, the Pinelands Commission previously authorized the Executive Director on August 6, 1992 (Resolution No. PC4-92-104) to sign a Memorandum of Agreement with the New Jersey Department of Environmental Protection and Energy concerning the regulation of waters of the United States within the Pinelands Area and subsequent revisions to the Memorandum of Agreement were made by the Department and the Attorney General's office making it necessary for the Pinelands Commission to again authorize the Executive Director to execute this agreement.

NOW, THEREFORE, BE IT RESOLVED that the Pinelands Commission agrees to enter into the attached Memorandum of Agreement and the Executive Director is authorized to execute said agreement between the Pinelands Commission and the New Jersey Department of Environmental Protection and Energy.

BE IT FURTHER RESOLVED that the Pinelands Commission strongly urges the New Jersey Department of Environmental Protection and Energy to consider adoption of Statewide General Permits which will function in place of Nationwide Permits for agricultural activities which are compatible with wetlands prior to or upon assumption of the administration of the Section 404 program as long as such permits are consistent with the objectives of the Pinelands Protection Act and the Freshwater Wetlands Protection Act.

Record of Commission Votes

Commissioners	AYE	NAY	NP	ABS	Commissioners	AYE	NAY	NP	ABS	Commissioners	AYE	NAY	NP	ABS
Ashmun	✓				Darlington	✓				McGrail	✓			
Auerbach	✓				Hogan	✓				Norcross			✓	
Avery	✓				Lee	✓				Reynolds			✓	
Brown	✓				Lefke	✓				Sullivan			✓	
Chavooshian	✓				McFadden	✓								

Adopted at a meeting of the Pinelands Commission Date: February 5, 1993

Terrence D. Moore
Executive Director

Richard J. Sullivan
Chairman

MEMORANDUM OF AGREEMENT

BETWEEN THE STATE OF NEW JERSEY

AND THE DEPARTMENT OF THE ARMY

I. PURPOSE AND AUTHORITY

A. Section 404(g) thru (l) of the Clean Water Act of 1977 (CWA) Public Law 92-500, as amended by Public Law 95-217, 33 U.S.C. 1344(g) through (l) authorizes the Administrator of the United States Environmental Protection Agency (EPA) to approve a state administered program for the assumption of the Section 404 permit program for certain waters of that state. The EPA has promulgated regulations at 40 C.F.R. Part 233 outlining its requirements for approving a State Program.

B. The State of New Jersey (State) is submitting its program for the assumption of the Section 404 program in compliance with the above cited authorities. This Memorandum of Agreement (MOA) between the State and the Corps fulfills the requirements of 40 C.F.R. Section 233.14.

C. Section 404 of the Clean Water Act authorizes the Secretary of the Army, acting through the Chief of Engineers, to regulate the discharge of dredged or fill material into waters of the United States. The Corps' North Atlantic Division, acting through the New York and Philadelphia Districts, currently administers the Section 404 program in the State. The Division Engineer, North Atlantic Division, has been delegated the authority to enter into this Memorandum of Agreement.

D. The New Jersey Department of Environmental Protection and Energy (NJDEPE) pursuant to the Freshwater Wetlands Protection Act (FWPA), P.L. 1987, c.156 (codified at 13:9B-1 et seq.), is authorized to issue permits for regulated activities conducted in State regulated waters, including the discharge of dredged and fill material. The Commissioner of the NJDEPE is given the authority to issue permits pursuant to the FWPA and is the state official charged with administering the State Program when assumed in accordance with 40 CFR part 233.

II. EFFECTIVE DATE AND REVISIONS

A. This MOA will become effective upon approval of the State Program by the Administrator of the EPA.

B. This MOA, and procedures established in conformance with it, shall be reviewed as necessary by the NJDEPE and the Corps. This agreement may be modified upon the initiative of

either party. Amendments to this agreement shall be in writing, and shall become effective upon the signature of both parties. Amendments shall be made in conformance with 40 C.F.R. 233.16.

C. This MOA will remain in effect until such time as NJDEPE's program authorization is withdrawn or is voluntarily transferred by NJDEPE to the Corps according to the criteria and procedures established in 40 C.F.R. 233.53.

III. STATE WATERS TO BE REGULATED

A. All waters of the United States, as defined at 40 C.F.R. Section 232.2(q), within the State of New Jersey will be regulated by NJDEPE as part of their State Program, with the exception of those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary highwater mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, including wetlands adjacent thereto. For the purposes of this agreement, the Corps will retain regulatory authority over those wetlands that are partially or entirely located within 1000 feet of the ordinary high water mark or mean high tide of the Delaware River, Greenwood Lake, and all water bodies which are subject to the ebb and flow of the tide.

State waters will generally be determined by superimposing Head of Tide data on the State's freshwater wetlands quarter quadrangles which are at a scale of one inch equals 1000 feet. A line will be established parallel to and 1000 feet from the ordinary high water mark or mean high tide of the waters described above. The Corps will retain jurisdiction over all wetlands which are waterward of, or intersected by, the jurisdictional line described above.

In those waters over which NJDEPE does not assume jurisdiction under the State Program, NJDEPE will retain jurisdiction under State law, and both State and federal requirements will apply.

B. Bodies of water over which NJDEPE will not assume 404 program jurisdiction include, but are not limited to:

1. The entire length of the Delaware River and adjacent wetlands, as described in A. above, within the State of New Jersey;

2. Waters of the United States falling under the jurisdiction of the Hackensack Meadowlands Development Commission;

3. Greenwood Lake and adjacent wetlands, as described in A. above;

4. All tidal waterbodies to the head of tide and adjacent wetlands, as described in A. above; and

5. All waterways not included in 1-4, above, that are served by an existing or proposed federal navigation project, and adjacent wetlands. The Philadelphia and New York Districts will provide NJDEPE with a listing of such projects and update those lists as necessary.

C. Modifications to the extent of State regulated waters will be made when the Corps makes a navigability determination in accordance with the provisions of 33 C.F.R. Part 329 (1987) that the waterway is presently used or is susceptible to use in its natural condition or by reasonable improvement as a means to transport interstate or foreign commerce. Modifications will be made according to the provisions of section II. B. of this MOA.

IV. JOINT PROCESSING PROCEDURES

In areas where NJDEPE and the Corps have concurrent regulatory jurisdiction, NJDEPE and the Corps agree to establish and follow Joint Processing Procedures. These procedures will significantly reduce both duplicative regulatory effort by NJDEPE and the Corps, and duplicative requirements upon applicants for NJDEPE and Corps permits. The procedures include joint applications, designating NJDEPE as the lead agency for jurisdictional determinations/letters of interpretation, and programmatic general permits to be issued by the Corps under the authority of 33 C.F.R. Section 325.5(c) (3).

V. PERMITS AND PENDING PERMIT APPLICATIONS

A. INDIVIDUAL PERMITS

Department of the Army Individual permits issued prior to the date of assumption for regulated activities in assumable waters shall remain in effect for the purposes of Section 404 after State assumption. These permits shall continue to be effective for the original duration established by the Corps. Requests for extensions or modifications of the above described permits, after the date of assumption, shall be made to NJDEPE.

B. NATIONWIDE PERMITS

On November 22, 1991, the Chief of Engineers issued thirty-seven (37) nationwide permits which authorize many regulated activities, 51 Fed. Reg. 41254 (codified at 33 C.F.R. Section 330). However, the Nationwide permits adopted on November 22, 1991 do not constitute a basis for exemption from the FWPA and therefore permits under the State Program are required.

C. REGIONAL PERMITS (STATE PROGRAM GENERAL PERMITS)

After assumption of the 404 program by NJDEPE, the Corps will no longer issue regional permits in waters subject to regulation under the State Program. Authorizations approved prior to the date of assumption, under existing State program general permits issued by the Corps District Engineer, for regulated activities in assumable waters, shall remain in effect for the purposes of Section 404 after State assumption. These authorizations shall continue to be effective for the original duration established by the Corps. Requests for extensions or modifications of the above described permits, after the date of assumption, shall be made to NJDEPE.

D. STATEWIDE GENERAL PERMITS

Authorizations approved prior to the date of assumption under Statewide general permits issued by the Commissioner of the NJDEPE for regulated activities in assumable waters, shall remain in effect for the purposes of Section 404 after State assumption. These permits shall continue to be effective for the original duration.

E. Upon notification of program approval from the Administrator of EPA, the Corps will transfer to the NJDEPE any pending permit application files within the area of State regulated waters. The Corps will however, retain the records pertaining to completed, currently valid permits and authorizations in order that the Corps may continue to administer and enforce the terms and conditions of these permits. However, upon request by the Corps, NJDEPE will assist in administering and enforcing the terms and conditions of specific permits.

VI. REVIEW OF APPLICATIONS FOR STATE PROGRAM PERMITS

A. The Corps reserves the right to review applications for permits to be issued under the State Program, for projects which, due to their size or scale, may have an impact upon navigation in Navigable Waters of the United States as defined at 33 C.F.R. Part 329, and projects involving discharges which could have an impact upon existing or proposed Corps projects. The Corps shall provide a list to the NJDEPE of proposed Corps projects which may be impacted by projects proposed by other persons. The Corps agrees to update this list as necessary.

VII. ENFORCEMENT

A. In those waters subject to the State Program, the Corps will not be responsible for enforcing against unauthorized discharges of dredged and fill material in violation of the CWA which occur after the effective date of this MOA.

NJDEPE will take timely and appropriate enforcement action

against persons in violation of the State Program permit conditions and against persons conducting unauthorized discharges of dredged or fill material into state regulated waters pursuant to N.J.A.C. 7:7A-15.

B. The Corps will retain the records and responsibility for enforcement actions for unauthorized activities which occurred prior to the effective date of the FWPA.

C. For those unauthorized activities which occurred after the effective date of the FWPA but prior to the effective date of this MOA, which are the subject of ongoing enforcement actions by both the State and the Corps, the Corp agrees to transfer the lead for these cases to the State. However, upon request by the NJDEPE, the Corps will assist in resolving specific cases. The NJDEPE will notify the Corps of the proposed resolution of transferred cases. If the Corps does not disagree with the action to be taken by the State, then the resolution of an action by the State will also constitute resolution of the Federal action. If there is a disagreement or an unusual circumstance concerning a violation, the parties to this agreement retain authority to independently pursue resolution of a violation.

STATE OF NEW JERSEY

Date: 3-4-97

By: _____
Scott A. Weiner, Commissioner
State of New Jersey
Department of Environmental Protection
and Energy

DEPARTMENT OF THE ARMY

Date: 4 MAR 97

By: _____
PAUL Y. CHINEN, Brigadier General
United States Army
Division Engineer
North Atlantic Division

MEMORANDUM OF AGREEMENT BETWEEN

THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION & ENERGY

AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I. GENERAL

A. Purpose

This Memorandum of Agreement (hereinafter "Agreement") between the New Jersey Department of Environmental Protection & Energy (NJDEPE) and the United States Environmental Protection Agency (Region II) (EPA), is entered into to enable the State of New Jersey to carry out the policies, regulations and procedures necessary to administer the permit program established pursuant to Section 404 of the Clean Water Act (CWA), 33 U.S.C. 1344, hereinafter referred to as "the 404 program," thereby fulfilling the requirements of the Freshwater Wetlands Protection Act, P.L. 1987, c. 156. This agreement does not create any substantive standards relating to any aspect of the permit program or impose any legal obligations on the public.

B: Parties and Effective Date

(1) This agreement is entered into by the State of New Jersey through the Commissioner of the NJDEPE ("Commissioner") and the United States Environmental Protection Agency through the Regional Administrator of Region II ("Administrator").

(2) This agreement shall be executed by the Commissioner and the Administrator and shall become effective at the time the NJDEPE's authorization to administer the 404 program takes effect, which shall be the date set out in the Federal Register of EPA's decision to approve the State's application to administer the 404 program.

(3) Nothing in this agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under the CWA, nor shall it restrict NJDEPE's enforcement responsibilities under New Jersey law.

(4) This agreement will remain in effect until such time as NJDEPE's program authorization is modified or withdrawn by EPA or is voluntarily transferred by NJDEPE to the Army Corps of Engineers (ACOE) according to the criteria and procedures established in 40 C.F.R. 233.53.

C. Modification

This agreement may be modified pursuant to 40 C.F.R. 233.16 upon the initiative of either party. Amendments to this

agreement shall be in writing, and shall be effective upon the signature of both parties.

D. Confidentiality

(1) All of the information EPA transfers to NJDEPE will be provided subject to the procedures and limitations of 40 C.F.R. 233.3.

(2) Any information obtained or used in the administration of the State Program shall be available to EPA without restriction. If information has been submitted to NJDEPE under a claim of confidentiality, NJDEPE must inform EPA of such claim. All information submitted by NJDEPE subject to a claim of confidentiality shall be treated in accordance with the procedures of 40 C.F.R. Part 2., 40 C.F.R. 233.3(c) and N.J.A.C. 7:7A-11.4.

E. Computing Time Periods

In computing any period of time prescribed by this agreement, the day on which the designated period of time begins shall not be included. Saturdays, Sundays, and legal holidays shall be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

F. Legal Framework

(1) The legal basis for the State's assumption of the 404 program is provided by Section 404(g)(1) of the Clean Water Act, which authorizes the Administrator of the EPA to approve state administered programs for regulating the discharge of dredged or fill material into State regulated waters as defined at 40 C.F.R. 232.2, and by N.J.S.A. 13:9B-27 of the Freshwater Wetlands Protection Act which mandates the State of New Jersey to take all appropriate actions to secure the assumption of the permit jurisdiction exercised by the U.S. ACOE pursuant to the Federal Act.

(2) The implementing regulations concerning assumption of the 404 program under the CWA are found at 40 C.F.R. 230, 232 and 233.

(3) The State's legal authority for the activities required for assumption is provided by N.J.S.A. 13:9B-1 et seq., and N.J.S.A. 58:10A-1 et seq., which authorizes the NJDEPE to issue permits for the discharge of dredged or fill material into waters of the United States within the boundary of New Jersey or subject to its jurisdiction.

(4) Prior to the assumption of the 404 program by NJDEPE, the North Atlantic Division of the United States Army Corps of

Engineers (Corps) has administered the 404 program in New Jersey. The Division Engineer of the North Atlantic Division has been delegated the authority to enter into a Memorandum of Agreement which will transfer the program to NJDEPE pursuant to CWA requirements.

(5) NJDEPE's Memorandum of Agreement with the Corps stipulates joint permit processing responsibilities for activities which involve non-assumable waters, as well as transfer of permitting authority from the Corps to NJDEPE. This agreement identifies the State waters to be regulated, joint processing procedures, general permit procedures, transfer of records, protection of navigation or anchorage, permitting for Corps water resource projects and permitting for emergency work. The legal effect of the Memorandum of Agreement between the NJDEPE and the Corps is conditioned upon approval of the State's program and of this agreement between NJDEPE and the EPA.

G. Policy Statement

(1) Each of the parties to this agreement is responsible for ensuring that its obligations under the CWA are met. Upon approval of the State's application from EPA, NJDEPE assumes primary responsibility for implementing certain provisions of the 404 program within New Jersey's boundaries. This will be accomplished under the authority of State law. EPA retains its responsibility to ensure full and faithful execution of the requirements of the CWA, including direct implementation in the event NJDEPE does not act in accordance with the CWA, or does not act in a timely fashion. The Commissioner and the Administrator agree to maintain a high level of cooperation and coordination between their respective staffs and to work in partnership to assure successful and effective administration of the 404 program.

II. PERMIT APPLICATION REVIEW AND PERMIT ISSUANCE

A. Lead Agency Responsibility for 404 Program

(1) NJDEPE is the lead agency in New Jersey for administering the State Program. The Commissioner shall administer the State Program as approved by EPA, using this MOA, applicable state and federal laws, and any separate working agreement which shall be entered into with the Administrator as necessary for full administration of the program. The strategies and priorities for permit review, compliance monitoring and enforcement of permits shall be established by the Commissioner and shall be reviewed annually by the Administrator.

(2) NJDEPE is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing and terminating or denying State Program permits for all discharges of dredged or fill material into state regulated waters, as defined at 40 C.F.R. 232.2. The Commissioner has

delegated the State Program to Environmental Regulation subject to the provisions of N.J.A.C. 7:1-1.3. NJDEPE will use procedures and policies found in N.J.A.C. 7:7A and N.J.A.C. 7:14 in its administration of the program.

B. Waiver of Review

(1) Pursuant to Section 404(k) of the CWA, EPA waives the requirements of Section 404(j) regarding Federal review of NJDEPE permit applications for all but the following categories of permits:

a. Draft general permits;

b. Discharges with reasonable potential for affecting Federally listed or proposed endangered or threatened species;

c. Discharges of dredged or fill material which have the potential for adverse impacts on the waters of a state other than New Jersey;

d. Discharges known or suspected to contain toxic pollutants as identified by Section 307(a)(1) of the CWA; hazardous substances identified pursuant to Section 311 of the CWA and Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq.; toxic substances as defined by Section 3 of the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.; and hazardous waste as defined by Section 1004(5) of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.;

e. Discharges located in the proximity of a public water supply intake;

f. Discharges within critical areas established under State or Federal law, including but not limited to National and State parks; fish and wildlife sanctuaries or refuges; National and historical monuments; wilderness areas and preserves; sites identified or proposed under the National Historic Preservation Act; and components of the National Wild and Scenic Rivers system;

g. The filling of 5 or more acres of freshwater wetlands or State open waters and/or any regulated activity which results in significant reductions in the ecological, commercial, or recreational values of five or more acres of freshwater wetlands or State open waters;

h. Culvert enclosures of more than 100 feet with more than 200 cubic yards of fill in waters regulated by NJDEPE;

i. Channelization of more than 500 feet of a river or stream.

(2) The Administrator may terminate waiver of the review of categories of permit applications outlined in this MOA as well the waiver of review of specific permit actions at any time by sending the Commissioner written notice of implementation.

(3) The Department may request review by the EPA of specific projects based on the potential for significant adverse environmental impacts.

C. Review Procedures

(1) The Commissioner shall promptly transmit to the Administrator:

a. A copy of the public notice for any complete permit applications received by NJDEPE, except those for which permit review has been waived under this agreement. NJDEPE shall supply the Administrator with copies of public notices for permit applications for which permit review has been waived whenever requested by EPA.

b. A copy of a draft general permit whenever NJDEPE intends to issue or amend a general permit. The draft general permit shall comply with the requirements of 40 C.F.R. 233.21.

c. Notice of every significant action taken by NJDEPE related to the consideration of any draft general permit or permit application except those for which federal review has been waived.

d. A monthly report outlining all completed permit decisions and jurisdictional determinations. NJDEPE should supply the Administrator with a copy of any permit or jurisdictional determination whenever requested by EPA.

(2) If the information provided is inadequate to determine whether the permit application or draft general permit meets federal requirements, the Administrator may, within 30 days of receipt of the information, request the Commissioner to transmit to the Administrator the complete record of the permit proceedings before NJDEPE, or any portion of the record, or any other information, including a supplemental application, that the Administrator determines is necessary for review.

(3) Unless review has been waived under this agreement, the Administrator shall provide a copy of each of the documents specified at 40 C.F.R. 233.50 to the Corps, FWS, and the United States National Marine Fisheries Service (NMFS) in accordance with the procedures at 40 C.F.R. 233.50.

(4) If the Administrator intends to comment upon, object to, or make recommendations with respect to a permit application, draft general permit, or the Commissioner's failure to accept the recommendations of an affected state, the Administrator shall so

notify the Commissioner in accordance with 40 C.F.R. 233.50. If the Commissioner has been so notified, the Commissioner and the Administrator shall follow the procedures set forth at 40 C.F.R. 233.50.

(5) In the event that NJDEPE neither satisfies EPA's objections or requirement for a permit condition nor denies the permit, the Corps shall process the 404 permit application.

D. Prohibitions on Issuing Permits

No permit shall be issued by the Department in the following circumstances:

(1) When permit does not comply with the requirements of the CWA or regulations thereunder, including the Section 404(b)1 Guidelines (40 CFR Part 230).

(2) When the Regional Administrator has objected to the issuance of the permit under 40 C.F.R. Part 233.50 and the objection has not been resolved to the Regional Admininistrator's satisfaction.

(3) When the proposed discharges would be in an area which has been prohibited, withdrawn, or denied as a disposal site by the Administrator under Section 404(c) of the CWA, or when the discharge would fail to comply with a restriction imposed thereunder.

(4) If the Corps determines, after consulting with the Coast Guard, that anchorage and navigation of any navigable waters would be substantially impaired.

III. ENFORCEMENT

A. EPA will retain responsibility for all pending enforcement actions for which EPA has requested lead agency status prior to assumption.

B. State Enforcement

NJDEPE will take timely and appropriate enforcement action against persons in violation of the State Program permit conditions and against persons conducting unauthorized discharges of dredged or fill material into state regulated waters pursuant to N.J.A.C. 7:7A-15.

C. EPA Enforcement Oversight

(1) In instances where the EPA determines that the NJDEPE has not initiated timely and appropriate enforcement action regarding a State Program permit violation or an unauthorized discharge, EPA may proceed with any or all of the enforcement options available under Section 309 of the CWA.

(2) Prior to proceeding with federal enforcement action against a State Program permit violator or an unauthorized discharger, and for purposes of providing notice only, EPA shall inform NJDEPE that federal enforcement action is to be initiated forthwith. This notification shall be in the form of a telephone or written communication by the Administrator to the Commissioner or a designee. Except in the exercise by EPA of its emergency power under Section 504 of the CWA, such notification shall be provided in all cases of federal enforcement action regardless of the existence or extent of previous communication between EPA and NJDEPE on the matter. It is expected that preliminary staff discussions will take place between EPA and NJDEPE representatives before institution of federal enforcement action. If EPA fails to provide notice such failure does not invalidate EPA's ability to enforce.

D. Joint Enforcement

(1) Either agency may request the other to take independent or joint enforcement action on any case. Any such request shall be in writing and a response shall be given within 30 days of receipt. Where there may be an imminent and substantial danger to human health or welfare or the environment, such a request may be made by telephone or other means. The details of enforcement coordination will be specified in a yearly NJDEPE/EPA agreement, which will be drafted following state program approval and reviewed annually. The NJDEPE/EPA agreement shall not override the terms of this agreement.

IV. Program Maintenance

A. Duty to Maintain Program compatibility

(1) NJDEPE's State Program will be conducted in conformance with applicable regulations and definitions found in 40 C.F.R. Parts 230 and 233, and in N.J.A.C. 7:7A, unless provided otherwise in this agreement. Whenever any regulations found in 40 C.F.R. Parts 230 and 233 have been revised or amended in a manner which affects the State Program, the Administrator shall so notify the Commissioner. However, nothing precludes the State from adopting or enforcing requirements which are more stringent or from operating a program with greater scope than that required by 40 C.F.R. Parts 230 and 233.

(2) EPA will keep NJDEPE informed of the content and meaning of federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State Program. EPA will forward copies of all guidance documents, as they become available, to NJDEPE. Guidance documents are to be sent to: Land Use Regulation Program, Environmental Regulation, New Jersey Department of Environmental Protection and Energy, CN 401, 501 East State Street, Trenton, New Jersey 08625. EPA will also provide general technical

guidance to NJDEPE. EPA will share with NJDEPE any national reports developed by EPA from the data obtained through state reporting requirements. EPA shall provide NJDEPE with all guidance and technical resource documents unless EPA is notified that guidance and technical documents are being sent directly to NJDEPE by EPA headquarters.

(3) The Commissioner agrees to inform the Administrator of any proposed or adopted program changes which would affect NJDEPE's ability to implement the authorized program, any proposed transfer or responsibility to another agency, and any other modifications which are significant to administration of the program.

B. EPA Oversight of State Program

(1) The Administrator will assess the administration and enforcement of the State Program on a continuing basis for equivalence and consistency with the CWA, this agreement, and all applicable federal requirements and policies and for adequacy of enforcement. This assessment will be accomplished by : (1) timely EPA review of information submitted by NJDEPE in accordance with this agreement; (2) permit overview; (3) compliance and enforcement overview; and (4) annual review of NJDEPE program activities.

(2) The Administrator may also consider, as part of this regular assessment, written comments about NJDEPE's program administration and enforcement that are received from regulated persons, the public, and federal, state and local agencies. Any response by the Administrator to the public comment will be preceded by notice to the Commissioner in accordance with this paragraph. Copies of any such comments received by the Administrator will be provided to the Commissioner within thirty (30) days of their receipt by EPA. The Commissioner will have 30 days from receipt of the copies of such comments to provide the Administrator with NJDEPE's response. The Administrator will take NJDEPE's response into account prior to issuing a response to regulated persons, the public, or federal, state or local agencies. In addition, the Commissioner will be copied on all responses issued by the Administrator within 30 days of their issuance.

C. Annual Reports

(1) Within 90 days after completion of the State's fiscal year (June 30), the Commissioner shall submit to the Administrator a draft annual report in accordance with the requirements of 40 C.F.R. 233.52.

(2) The State shall make the draft annual report available for public inspection.

(3) Within 60 days of receipt of the draft annual report, the Administrator will complete review of the draft report and

transmit comments, questions, and/or requests for additional evaluation and/or information to the Commissioner.

(4) Within 30 days of receipt of the Administrator's comments, the State will finalize the annual report, incorporating and/or responding to the Administrator's comments, and transmit the final report to the Administrator.

(5) Upon acceptance of the annual report, the Administrator shall publish notice of availability of the final annual report.

D. Annual Review and Performance Evaluation

(1) EPA shall conduct annual performance evaluations of the State Program from NJDEPE's annual reports and other requested information. The performance evaluation shall determine the State Program's consistency with the program as approved, and with applicable regulations, guidance and policies. The annual review will be conducted within 60 days of receipt by the Administrator of the final State annual report, and will include a review of expenditures of federal funds.

(2) EPA shall submit a report of the evaluation findings to the NJDEPE outlining any perceived deficiencies in program performance and making recommendations for improving NJDEPE operations. If NJDEPE is requested by EPA to respond to the EPA program evaluation report, NJDEPE will have 60 days from the date of receipt of the report to respond in writing. NJDEPE's response shall address each EPA recommendation specifically.

(3) Either party to this agreement may call a meeting to discuss NJDEPE's annual report, the annual review process, and/or the performance evaluation.

E. Procedures for Revision of the State Program

(1) Either EPA or NJDEPE may initiate program revision. Program revision may be necessary when the controlling federal or state statutory or regulatory authority is modified or supplemented or for other reasons. The NJDEPE shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

(2) Revision of the State Program shall be accomplished in accordance with the requirements of 40 C.F.R. 233.16 and of applicable State law.

F. Transfer or Withdrawal of State Program

(1) The EPA may withdraw program approval from NJDEPE upon a finding that the State Program no longer complies with the requirements of the CWA and implementing regulations, and that NJDEPE has failed to take corrective action.

(2) The criteria and procedures for withdrawal of a state program, found at 40 C.F.R. 233.53, shall govern program withdrawal.

(3) NJDEPE may voluntarily transfer the State Program to the Corps using the procedures at 40 C.F.R. 233.53(a).

VII. Signatures

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY

Date: 3-4-97 By: _____
Scott A. Weiner, Commissioner

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION II

Date: _____ By: _____
William Muszynski
Acting Regional Administrator

SECTION: A-IX

LOCAL OPERATING PROCEDURE NJDEPE / ACOE

LOCAL OPERATING PROCEDURE
BETWEEN
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY
AND THE U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA AND NEW YORK DISTRICTS

SUBJECT: Local Operating Procedure between the New Jersey Department of Environmental Protection and Energy and the U.S. Army Corps of Engineers, Philadelphia and New York Districts.

1. Purpose: The purpose of this agreement is to establish procedures to minimize, to the maximum extent practicable, duplication regarding the delineation of Federal and State regulated waters and wetlands within the State of New Jersey.

2. Applicability/Authority: Federal and State regulated waters and wetlands within the State of New Jersey.

   a. Section 404 of the Clean Water Act

   b. Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

3. Procedure:

   a. Delineations of waters and wetlands shall be performed and/or verified by the New Jersey Department of Environmental Protection and Energy utilizing a multi- parameter method. These determinations will be accepted by the U.S. Army Corps of Engineers, Philadelphia and New York Districts, as accurate delineations of Federal and State regulated waters and wetlands within the geographic boundaries of New Jersey.

   b. The New Jersey Department of Environmental Protection and Energy will be the lead agency with respect to delineations of waters and wetlands within the geographic boundaries of New Jersey. Requests/inquiries regarding these delineations received by the U.S. Army Corps of Engineers will be forwarded to the New Jersey Department of Environmental Protection and Energy. Applicants will be advised of their need to apply to the New Jersey Department of Environmental Protection and Energy for verification/establishment of the delineations.

   c. Nationwide permit requests received by the U.S. Army Corps of Engineers will be reviewed for the proposal's applicability for authorization under the nationwide permit program. That determination will be conveyed to the applicant in writing. In accordance with paragraph (b) above, requests/inquiries for the delineation of waters and wetlands received in conjunction with nationwide permit requests will be directed to the New Jersey Department of Environmental Protection and Energy.

The applicant will be advised of his/her need to apply to the New Jersey Department of Environmental Protection and Energy for verification/establishment of the delineations. Additionally, the State will review the information in order to determine whether the project meets the grandfathering criteria of the State's Freshwater Wetlands Protection Act (Act) or requires a permit under the Act.

d. Upon completion of the water and wetlands delineation and verification of a survey of the delineation, the accuracy of that survey will be confirmed in writing to the applicant. The New Jersey Department of Environmental Protection and Energy will include in their confirmation letter an approval statement/letter on behalf of the U.S. Army Corps of Engineers.

e. Upon completion of the waters and wetlands delineation/verification, the New Jersey Department of Environmental Protection and Energy will provide the U.S. Army Corps of Engineers with the following information:

   1. One copy of the State's confirmation letter;

   2. One copy of the final, approved survey of the limits of the regulated waters and wetlands on the property;

   3. One copy of the technical information used in establishing the waters and wetlands boundaries.

f. This agreement does not pertain to waters and wetlands delineations concerning enforcement actions (permitless discharges). All parties to this agreement retain authority to independently establish jurisdictional boundaries under these circumstances.

g. If there is disagreement or an unusual circumstance concerning a jurisdictional determination, the parties to this agreement retain authority to independently or jointly establish jurisdictional boundaries.

4. Both agencies agree to work towards development of a joint evaluation procedure including, but not limited to, a joint application form and programmatic general permit.

5. This agreement will be effective on 9 August 1991 and will continue until modified or revoked by agreement of all of the parties or until revoked by any party alone upon written notice.

Kenneth H. Clow
Lieutenant Colonel, Corps of Engineers
Philadelphia District Engineer

R.M. Danielson
Colonel, Corps of Engineers
New York District Engineer

John R. Weingart
Assistant Commissioner for Environmental Regulations
New Jersey Department of Environmental Protection

SECTION: A-X

NEW JERSEY WETLANDS KEY MAP

New Jersey Wetlands Maps

- **Authorization:** The Department of Environmental Protection has prepared wetlands maps, as required by the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 to provide a functional, complete, and up to date composite wetlands inventory for the entire state. These maps give the best indication currently available of where wetlands are, and are not, located in New Jersey. The maps however, are not a regulatory tool. To make development or land preservation decisions about a specific site, particularly if it is in or adjacent to a wetlands polygon, people are urged to first contact the Department of Environmental Protection's Division of Coastal Resources to obtain a Letter of Interpretation.

- **About the Maps:** Each map is prepared from a 1986 color infra-red aerial photograph. The photo basemap is exactly one quarter of the U.S. Geological Survey Topographic Quadrangle map. There are 624 quarter quadrangles to cover the entire state.

- **Map Scale:** The scale of each map is one inch = one thousand feet. The ratio in inches is 1:12,000.

- **Wetland Delineation:** Each basemap has a corresponding wetlands delineation. Each delineation is based on the 1986 color infra-red photography. This photography produces characteristic wetland images or "signatures". Each characteristic signature is interpreted by experienced photo interpreters and verified by field investigation. Additional information such as county soil surveys are used to assist in the delineation process. Once the analysts have developed a wetland signature, they then delineate all areas of wetlands showing the characteristic signature. These delineated areas are placed on the quarter quads as wetland polygons or linear features.

- **Wetland Classification:** Wetland systems are classified according to type by the U.S. Fish and Wildlife Service Cowardin Classification System. The five basic ecological systems are: Marine, Estuarine, Riverine, Palustrine, and Lacustrine. Further differentiation is possible by class, subclass, water regime and special modifiers. Each polygon is assigned a unique alpha numeric sequence that describes the vegetation, frequency of inundation, and special site conditions. Some of the polygons are quite small and the basemap is easily obscured by large labels. To prevent this, each classification is coded with a numeric label. Mapping convention and scale make it impossible to show polygons less than one acre in area, however these areas are still regulated.

- **Look-Up Table:** Each composite map has a look-up table at the top of the map. This table contains both the Cowardin Classification of each wetlands polygon found on the map and the number code assigned to the classification type. For example, a red maple swamp would be classified as a PFO1C: Palustrine Forest, Deciduous, Seasonally Flooded, and Broadleafed.

- **Map Uses:** These maps are intended to be used as a planning guide. A review of the map will show areas that may contain regulated wetlands. They will alert the user to both occurrence and type of wetlands. Early planning will allow protection of the wetlands and associated transition areas.

- **Accuracy: Each basemap meets National Map Accuracy Standards. This is the most** accurate mapping ever compiled of the entire state. Each map contains both latitude and longitude as well as state plane coordinate systems. A diagraph is found on the bottom of each map relating magnetic and true north. Hikers and other people who need accurate maps of the outdoors can use the basemaps to find their way, since the map is an enlarged aerial photograph, and contains great detail.

  Some maps cover areas of New Jersey previously mapped under the Wetlands Act of 1970, N.J.S.A. 13:9B-1 et seq. The Upper Wetlands Boundary, UWB, has been transferred to the present wetlands maps to show the areas regulated under the Wetlands Act of 1970. Due to the scale change involved in transfer of the UWB, the previously promulgated 1970 wetlands maps must be consulted for the exact line placement.

- **Map Products:** Wetland maps come in a variety of forms depending on their intended use. The most common form is a blueline paper print. This is a paper copy of the composite

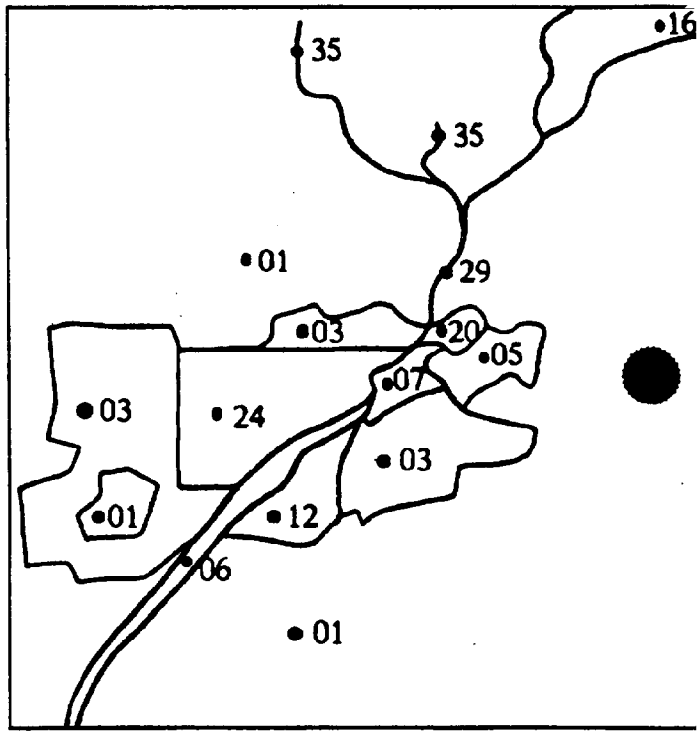
map and is available from the Department of Environmental Protection Maps and Publications, Bureau of Revenue, 428 East State Street, Trenton, N.J. 08625 for a fee of $5.00. A copy of the enlarged aerial photograph, without wetlands delineation, and stable base or mylar copies of both the basemap and composite are available directly from the contractor. These copies may not be reproduced. They are available from the Markhurd Corporation, 13400 68th Avenue North, Minneapolis, MN, 55369.

Additional Sources of Information:

- ❑ Freshwater Wetlands Protection Act Rules-N.J.A.C. 7:7A, As Amended July 17, 1989.
- ❑ Classification of Wetlands and Deepwater Habitats of the United States, U.S. Fish and Wildlife Service. FWS/OBS-79/31. 103 pp.
- ❑ Federal Manual for Identifying and Delineating Jurisdictional Wetlands. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and U.S.D.A. Soil Conservation Service, Washington, D.C. Cooperative Technical Publication. 1989. 76 pp. plus appendices.
- ❑ National List of Plant Species That Occur in Wetlands: 1988 National summary, U.S. fish and Wildlife Service, Biological Report 88(24). 1988 226 pp.
- ❑ Wetlands of New Jersey, Tiner, R. W. Jr., U.S. Fish and Wildlife Service, 1985. 117 pp.
- ❑ Hydric Soils of New Jersey, United States Department of Agriculture, Soil Conservation Service. 1985. 12 pp.
- ❑ Rules on Coastal Resources and Development: N.J.A.C. 7:7E-1.1 et seq. 1988. 238 pp.

NEW JERSEY WETLANDS MAPS

01 UPLAND	07 POWH	24 MoDAg
03 PFO1A	12 PSS1A	29 R30W
05 PEM1C	16 PFO1B	35 R3UB1
06 R20W	20 PSS1B	

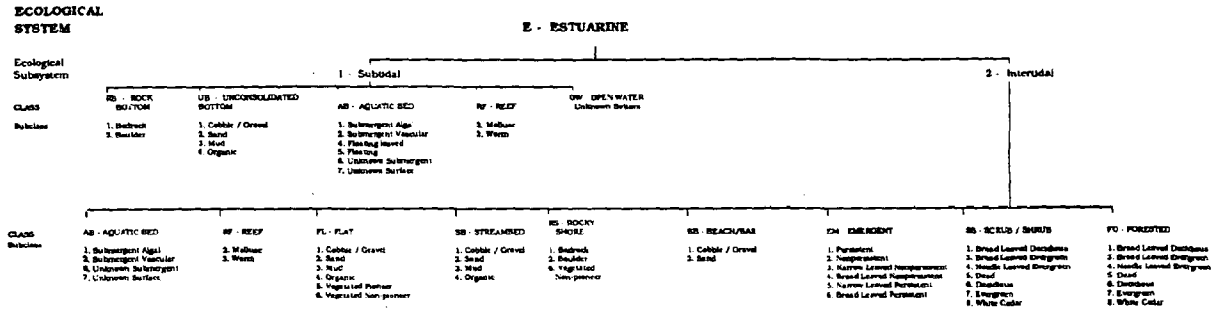


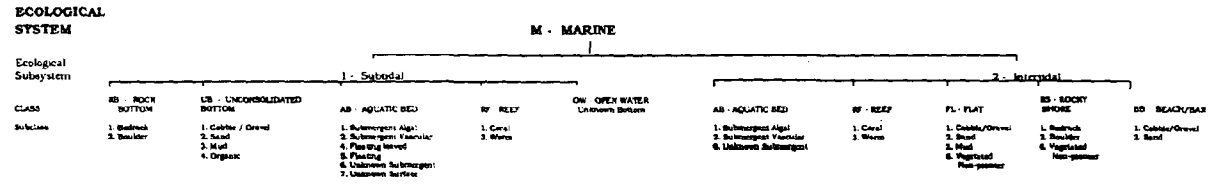
Department of Environmental Protection
Division of Coastal Resources
CN 401
Trenton, NJ 08625

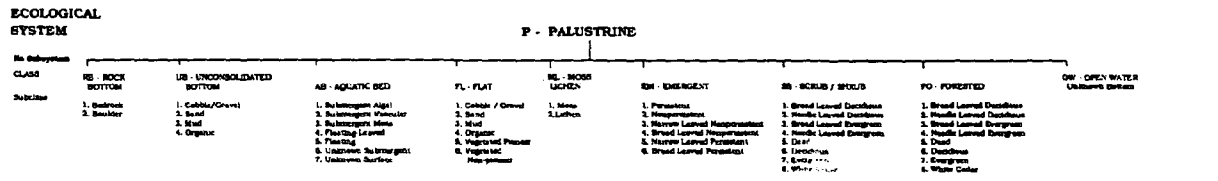
James Florio, Governor
Judith A. Yaskin, Commissioner

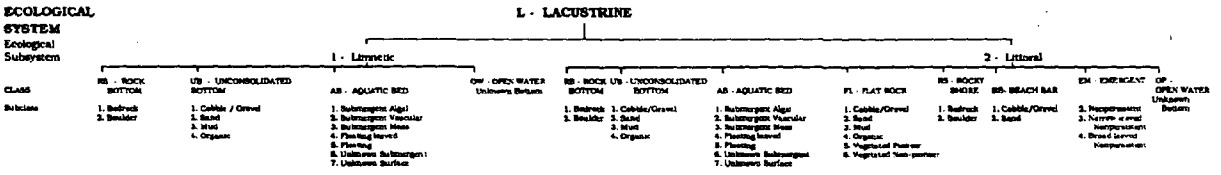
WETLAND LEGEND

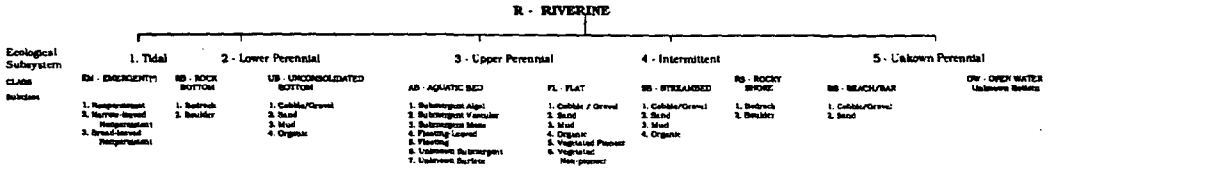
U - Primarily represents **upland** areas, but may include unclassified wetlands less than 1 acre in area, non photo-identifiable areas and/or unintentional omissions.











(*) EM - EMERGENTS are only found in the Riverine Tidal and Riverine Lower Perennial Ecological Subsystem. All other classes are found in all Riverine Ecological Subsystems

MODIFYING TERMS

In order to more adequately describe wetland and aquatic habitats one or more of the water regime, water chemistry, soil, or special modifiers may be applied at the class or lower level in the hierarchy. The farmed modifier may also be applied to the ecological system.

WATER REGIME(1)		WATER CHEMISTRY			SOIL	SPECIAL MODIFIERS
Non-Tidal	Tidal	Coastal Salinity	Inland Salinity	pH Modifiers for all Fresh Water		
A Temporary B Saturated C Seasonal D Seasonal Well-drained E Seasonal Saturated F Semipermanent G Intermittently Exposed	H Permanent J Intermittently Flooded K Artificial Z Intermittently Exposed/Permanent W Intermittently Flooded/Permanent Y Saturated/Semipermanent/Permanent U Unknown	1 Hypersaline 2 Eusaline 3 Mixohaline (Brackish) 4 Polyhaline 5 Mesohaline 6 Oligohaline 0 Fresh	7 Hypersaline 8 Eusaline 9 Mixohaline 0 Fresh	+ Acid - Circumneutral 1 Alkaline	a Organic s Mineral	b Beaver d Partially Drained/Ditched f Farmed MODL MODB MODAg MODD

(1) Information on the water regime modifiers found on this legend, but not found in the classification system, may be obtained from the above listed source.

SOIL CONSERVATION DISTRICTS (SCD) IN NEW JERSEY

Bergen SCD
327 East Ridgewood Avenue
Paramus, NJ 07652
201-261-4407

Burlington SCD
Cramer Building
Route 38
Mt. Holly, NJ 08060
609-267-7410

Camden SCD
Municipal Building
59 South White Horse Pike
Berlin, NJ 08009
609-767-6299

Cape-Atlantic SCD
Atlantic County Office Building
1200 West Harding Highway
Mays Landing, NJ 08330
609-625-3144

Cumberland SCD
PO Box 144
Deerfield, NJ 08313
609-451-2422

Freehold SCD
(Monmouth & Middlesex Counties)
211 Freehold Road
Manalapan, NJ 07726
201-446-2300

Somerset-Union SCD
Somerset County 4-H Center
308 Milltown Road
Bridgewater, NJ 08807
201-526-2701

Sussex SCD
330 Route 206 South
Newton, NJ 07860
201-579-5074

Gloucester SCD
Kandle Center
72 East Holly Avenue
Pitman, NJ 08071
609-589-5250

Hudson, Essex & Passaic SCD
571 Bloomfield Avenue
Verona, NJ 07044
201-239-1886

Hunterdon SCD
Extension Center Building
4 Gauntt Place
Flemington, NJ 08822
201-782-3915

Mercer SCD
508 Hughes Drive
Hamilton Square, NJ 08690
609-586-9603

Morris SCD
Court House
Morristown, NJ 07960
201-829-8699

Ocean SCD
6 Mott Place, CN 2191
Toms River, NJ 08753
201-244-7048

Salem SCD
1000 East Route 40, Box 47
Woodstown, NJ 08098
609-769-1124

Warren SCD
Stiger Street
Hackettstown, NJ 07840
201-852-2579

Department of Agriculture
State Soil Conservation Committee
CN 330
Trenton, NJ 08625
609-292-5540

SECTION: A-XI

ENDANGERED AND THREATENED SPECIES

ENDANGERED AND THREATENED WILDLIFE OF NEW JERSEY

Endangered Species are those whose prospects for survival in New Jersey are in immediate danger because of a loss or change in habitat, over-exploitation, predation, competition, disease, disturbance or contamination. Assistance is needed to prevent future extinction in New Jersey.

Threatened Species are those who may become endangered if conditions surrounding them begin to or continue to deteriorate.

BIRDS

Endangered

Pied-billed Grebe,* *Podilymbus podiceps*
Bald Eagle, *Haliaeetus leucocephalus***
Northern Harrier,* *Circus cyaneus*
Cooper's Hawk, *Accipiter Cooperii*
Red-shouldered Hawk, *Buteo lineatus* (Breeding)
Peregrine Falcon, *Falco peregrinus***
Piping Plover, *Charadrius melodus***
Upland Sandpiper, *Bartramia longicauda*
Roseate Tern, *Sterna dougallii*
Least Tern, *Sterna antillarum*
Black Skimmer, *Rynchops niger*
Short-eared Owl,* *Asio flammeus*
Sedge Wren, *Cistothorus platensis*
Loggerhead Shrike,
Vesper Sparrow, *Pooecetes gramineus*
Henslow's Sparrow, *Ammodramus henslowii*

Threatened

American Bittern*, *Botaurus lentiginosos*
Great Blue Heron*, *Ardea herodias*
Little Blue Heron, *Egretta caerulea**
Yellow-crowned Night Heron, *Nyctanassa violaceus*
Osprey, *Pandion haliaetus*
Northern Goshawk, *Accipiter gentilis*
Red-shouldered Hawk, *Buteo lineatus* (Non-breeding)
Black Rail, *Laterallus jamaicensis*
Long-eared Owl, *Asio otus*
Barred Owl, *Strix varia*
Red-headed Woodpecker, *Melanerpes erythrocephalus*
Cliff Swallow,* *Hirundo pyrrhonota*
Savannah Sparrow, *Passerculus sandwichensis*
Ipswich Sparrow, *Passerculus sandwichensis*
Grasshopper Sparrow, *Ammodramus savannarum*
Bobolink, *Dolichonyx oryzivorus*

*Only breeding population considered endangered or threatened
**Federally endangered or threatened

REPTILES

Endangered

Bog Turtle, *Clemmys muhlenbergi*
Atlantic Hawksbill, *Eretmochelys imbricata***
Atlantic Loggerhead, *Caretta caretta***
Atlantic Ridley, *Lepidochelys kempi***
Atlantic Leatherback, *Dermochelys coriacea***
Corn Snake, *Elaphe g. guttata*
Timber Rattlesnake, *Crotalus h. horridus*

Threatened

Wood Turtle, *Clemmys insculpta*
Atlantic Green Turtle, *Chelonia mydas***
Northern Pine Snake, *Pituophis m. melanoleucus*

**Federally endangered or threatened

ENDANGERED AND NONGAME SPECIES PROGRAM

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF FISH, GAME AND WILDLIFE

AMPHIBIANS

Endangered

Tremblay's Salamander, *Ambystoma tremblayi*
Blue-spotted Salamander, *Ambystoma laterale*
Eastern Tiger Salamander, *Ambystoma t. tigrinum*
Pine Barrens Treefrog, *Hyla andersonii*
Southern Gray Treefrog, *Hyla chrysoscelis*

Threatened

Long-tailed Salamander, *Eurycea longicauda*
Eastern Mud Salamander, *Pseudotriton montanus*

MAMMALS

Endangered

Bobcat, *Lynx rufus*
Eastern Woodrat, *Neotoma floridana*
Sperm Whale *Physeter, macrocephalus***
Fin Whale, *Balaenoptera physalus***
Sei Whale, *Balaenoptera borealis***
Blue Whale, *Balaenoptera musculus***
Humpback Whale, *Megaptera novaeangliae***
Black Right Whale, *Balaena glacialis***

INVERTEBRATES

Endangered

Mitchell's Satyr (butterfly), *Neonympha m. mitchellii*
Northeastern Beach Tiger Beetle, *Cicindela d. dorsalis*
American Burying Beetle, *Nicrophorus americanus***
Dwarf Wedge Mussel, *Alasmidonta heteredon***

**Federally endangered

FISH

Endangered

Shortnose Sturgeon, *Acipenser brevirostrum***

List revisions: March 29, 1979
January 17, 1984
May 6, 1985
July 20, 1987
June 3, 1991

The lists of New Jersey's endangered and nongame wildlife species are maintained by the DEP's Division of Fish, Game and Wildlife's, Endangered and Nongame Species Program. These lists are used to determine protection and management actions necessary to insure the survival of the State's endangered and nongame wildlife. This work is made possible only through voluntary contributions received through the Wildlife Check-off on the New Jersey State Tax Form. The Wildlife Check-off is the only major funding source for the protection and management of the State's endangered and nongame wildlife resource. For more information about the Endangered and Nongame Species Program or to report a sighting of endangered or threatened wildlife contact: Endangered and Nongame Species Program, Northern District Office, Box 383 R.D. 1, Hampton, N.J. 08827 or call (908) 735-8975.

SECTION B

FRESHWATER WETLANDS PROTECTION ACT RULES

AMMENDMENTS TO APRIL 19, 1993

SECTION B-1

N.J.A.C. 7:7A-1.4 DEFINITIONS

ENVIRONMENTAL PROTECTION AND ENERGY
ENVIRONMENTAL REGULATION - LAND USE REGULATION PROGRAM
Freshwater Wetlands Protection Act Rules
Adopted Amendments: N.J.A.C. 7:7A-1.4, N.J.A.C. 7:7A-2.7 and N.J.A.C. 7:7A-8.10
Proposed: March 16, 1992, at 24 N.J.R. 912 (b)
Adopted: March 16, 1993, by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy
Filed: March 16, 1993 as R.1993 d.159, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 13:9B-1 et seq. (P.L. 1987, c.156)
DEPE Docket Number: 06-92-02.
Effective date: April 19, 1993
Operative date:
Expiration date: March 16, 1997

7:7A-1.4 Definitions

"Advanced stages of construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine whether a project or part of a project is in "advanced stages of construction," the Department shall evaluate such proofs as may be provided by the applicant, including but not limited to, possession of a valid building permit (where legally applicable), evidence of a valid ACOE permit for those activities regulated under the 404 program, and evidence documenting completion of construction activities before the date of assumption. This evidence may include, but is not limited to, the following: documentation that the local construction official has completed the inspection listed at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Advanced stages of construction" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction.

SECTION B-II

N.J.A.C. 7:7A-2.7 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

7:7A-2.7 Activities exempted from permit requirement

(a) - (c) (No change.)

(d) Subject to the limitations of this section, the following are exempt from the requirements of the Act until the State assumes the Federal 404 program. These activities may need Federal 404 permits and/or a WQC:

1. Projects for which preliminary site plan or subdivision applications have received formal preliminary approvals from local authorities pursuant to the "Municipal Land Use Law," N.J.S.A. 40:55D-1 et seq., prior to July 1, 1988 provided those approvals remain valid under the Municipal Land Use Law. This excludes approvals which were given prior to the August 1, 1976 effective date of the Municipal Land Use Law. To qualify for an exemption under this N.J.A.C. 7:7A-2.7(d)1, a project must have received preliminary approval (as defined in N.J.S.A. 40:55D-6) of a subdivision or site plan. Sketch plat approval, a classification determination, or any other types of approvals referred to in the Municipal Land Use Law (e.g., building permits, variances or conditional use approval) is not sufficient to make the project eligible for an exemption under this N.J.A.C. 7:7A-2.7(d)1.

2. Projects as defined in N.J.S.A. 40:55D-1 et seq. have been submitted to the local authorities prior to June 8, 1987 and subsequently approved. If a project meets all criteria under this subsection to qualify for an exemption, except that the project has not yet received municipal approval, the Department will issue a letter certifying that the qualifying application was filed prior to June 8, 1987 and the project will receive an exemption upon receipt of preliminary approval from the municipality. To qualify for an exemption under this N.J.A.C. 7:7A-2.7(d)2, an application for preliminary approval must have been in proper form, must have been accompanied by all plans, data and information called for by the local land use ordinance and by statute for either a subdivision or site plan, as the case may be, and thus must have been in fact complete prior to June 8, 1987. An application for sketch plat approval, classification determination, or any of the other types of approvals referred to in the Municipal Land Use Law (e.g., building permits, variances or conditional use approval) is not sufficient to make the project eligible for an exemption under this N.J.A.C. 7:7A-2.7(d)2;

3. (No change.)

(e) - (h) (No change.)

(i) If the USEPA's regulations providing for the delegation to the State of the Federal wetlands program

7:7A-2.7 Activities exempted from permit requirement

(a) - (c) (No change.)

(d) Subject to the limitations of this section, the following are exempt from the requirements of the Act until the State assumes the Federal 404 program. These activities may need Federal 404 permits an

1. Projects for which pr or subdivision applications have r minary approvals from local authorities unicipal Land Use Law," N.J.S.A. 40:55D-1 July 1, 1988 provided those approvals re Municipal Land Use Law. This ex ch were given prior to the August 1, 197 the Municipal Land Use Law. To qualify for an exemption under this N.J.A.C. 7:7A-2.7(d)1, a project must have received preliminary approval (as defined in N.J.S.A. 40:55D-6) of a subdivision or site plan. Sketch plat approval, a classification determination, or any other types of approvals referred to in the Municipal Land Use Law (e.g., building permits, variances or conditional use approval) is not sufficient to make the project eligible for an exemption under this N.J.A.C. 7:7A-2.7(d)1.

2. Projects as defined in N.J.S.A. 40:55D-1 et seq. have been submitted to the local authorities prior to June 8, 1987 and subsequently approved. If a project meets all criteria under this subsection to qualify for an exemption, except that the project has not yet received municipal approval, the Department will issue a letter certifying that the qualifying application was filed prior to June 8, 1987 and the project will receive an exemption upon receipt of preliminary approval from the municipality. To qualify for an exemption under this N.J.A.C. 7:7A-2.7(d)2, an application for preliminary approval must have been in proper form, must have been accompanied by all plans, data and information called for by the local land use ordinance and by statute for either a subdivision or site plan, as the case may be, and thus must have been in fact complete prior to June 8, 1987. An application for sketch plat approval, classification determination, or any of the other types of approvals referred to in the Municipal Land Use Law (e.g., building permits, variances or conditional use approval) is not sufficient to make the project eligible for an exemption under this N.J.A.C. 7:7A-2.7(d)2;

3. (No change.)

(e) - (h) (No change.)

(i) If the USEPA's regulations providing for the delegation to the State of the Federal wetlands program

conducted pursuant to section 404 of the Federal Act require a permit for any of the activities exempted by this section, the Department shall require a permit for those activities so identified by the USEPA upon assumption of the Federal program. The exemptions in (d) 1 and 2 above shall be void as of the date of assumption by the Department of the Federal 404 program unless all requisite permits or concurrences with Federal permits were received from the United States Army Corps of Engineers prior to July 1, 1988 and remain valid, in which case the exemption will still be valid. Upon expiration of a permit issued by the Federal Act any application for renewal shall be made to the appropriate regulatory agency. The Department shall not require the establishment of a transition area as a condition of any renewal of a permit issued pursuant to the Federal Act prior to the effective date of the Act.

1. The Department will not require a permit or waiver pursuant to the Act to allow the completion of individual buildings, structures or other improvements, which are already in "advanced stages of construction," as defined in N.J.A.C. 7:7A-1.4, prior to the date of assumption. In addition to the completion of buildings, structures or other improvements, the Department will allow the completion of their appurtenant improvements. An applicant seeking to complete improvements which are in "advanced stages of construction" prior to the date of assumption shall submit the following documentation to the Department: a valid building permit (where legally applicable), and/or a valid ACOE permit for those activities regulated under the 404 program. In addition, the applicant shall submit **any** of the following proofs if available and applicable : documentation that the local construction official has completed the inspection listed at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; billing receipts documenting the completion of the above construction activities; or any other evidence documenting construction activities prior to the date of assumption.

SECTION B-III

N.J.A.C. 7:7A-8.10 HEARINGS AND APPEALS

LETTERS OF INTERPRETATION

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 N.J.A.C. 7:7A-8, 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 and Energy
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.

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