

State of New Jersey

N J L R C

New Jersey Law Revision Commission

FINAL REPORT AND RECOMMENDATIONS

relating to

ENVIRONMENTAL STATUTES - LAND USE REGULATION

October 1998

John M. Cannel, Esq., Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07102
973-648-4575
(Fax) 973- 648-3123
email: reviser@superlink.net
web site: <http://www.lawrev.state.nj.us>

Title - Environment

Subtitle - Land Use Regulation

This proposed subtitle contains a series of chapters each of which, except for the first and the last two, give the Department of Environmental Protection regulatory authority over land use in a specified area or over a certain type of project or development. The first chapter (Construction permits) sets forth time periods within which most permits must be processed. The last two chapters establish independent bodies, i.e., the Pinelands Commission and the Hackensack Meadowlands Development Commission, and empower those bodies to regulate land use in the geographic areas within their jurisdiction. With the exception of the Waterfront Development Act, circa 1914, the regulatory authority conferred in these proposed chapters originated in legislation enacted from the early 1960's onward. This proposed subtitle consolidates these chapters into a single subtitle to facilitate easy reference to various statutory schemes which regulate land use through a permit application and review process.

Because virtually all of the source legislation is so recent, there is little need in most of these chapters for updating archaic language or eliminating superseded enactments. For the most part the revision process has been confined to eliminating executed provisions, conforming and modernizing language, and rearranging provisions for clarity and consistency.

The Waterfront Development Act is presently compiled in Title 12 Navigation and the Flood Hazard Area Control Act is presently compiled in Title 58 Waters and Water Supply. All of the remaining material in this proposed subtitle is presently compiled in Title 13 Conservation and Development--Parks and Recreation, in particular chapters 9A Coastal Wetlands, 9B Freshwater Wetlands, 19 Coastal Protection, 17 Hackensack Meadowlands Reclamation and Development and 18 and 18A concerning the Pinelands. A few sections within those chapters eventually will be moved, however, to the proposed new subtitle "Navigation."

Chapter - Construction permits

This chapter derives from the provisions of L.1975, c.232 (13:1D-29 to -34). These provisions were enacted in response to legislative concerns about time delays in the processing of permits under various "land use" regulatory acts put in place in the early 1970's. As enacted, the provisions applied to permits under the Waterfront Development Act, the Coastal Wetlands Act, the Coastal Area Facility Review Act, the Flood Hazard Area Control Act and sewer system permits pursuant to 58:11-10, now repealed, L.1977, c.224 (see now 58:12A-4 and 58:12A-10). These provisions are continued in this chapter as applicable to the respective counterparts to the original enactments, i.e., the proposed chapters on "Waterfront and harbor facilities," "Coastal Wetlands" and "Flood hazard areas." The provisions do not apply to the other proposed chapters of this subtitle, i.e., the proposed chapter "Freshwater wetlands" and those that concern the Pinelands and Hackensack Meadowlands. Note that the source statute for the proposed chapter on freshwater wetlands enacted subsequent to these provisions, contains similar permit processing requirements. See L.1987, c.156, §. 5, (C.13:9B-5), continued as the proposed chapter "Freshwater wetlands."

Note that the provisions of 13:1D-101 to -124 also govern the review of construction permit applications and the issuance of permits, as well as the payments of permit application fees. These provisions currently are scheduled to be included in the proposed new subtitle "Organization, powers and duties" as they apply to permit programs included in several different subtitles of this proposed new title.

CP-1. Definitions

For the purposes of this chapter, "Construction permit" means:

- a. Approval of plans for the development of any waterfront upon any tidal waterway pursuant to [the chapter of this subtitle entitled "Waterfront and harbor facilities."]
- b. A permit for a regulated activity pursuant to [the chapter of this subtitle entitled "Coastal wetlands."]
- c. A permit issued pursuant to [the chapter of this subtitle entitled "Coastal area development."]

d. Approval of a structure or alteration within the area which would be inundated by the 100 year design flood of any nondelineated stream or of a change in land use within any delineated floodway or any State administered and delineated flood fringe area, all pursuant to [the chapter of this subtitle entitled "Flood hazard areas."]

e. Approval of plans and specifications for the construction changes, improvements, extensions or alterations to any sewer system pursuant to [the provisions of the Clean Water Act, i.e., 58:12A-4 and 58:12A-10].

"Construction permit" shall not, however, include any approval of or permit for an electric generating facility or for a petroleum processing or storage facility, including a liquefied natural gas facility, with a storage capacity of over 50,000 barrels.

Source: 13:1D-29

COMMENT

The introductory phrase has been shortened to read "For the purposes of this chapter," and definitions of "Commissioner" and "department" have been eliminated as superfluous. "Means and shall include" has been changed to "means."

Source subsection (b)(5) refers to a statute now repealed, see L.1977, c.224, §14, and replaced by 58:12A-4 and 58:12A-10.

CP-2. Application for construction permits

a. The department shall promptly review all applications for construction permits. The department shall, within 20 working days following the filing of an application for a construction permit, request that the applicant submit additional information to assist it in its review if it deems that such information is necessary. In the event that additional information is requested, the application will be construed to be complete when the additional information is received by the department.

b. This section shall not apply to applications for construction permits pursuant to [the chapter of this subtitle entitled "Coastal area facilities."]

Source: 13:1D-30

¹ **13:1D-29. Definitions**

For the purposes of this act, unless the context clearly requires a different meaning, the following terms shall have the following meanings:

a. "Commissioner" means the State Commissioner of Environmental Protection.

b. "Construction permit" means and shall include:

(1) Approval of plans for the development of any waterfront upon any tidal waterway pursuant to 58:12:5-3.

(2) A permit for a regulated activity pursuant to "The Wetlands Act of 1970," P.L.1970, c.272 (C. 13:9A-1 et seq.).

(3) A permit issued pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C. 13:19-1 et seq.)

(4) Approval of a structure or alteration within the area which would be inundated by the 100 year design flood of a nondelineated stream or of a change in land use within any delineated floodway or any State administered and delineated flood fringe area, all pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19 (C. 58:16A-50 et seq.) as amended and supplemented.

(5) Approval of plans and specifications for the construction changes, improvements, extensions or alterations to any sewer system pursuant to R.S. 58:11-10.

"Construction permit" shall not, however, include any approval of or permit for an electric generating facility or for a petroleum processing or storage facility, including a liquefied natural gas facility, with a storage capacity of over 50,000 barrels.

c. "Department" means the Department of Environmental Protection.

L.1975, c.232, § 1. Amended by L.1979, c.359, § 8 &ff. Jan. 31, 1980.

² **13:1D-30. Application for construction permits; review; request for additional information**

The department shall promptly review all applications for construction permits. The department shall within 20 working days following the filing of an application for a construction permit, except a permit issued pursuant to the Coastal Area Facility Review Act, P.L.1973, c.185 (C. 13:19-1 et seq.), request that the applicant submit additional information to assist it in its review if it deems that such information is necessary. In the event that such information is requested, the application will be construed to be complete when the additional information is received by the department.

L.1975, c.232, § 2.

COMMENT

The source section has been divided into two subsections. The exception to this provision for applications pursuant to the Coastal Area Facilities Review Act has been made into proposed subsection (b) for clarity. Note that CAFRA (now the proposed chapter entitled "Coastal area development" contains an equivalent provision setting forth time periods for requests for additional information. See L.1973, c.185, §. 8, as amended by L.1993, c.190, §. 9 (C.13:19-8).

CP-3. Application for permit

The department shall approve, condition or disapprove an application for a construction permit within 90 days following the date that the application is complete. This time period may be extended for a 30-day period by the mutual consent of the applicant and the department, provided that the department requests the applicant for such an extension at least 15 days prior to the expiration date for the approval, conditioning or disapproval of such an application.

Source: 13:1D-31³

COMMENT

The source section has been divided into two sentences.

CP-4. Failure to take action

- a. In the event that the department fails to take action on an application for a construction permit within the 90-day period specified herein, then the application shall be deemed to have been approved.
- b. This section shall not apply to applications for construction permits pursuant to [the chapter of this subtitle entitled "Coastal area facilities."]

Source: 13:1D-32⁴

COMMENT

The source section has been divided into two subsections. The exception to this provision for applications pursuant to the Coastal Area Facilities Review Act has been made into proposed subsection (b) for clarity. Note that CAFRA (now the proposed chapter entitled "Coastal area development") contains no equivalent provision.

CP-5. Regulations

The commissioner shall adopt, amend and repeal regulations to implement the provisions of this chapter. The commissioner shall in accordance with a fee schedule adopted as a regulation, establish and charge reasonable fees for the filing and review of any application for a construction permit. The fees, except as may otherwise be provided by law, shall be deposited in a fund to be known as the "Environmental Services Fund," kept separate and apart from all other State receipts and appropriated only as provided in this section. There shall be appropriated annually to the department, revenue from the fund sufficient to defray in full the costs incurred in the processing and review of applications for construction permits.

Source: 13:1D-33⁵

³ **13:1D-31. Application for construction permit; approval conditioning or disapproval; time period**

The department shall approve, condition or disapprove an application for a construction permit within 90 days following the date that the application is complete, except that this time period may be extended for a 30-day period by the mutual consent of the applicant and the department, provided that the department request the applicant for such an extension at least 15 days prior to the expiration date for the approval, conditioning or disapproval of such an application.

L.1975, c.232, § 3.

⁴ **13:1D-32. Failure to take action within time period; application deemed approved**

In the event that the department fails to take action on an application for a construction permit within the 90-day period specified herein, then the application shall be deemed to have been approved; provided, however, that the time periods specified in P.L.1973, c.185 (C.13:19-1 et seq.) shall apply to applications for construction permits pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.).

L.1975, c.232, § 4; amended 1993, c.190, § 22.

COMMENT

“Rules and regulations” changed to “regulations.” The phrase “imposed hereunder” deleted in the third sentence. “Herein” changed to “in this section.” “Such” changed to “the.”

CP-6. Monthly bulletin

The commissioner shall publicly distribute, at least monthly, a bulletin, listing the pending applications for construction permits and the status of the review of those applications, including decisions on applications.

Source: 13:1D-34

COMMENT

“Thereon” changed to “applications.”

⁵ **13:1D-33. Rules and regulations; fees; environmental services fund**

The commissioner shall adopt, amend and repeal rules and regulations to implement the provisions of this act. The commissioner shall in accordance with a fee schedule adopted as a rule or regulation establish and charge reasonable fees for the filing and review of any application for a construction permit. The fees imposed hereunder, except as may otherwise be provided by law, shall be deposited in a fund to be known as the "Environmental Services Fund," kept separate and apart from all other State receipts and appropriated only as provided herein. There shall be appropriated annually to the department revenue from such fund sufficient to defray in full the costs incurred in the processing and review of applications for construction permits.

L.1975, c.232, § 5.

⁶ **13:1D-34. Monthly bulletin**

The commissioner shall publicly distribute, at least monthly, a bulletin, listing the pending applications for construction permits and the status of the review of those applications, including decisions thereon.

L.1975, c. 232, § 6.

Chapter: Waterfront and harbor facilities

This chapter has the oldest derivation of the chapters included in this subtitle. The source statute, commonly referred to as the Waterfront Development Act, was first enacted in 1914. The Act empowered the Board of Commerce and Navigation, one of the predecessor entities to the Department of Environmental Protection, to regulate the construction of any "dock, wharf, pier, bulkhead, bridge, pipeline, cable or any other similar or dissimilar waterfront development." The purpose of the regulatory authority conferred was to preserve and improve navigation and to improve commerce upon navigable waters.

The scope of the department's authority under the Waterfront Development Act became an issue in 1979, when the department promulgated rules pursuant to the Act which sought to regulate development in the upland area adjacent to the waterfront, as distant as 500 feet from the mean high waterline. These regulations were promulgated by the department in order to close what was regarded as a "loophole" under the Coastal Area Facilities Review Act, L.1973, c.185, enacted to regulate development in the coastal area based upon environmental concerns. The "loophole" consisted of an exemption from permitting requirements for certain types of projects, primarily residential developments of less than 25 units. The department sought to review projects under the Waterfront Development Act for their environmental effects in addition to their effects upon commerce and navigation.

The Waterfront Development Act regulations were challenged and eventually declared invalid on the ground that the department had exceeded its regulatory authority under the Act in promulgating rules that sought to regulate waterfront development based on environmental concerns rather than on commerce and navigation related concerns. See *Last Chance Development Partnership v. Kean*, 119 N.J. 425 (1990), *aff'ng* 232 N.J. Super. 115 (App. Div. 1989). The Appellate Division opinion extensively reviewed the legislative history of the Waterfront Development Act, concluding that the purpose of the regulatory authority conferred in the Act was the protection and development of commerce and navigation, not environmental regulation. 232 N.J. Super. at 119-22. The Court also noted that the Waterfront Development Act is compiled in Title 12 Navigation rather than under Title 13 Conservation and Development, 119 N.J. at 435.

In this revision project, the Waterfront Development Act is compiled in this subtitle along with other, "environmentally based" land use regulatory statutes from which the Court distinguished the Act in the opinion in *Last Chance Development*. It is a matter of convenience and orderly arrangement, without substantive implication, to include this proposed chapter along with other proposed chapters that permit the Department of Environmental Protection to regulate land use, albeit for different underlying purposes.

A single section of this chapter, R.S. 12:5-9, added in 1939 and authorizing the department to establish a Harbor of refuge in Sandy Hook Bay, has been retained in the subtitle "Navigation."

WD-1 Annual report on condition of water-front or harbor facilities

The department shall report annually to the legislature the condition of waterfront and harbor facilities and any other matter concerning the movement of commerce upon all navigable rivers and waters within this state or bounding thereon. The department shall also recommend to the legislature and to the various municipalities interested in the navigable waters of this state any measures that the department deems necessary or advisable for the preservation of proper navigation or its improvement or the improvement of commerce upon those waters.

Source: 12:5-1

COMMENT

The term "board," a reference to the former Board of Commerce and Navigation, has been changed to "department." The phrase "investigate and report" has been changed to "report"; "incident to" changed to "concerning"; "such...as" changed to "any...that." The language has generally been simplified.

⁷ **12:5-1. Annual report on condition of water-front or harbor facilities; recommendations**

The board of commerce and navigation shall investigate and report annually to the legislature the condition of water-front and harbor facilities and any other matter incident to the movement of commerce upon all navigable rivers and waters within this state or bounding thereon. The board shall also recommend to the legislature and to the various municipalities interested therein such measures as may, in the judgment of the board, be necessary or advisable for the preservation of proper navigation or its improvement or the improvement of commerce upon such waters.

WD-2 Preventing encroachment on water front

The department may, by appropriate action in any court, prevent or compel the removal of any encroachment or other trespass upon the waterfront of any of the navigable waters of this State or bounding thereon, or upon the riparian lands of this State. The department may restrain, prevent and remove any construction, erection or accretion which is injurious to the flow of any such navigable waters, and which is detrimental to proper navigation or the maintenance and improvement of commerce on those waters.

Source: 12:5-2

COMMENT

The reference to the Department of Environmental Protection has been changed to "department." The words "thereof" and "thereon" in the last parenthetical paragraph have been changed to "of those waters" and "on those waters." Other editorial changes for simplicity and clarity.

WD-3 Submission of plans for waterfront development

a. All plans by any person or municipality for the development of any waterfront upon any navigable water or stream of this State or bounding thereon, in the nature of an individual improvement or development or as part of a general plan which involve the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable, or any other similar or dissimilar waterfront development shall be first submitted to the department. No such development or improvement shall be undertaken without first receiving the approval of the department, or as otherwise provided in this chapter.

b. The following are exempt from the provisions of this section:

(1) The repair, replacement or renovation of a permanent dock, wharf, pier, bulkhead or building existing prior to January 1, 1981, provided the repair, replacement or renovation does not increase the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels;

(2) The repair, replacement or renovation of a floating dock, mooring raft or similar temporary or seasonal improvement or structure, provided the improvement or structure does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking or servicing of pleasure vessels.

Source: 12:5-3

COMMENT

Subsection (a) has been reworded for simplicity. The phrase "in the nature of individual improvement or development or development or as a part of a general plan" has been deleted as surplusage in light of the unqualified introductory phrase "all plans." The phrase "without the approval ... first had and received" has been changed to "without first receiving"; "commenced or executed" changed to "undertaken."

⁸ 12:5-2. Preventing encroachment on water front

The Department of Environmental Protection may, by appropriate action in any court, prevent the encroachment or trespass upon the water front of any of the navigable waters of this State or bounding thereon, or upon the riparian lands of this State, and compel the removal of any such encroachment or trespass, and restrain, prevent and remove any construction, erection or accretion injurious to the flow of any such waters, which may be detrimental to the proper navigation thereof and the maintenance and improvement of commerce thereon.

Amended by L.1975, c.232, § 7.

⁹ 12:5-3. Submission to board of plans for water-front development; exemptions

a. All plans for the development of any waterfront upon any navigable water or stream of this State or bounding thereon, which is contemplated by any person or municipality, in the nature of individual improvement or development or as a part of a general plan which involves the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable, or any other similar or dissimilar waterfront development shall be first submitted to the Department of Environmental Protection. No such development or improvement shall be commenced or executed without the approval of the Department of Environmental Protection first had and received, or as hereinafter in this chapter provided.

b. The following are exempt from the provisions of subsection a. of this section:

(1) The repair, replacement or renovation of a permanent dock, wharf, pier, bulkhead or building existing prior to January 1, 1981, provided the repair, replacement or renovation does not increase the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels;

(2) The repair, replacement or renovation of a floating dock, mooring raft or similar temporary or seasonal improvement or structure, provided the improvement or structure does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking or servicing of pleasure vessels.

Amended by L.1975, c.232, § 8; L.1981, c.315, § 1 eff. Dec. 3, 1981.

WD-4 Procedure before local governing body

Where the waterfront is under the control of a local board, commission or other governing body created by legislative act, having power to improve or develop the waterfront or exercising such authority and a permit or license must be granted by it before any improvement or development may be commenced, plans proposed by the governing body or submitted to it for approval shall also be filed with the department.

The department may, within ten days after receiving such plans, file notice of objections to the carrying out of the improvement or development, or to the granting of a permit or license by the governing body. The filing of the notice shall act as a stay in the carrying out of the plans or in the granting of such permit or license until a public hearing has been held by the governing body sitting jointly with the department. At the hearing the department may state its objections to the plans and recommend such changes as it may deem necessary.

The governing body, together with the department, shall approve or disapprove the plans, or grant or refuse to grant the permit or license as may be necessary or desirable.

Source: 12:5-4^o

COMMENT

"Board" has been changed to "department." Minor language changes for simplicity and clarification.

WD-5 Actions for violations

a. Any development or improvement enumerated in [section WD-3] and in [the chapter of this subtitle entitled "Construction permits"] or included within any regulation adopted pursuant to those provisions, which is commenced or executed without first obtaining approval, or contrary to the conditions of approval, as provided in [the chapter of this subtitle entitled "Construction permits"] and in [Section WD-3] shall be deemed to be a purpresture, a public nuisance and a violation under this section and shall be abated in the name of the State by one or more of the following actions:

(1) The issuance of an administrative order by the commissioner of the department specifying that there has been a violation of the provisions of this section, or any applicable regulation or permit; setting forth the facts forming the basis for the issuance of the order; and specifying the course of action necessary to correct the violation;

(2) The commencement of a civil action by the commissioner in Superior Court for injunctive or other appropriate relief;

(3) The levying of an administrative penalty by the commissioner in accordance with subsection b. of this section.

b. The commissioner is authorized to assess an administrative penalty of not more than \$1,000.00 for each violation of this section, and is authorized to assess additional penalties of not more than \$100.00 for each day during which this violation continues after receipt of an administrative order from the department pursuant to paragraph (1) of subsection a. of this section.

Prior to the assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that a penalty is being assessed. The notice shall include a reference to the section of the law, regulation, or permit condition violated; a concise statement of the

¹⁰ 12:5-5. Procedure when water front is under control of local governing body

Where such water front is under the control of a local board, commission or other governing body created by legislative act, having power to improve or develop the water front or exercising such authority, so that a permit or license must be granted by it before any improvement or development may be commenced, plans proposed by it or submitted to it shall be filed with the board of commerce and navigation.

The board may, within ten days after the receipt by it of such plans, file notice of objections to the carrying out of the improvement or development, or to the granting of a permit or license by such local governing body. The filing of the notice shall act as a stay in the carrying out of the plans or in the granting of such permit or license until a public hearing shall have been held by the local governing body sitting jointly with the board. At the hearing the board may state its objections to the plans and recommend such changes as it may deem necessary.

The local governing body together with the board shall approve or disapprove the plans, or grant or refuse to grant the permit or license as seems necessary or desirable.

facts alleged to constitute the violation; a statement of the amount of the administrative penalty assessed and a statement of the party's right to an administrative hearing.

c. The party shall have 21 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. This request shall specify in detail the statements contested by the party. If no hearing is requested, then after the expiration of the 21-day period the commissioner shall issue a final order assessing the penalty specified in the notice. The penalty is due when the final order is issued.

d. If a hearing is requested, it shall be held within 30 days of the date on which the request is received by the commissioner. If a violation is found to have occurred, the commissioner may issue a final order assessing not more than the amount of the penalty specified in the notice. The penalty is due when the final order is issued.

e. Any penalty imposed pursuant to this section may be enforced as provided for in "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.).

Source: 12:5-6¹

COMMENT

In subsection (a)(1), "applicable rule, regulation or permit" has been changed to "applicable regulation or permit." Cross-references to other laws changed. "Department of Environmental Protection" changed to "department."

WD-6 Preparation of plans upon request

a. Upon the request of a county, municipality or other political subdivision of this state, the department shall prepare and submit a proper plan for the development and improvement of the waterfront of the political subdivision upon any navigable stream or waters of this state or bounding on any such waters, the navigation of the waters incident to the waterfront, and the regulation and improvement of the traffic of commerce incident to the waterfront.

b. The department may charge the political subdivision for the actual cost of the preparation and submission of the plans and the political subdivision is hereby authorized to pay the cost from any funds in its treasury.

Source: 12:5-8²

¹¹ 12:5-6. Actions for violations

a. Any development or improvement enumerated in R.S. 12:5-3 and in P.L. 1975, c.232 (C. 13:1D-29 et seq.) or included within any rule or regulation adopted pursuant thereto, which is commenced or executed without first obtaining approval, or contrary to the conditions of approval, as provided in R.S. 12:5-3 and in P.L. 1975, c.232 (C. 13:1D-29 et seq.) shall be deemed to be a public nuisance and a violation under this section and shall be abated in the name of the State by one or more of the following actions:

(1) The issuance of an administrative order by the Commissioner of the Department of Environmental Protection specifying that there has been a violation of the provisions of this section, or any applicable rule, regulation or permit; setting forth the facts forming the basis for the issuance of the order; and specifying the course of action necessary to correct the violation;

(2) The commencement of a civil action by the commissioner in Superior Court for injunctive or other appropriate relief;

(3) The levying of an administrative penalty by the commissioner in accordance with section b. of this section.

b. The commissioner is authorized to assess an administrative penalty of not more than \$1,000.00 for each violation of this section, and is authorized to assess additional penalties of not more than \$100.00 for each day during which this violation continues after receipt of an administrative order from the department pursuant to paragraph (1) of subsection a. of this section.

Prior to the assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that a penalty is being assessed. The notice shall include a reference to the section of the law, regulation, or permit condition violated; a concise statement of the facts alleged to constitute the violation; a statement of the amount of the administrative penalty assessed and a statement of the party's right to an administrative hearing.

c. The party shall have 21 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. This request shall specify in detail the statements contested by the party. If no hearing is requested, then after the expiration of the 21-day period the commissioner shall issue a final order assessing the penalty specified in the notice. The penalty is due when the final order is issued.

d. If a hearing is requested, it shall be held within 30 days of the date on which the request is received by the commissioner. If a violation is found to have occurred, the commissioner may issue a final order assessing not more than the amount of the penalty specified in the notice. The penalty is due when the final order is issued.

e. Any penalty imposed pursuant to this section may be enforced as provided for in "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). Amended by L.1985, c.125, § 1eff. April 10, 1985.

¹² 12:5-8. Preparation of plans by board upon request of county or municipality; charges

Upon the request of a county, municipality or other political subdivision of this state, the board shall prepare and submit a proper plan for the development and improvement of the water front of such political subdivision upon any navigable stream or waters of this state or bounding thereon, the navigation of the waters incident thereto, and the regulation and improvement of the traffic of commerce incident thereto.

COMMENT

The two paragraphs in the source section have been lettered. Proposed subsection (b) has been rewritten for simplicity.

Recommended for repeal:

12:5-7. Municipal developments begun prior to April 8, 1914

COMMENT

This section is no longer necessary as it may be presumed after 80 years that any such developments have long since either been completed or abandoned.

12:5-10. Marine improvements on lands conveyed to State by municipalities

COMMENT

This section and the one next following, 12:5-10, enacted as L.1953, c.126, §§ 1 and 2, appear to have been enacted to deal with a series of transactions already in process or in place when the provisions were enacted. They are recommended for repeal as executed.

12:5-11. Appropriation for State's share of marine improvement¹⁵

For the preparation and submission of the plans the board may make such charge against the municipality requesting the same as is equal to the actual cost thereof and the political subdivision requesting them is hereby authorized to pay the same from any funds in its treasury.

¹³ **12:5-7. Municipal developments begun prior to April 8, 1914**

Sections 12:5-3 to 12:5-6 of this title shall not apply to or affect any development for docks, shipping and transportation facilities inaugurated by a municipality and under construction in whole or in part prior to April eighth, one thousand nine hundred and fourteen, provided the municipality had, prior to said date, filed with the secretary of state a map showing the lands proposed to be taken for such municipal development.

¹⁴ **12:5-10. Marine improvements on lands conveyed to State by municipalities**

Whenever a municipality of this State has or shall have conveyed lands to the State upon the condition that the State shall improve such lands by constructing thereon docks, basins or other marine accommodations of the Marina type for boats and vessels, the cost of each such marine improvement shall be borne equally by the State and the municipality making such conveyance.

L.1953, c.126, p.1324, § 1, eff. April 29, 1953.

¹⁵ **12:5-11. Appropriation for State's share of marine improvement**

In the case of any such conveyance heretofore made, there is hereby appropriated from the General Funds of the State, such sum as may be included in any general or supplemental appropriation act, for payment of the State's share for the said marine improvement of the lands so heretofore conveyed to the State.

L.1953, c.126, p.1324, § 2, eff. April 29, 1953.

Chapter - Coastal area development

The original source statute for this chapter was enacted in 1973 at the Coastal Area Facilities Review Act ("CAFRA"). See L.1973, c.185. It was enacted in response to two circumstances: the enactment of the federal Coastal Zone Management Act (P.L.92-583, see 16 U.S.C. § 1451 et seq.) and the prospect at the time that off-shore oil and gas exploration would engender the need for on-shore support facilities in the coastal area. The federal act made available grants to states which adopted and implemented coastal zone management programs.

As originally enacted, the CAFRA legislation established a coastal zone extending along the State's Atlantic Coast, from Raritan Bay to Cape May, then up to the Delaware Memorial Bridge. See L.1973, c.185, § 4 (N.J.S. 13:19-4). Within that zone, CAFRA required a special permit for the construction of any "facility" as defined in the statute, see L.1973, c.185, § 5 (13:19-5). The expressed intent of the Act was to balance the need to protect environmental resources in the coastal area with "the legitimate economic aspirations of the inhabitants of the coastal area...." L.1973, c.185, § 2 (N.J.S. 13:19-2).

The definition of "facility" in the original act included an extensive list of specific types of facilities, primarily industrial facilities, described according to function. Certain types of facilities were defined as exempt from CAFRA's requirements, including residential facilities under 25 units, commercial developments with less than 50 parking spaces, and certain other defined categories of facilities or expansions of certain facilities. The standards for permit approval were set forth in the statute, L.1973, c.185, § 10 (N.J.S. 13:19-10) and focused on assuring that new facilities "would result in minimum feasible" negative effect on water quality, plant and animal processes, historic, scenic, aesthetic and other values, among other factors. The application process required notice to adjacent property owners and local and county government authorities and a public hearing.

CAFRA came to be regarded as in need of updating, in part due to the fact that while large scale industrial development never materialized, residential development accelerated greatly in the shore area in the years after CAFRA was adopted. See Public Hearings before Senate Coastal Resources and Tourism Committee, S.1475 (Jan. 29, 1993), Opening remarks of Sen. Joseph M. Kyrillos, Jr., at 1-2. In addition, questions arose over the interaction between CAFRA and other regulatory statutes that pertained to the shore area, such as the Waterfront Development Act, 12:5-1 et seq., see *Last Chance Development Partnership v. Kean*, 119 N.J. 425 (1990), aff'ing 232 N.J. Super. 115 (App. Div. 1989) (voiding regulations adopted under the Waterfront Development Act that were directed at environmental concerns rather than commerce and navigation related concerns). See the introductory material under the proposed chapter above on Waterfront Development for further discussion of the relationship between CAFRA and the Waterfront Development Act.

The Department of Environmental Protection regulations adopted under the Waterfront Development Act were aimed at closing what was regarded as a loophole in the CAFRA regulatory scheme. Simply stated, as enacted CAFRA exempted from permit requirements any residential developments of 24 units or less.

The 1993 amendments to CAFRA sought to balance the competing views about the proper role of state regulation of growth and development in the shore area, with the desire of the environmental community for increased protection of environmentally sensitive coastal areas. The enacted amendments, L.1993, c.190, made a number of major changes in CAFRA's approach to coastal development. First, the focus of the original act on specific kinds of industrial "facilities" was replaced with a focus on more broad-based concepts of "development" of buildings and structures of all kinds. L.1993, c.190, §§ 1, 2 and 3 (repealing definition of "facilities" covered by CAFRA and adding definitions of "development," "commercial development," "public development," "industrial development," and "residential development." Second, the amendments adopted a three-zone approach to coastal regulation, which varied the degree of regulation in the coastal area according to whether it was directly on beaches or dunes, within 150 feet of the waterline or beaches and dunes, or more than 150 feet from those demarcation lines. The so-called "24 unit loophole" was completely eliminated in the first, most environmentally sensitive areas, almost eliminated in the second area, and largely retained in the remainder of CAFRA's defined coastal area. Generally speaking, this tier approach to regulation similarly categorizes permit review of other types of defined "development" within the coastal area. Note also that the 1993 CAFRA amendments included an amendment to the Waterfront Development Act to eliminate virtually any regulatory overlap between the two enactments. See L.1993, c.190, § 18 (amending R.S. 12:5-3).

Various other changes wrought by the 1993 amendments include the elimination of mandatory environmental impact statements, provisions for issuance of general permits for certain kinds of projects and activities, and increased penalty and enforcement provisions (for a recent discussion of the 1993 CAFRA amendments see Michael Gross and Jeffrey Beenstock, "Implications of the New CAFRA Legislation," 168 New Jersey Lawyer 13 (April 1995)).

In this proposed chapter, the provisions of CAFRA, as amended, have been retained largely in the same order as enacted, and with relatively little change. A few provisions which have been executed are recommended for repeal. The changes in this proposed chapter consist almost entirely of editorial changes (changing "act" to "chapter"; eliminating the use of "such,"), division of some sections into paragraphs and sub-paragraphs, and elimination of excess verbiage. In addition, references to the imposition of duties upon "the commissioner" have been changed in almost all instances to the more current "the department," to be consistent with the 1993 amendments to the chapter. Two sections added in 1995, 13:19-31 and -32, concerning the development of guidance documents for municipalities seeking federal aid for beach maintenance, have been moved to the subtitle "Navigation," to be compiled adjacent to material in that proposed subtitle concerning beach protection. In addition, the provisions of the "Adopt A Beach Act," 13:19-22 to -30, also presently compiled in the same chapter as CAFRA, have been moved to the proposed subtitle "Navigation."

CA-1. Legislative findings and declarations

The Legislature finds and declares that New Jersey's bays, harbors, sounds, wetlands, inlets, the tidal portions of fresh, saline or partially saline streams and tributaries and their adjoining upland fastland drainage area nets, channels, estuaries, barrier beaches, near shore waters and intertidal areas together constitute an exceptional, unique, irreplaceable and delicately balanced physical, chemical and biologically acting and interacting natural environmental resource called the coastal area, that certain portions of the coastal area are now suffering serious adverse environmental effects resulting from existing development activity impacts that would preclude or tend to preclude those multiple uses which support diversity and are in the best long-term, social, economic, aesthetic and recreational interests of all people of the State; and that, therefore, it is in the interest of the people of the State that all of the coastal area should be dedicated to those kinds of land uses which promote the public health, safety and welfare, protect public and private property, and are reasonably consistent and compatible with the natural laws governing the physical, chemical and biological environment of the coastal area.

It is further declared that the coastal area and the State will suffer continuing and ever-accelerating serious adverse economic, social and aesthetic effects unless the State assists, in accordance with the provisions of this act, in the assessment of impacts, stemming from the future location and kinds of developments within the coastal area, on the delicately balanced environment of that area.

The Legislature further recognizes the legitimate economic aspirations of the inhabitants of the coastal area and wishes to encourage the development of compatible land uses in order to improve the overall economic position of the inhabitants of that area within the framework of a comprehensive environmental design strategy which preserves the most ecologically sensitive and fragile area from inappropriate development and provides adequate environmental safeguards for the construction of any developments in the coastal area.

Source: 13:19-2⁶

¹⁶**13:19-2. Findings, declarations**

The Legislature finds and declares that New Jersey's bays, harbors, sounds, wetlands, inlets, the tidal portions of fresh, saline or partially saline streams and tributaries and their adjoining upland fastland drainage area nets, channels, estuaries, barrier beaches, near shore waters and intertidal areas together constitute an exceptional, unique, irreplaceable and delicately balanced physical, chemical and biologically acting and interacting natural environmental resource called the coastal area, that certain portions of the coastal area are now suffering serious adverse environmental effects resulting from existing development activity impacts that would preclude or tend to preclude those multiple uses which support diversity and are in the best long-term, social, economic, aesthetic and recreational interests of all people of the State; and that, therefore, it is in the interest of the people of the State that all of the coastal area should be dedicated to those kinds of land uses which promote the public health, safety and welfare, protect public and private property, and are reasonably consistent and compatible with the natural laws governing the physical, chemical and biological environment of the coastal area.

It is further declared that the coastal area and the State will suffer continuing and ever-accelerating serious adverse economic, social and aesthetic effects unless the State assists, in accordance with the provisions of this act, in the assessment of impacts, stemming from the future location and kinds of developments within the coastal area, on the delicately balanced environment of that area.

COMMENT

No change.

CA-2. Applicability of chapter

The provisions of this chapter shall not be regarded as in derogation of any powers now existing and shall be regarded as supplemental and in addition to powers conferred by other laws, including the authority of the department to regulate waterfront development pursuant to [the chapter of this subtitle entitled "Waterfront and harbor facilities"] and municipal zoning authority. The provisions of this chapter shall not apply to those portions of the coastal areas regulated pursuant to enforceable orders under [the chapter of this subtitle entitled "Coastal wetlands."]

Source: 13:19-19'

COMMENT

"Act" changed to "chapter." The phrase "as to be" changed to "as."

CA-3. Definitions

As used in this chapter:

"Beach" means a gently sloping unvegetated area of sand or other unconsolidated material found on tidal shorelines, including ocean, inlet, bay and river shorelines, and that extends landward from the mean high water line to either: the vegetation line; a man-made feature generally parallel to the ocean, inlet, bay or river waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or the seaward or bayward foot of dunes, whichever is closest to the ocean, inlet, bay or river waters;

"Commercial development" means a development designed, constructed or intended to accommodate commercial or office uses. "Commercial development" includes any establishment used for the wholesale or retail sale of food or other merchandise, or any establishment used for providing professional, financial, or other commercial services;

"Development" means the construction, relocation, or enlargement of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches or dunes, and includes residential development, commercial development, industrial development, and public development;

"Dune" means a wind- or wave-deposited or man-made formation of vegetated sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and the foot of the most inland slope of the dune. "Dune" includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist;

" Dwelling unit" means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle or any other habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in [section 2 of P.L.1962, c.73 (C.12:34.37)];

The Legislature further recognizes the legitimate economic aspirations of the inhabitants of the coastal area and wishes to encourage the development of compatible land uses in order to improve the overall economic position of the inhabitants of that area within the framework of a comprehensive environmental design strategy which preserves the most ecologically sensitive and fragile area from inappropriate development and provides adequate environmental safeguards for the construction of any developments in the coastal area.

L.1973,c.185,s.2; amended 1993,c.190,s.2.

¹⁷13:19-19. Applicability of act

The provisions of this act shall not be regarded as to be in derogation of any powers now existing and shall be regarded as supplemental and in addition to powers conferred by other laws, including the authority of the department to regulate waterfront development pursuant to R.S.12:5 et seq. and municipal zoning authority. The provisions of this act shall not apply to those portions of the coastal areas regulated pursuant to enforceable orders under P.L.1970, c.272 (C.13:9A et seq.).

L.1973, c.185, § 19; amended 1993, c.190, § 17.

"Governmental agency" means the Government of the United States, the State of New Jersey, or any other state, or a political subdivision, authority, agency or instrumentality thereof, and shall include any interstate agency or authority;

"Industrial development" means a development that involves a manufacturing or industrial process, and shall include, but need not be limited to, electric power production, food and food by-product processing, paper production, agri-chemical production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes utilizing mineral products;

"Person" includes a governmental agency;

"Public development" means a solid waste facility, including an incinerator and landfill, wastewater treatment plant, public highway, airport, an above or underground pipeline designed to transport petroleum, natural gas, or sanitary sewage, and a public facility, and shall not mean a seasonal or temporary structure related to the tourism industry, an educational facility or power lines;

"Public highway" means a public highway as defined in [section 3 of P.L.1984, c.73 (C.27-~~33~~)];

"Reconstruction" means the repair or replacement of a building, structure, or other part of a development;

"Residential development" means a development that provides one or more dwelling units.

Source: 13:19-3⁸

COMMENT

The definitions of "department" and "commissioner" have been eliminated as unnecessary. "Act" changed to "chapter."

CA-4. "Coastal area" defined

The "coastal area" shall consist of all that certain area lying between the line as hereinafter described and the line formed by the State's seaward (Raritan Bay and Atlantic Ocean) territorial jurisdiction on the east thereof, the State's bayward (Delaware Bay) territorial jurisdiction on the south and southwest thereof, and the State's

¹⁸13:19-3. Definitions

As used in this act:

"Beach" means a gently sloping unvegetated area of sand or other unconsolidated material found on tidal shorelines, including ocean, inlet, bay and river shorelines, and that extends landward from the mean high water line to either: the vegetation line; a manmade feature generally parallel to the ocean, inlet, bay or river waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or the seaward bayward foot of dunes, whichever is closest to the ocean, inlet, bay or river waters;

"Commercial development" means a development designed, constructed or intended to accommodate commercial or office uses. "Commercial development" shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food or other merchandise, or any establishment used for providing professional, financial, or other commercial services;

"Commissioner" means the Commissioner of Environmental Protection and Energy;

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

"Development" means the construction, relocation, or enlargement of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches or dunes, and shall include residential development, commercial development, industrial development, and public development;

"Dune" means a wind or wave-deposited or manmade formation of vegetated sand that lies generally parallel to andward of the beach, and between the upland limit of the beach and the foot of the most inland slope of the dune. Dune includes the primary, secondary and tertiary dune ridges, as well as manmade dunes, where they exist;

"Dwelling unit" means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle or any other habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L.1962, c.73 (C.2-7);

"Governmental agency" means the Government of the United States, the State of New Jersey, or any other state, or a political subdivision, authority, agency or instrumentality thereof, and shall include any interstate agency or authority;

"Industrial development" means a development that involves a manufacturing or industrial process, and shall include, but need not be limited to, electric power production, food and food-by-product processing, paper production, agri-chemical production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes utilizing mineral products;

"Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or governmental agency;

"Public development" means a solid waste facility, including an incinerator and landfill, wastewater treatment plant, public highway, airport, an above or underground pipeline designed to transport petroleum, natural gas, or sanitary sewage, and a public facility, and shall not mean a seasonal or temporary structure related to the tourism industry, an educational facility or power lines;

"Public highway" means a public highway as defined in section 3 of P.L.1984, c.73 (C.27-~~33~~);

"Reconstruction" means the repair or replacement of a building, structure, or other part of a development;

"Residential development" means a development that provides one or more dwelling units.

L.1973, c.185, § 3; amended 1993, c.190, § 3.

riverward (Delaware River) territorial jurisdiction on the west thereto. Beginning at the confluence of Cheesequake Creek with the Raritan Bay; thence southwesterly along the center line of Cheesequake Creek to its intersection with the Garden State Parkway; thence southeasterly along the Garden State Parkway to Exit 117 at State Highway 36; thence northeasterly along State Highway 36 to the intersection of Middle Road (County 516); thence easterly along Middle Road to the intersection of Palmer Avenue (County 7); thence northeasterly on Main Street to the intersection of State Highway 36; thence easterly on State Highway 36 to the intersection of Navesink Avenue; thence southerly on Navesink Avenue to the intersection of Monmouth Avenue at Navesink; thence westerly on Monmouth Avenue to its intersection with Browns Dock Road; thence southerly on Browns Dock Road to its intersection with Cooper Road; thence southwesterly on Cooper Road to the intersection of State Highway 35; thence southerly on State Highway 35 to its intersection with State Highway 71; thence southeasterly on State Highway 71 to its crossing of the Central Railroad of New Jersey tracks, now the Consolidated Rail Corporation (Conrail)/New Jersey Transit Corporation (NJ Transit); thence southerly along the Central Railroad of New Jersey tracks (now Conrail/NJ Transit) to its intersection of 6th Avenue (County 2); thence westerly on 6th Avenue (County 2) to the intersection of State Highway 33; thence westerly along State Highway 33 to the crossing of State Highway 18; thence southerly on State Highway 18 to its intersection of Marconi Road; thence southeasterly on Marconi Road to Adrienne Road, continuing south on Adrienne Road to Belmar Boulevard; thence easterly on Belmar Boulevard and 16th Avenue to the intersection of State Highway 71; thence southerly on State Highway 71 to the intersection of State Highway 35; thence northwesterly along State Highway 35 to State Highway 34 at the Brielle Circle; thence northwesterly along State Highway 34 to the Garden State Parkway at Exit 96; thence southwesterly along the Garden State Parkway to the intersection of the Monmouth, Ocean County boundary; thence westerly along that boundary to the intersection of the Central Railroad of New Jersey tracks (now Conrail); thence southwesterly along the tracks of the Central Railroad of New Jersey (now Conrail) to its junction with the tracks of the Pennsylvania Railroad near Whiting; thence easterly along the tracks of the Pennsylvania Railroad to its intersection with the Garden State Parkway near South Toms River; thence southerly along the Garden State Parkway to its intersection with the boundary of the Bass River State Forest; thence southerly, and thence westerly, along the Bass River State Forest to its intersection with the Garden State Parkway in Bass River Township; thence southerly along the Garden State Parkway to its intersection with Alt. 559, and thence northwesterly along Alt. 559 to its intersection with County Road 559 at Gravelly Run; thence northwesterly along County Road 559 to its intersection with U.S. 40 and S.R. 50 at Mays Landing; thence westerly along combined U.S. 40 and S.R. 50 to its intersection with S.R. 40; thence westerly along S.R.40 to its intersection with S.R.50; thence southerly on S.R. 50 to its intersection with Buck Hill Road near Buck Hill; thence westerly along Buck Hill (River Road also Head of River Road and Aetna Drive) Road to its intersection with S.R. 49; thence southeasterly along S.R. 49 to its intersection with S.R. 50; thence southeasterly along S.R. 50 to its intersection with County Road 585 (now County Road 610); thence southwesterly along County Road 585 (now County Road 610) to its intersection with S.R. 47 at Dennisville; thence northwesterly along S.R. 47 to its intersection with State Road 49 at Millville; thence through Millville along State Road 49 to its intersection with County Road 610 (Cedar Street); thence southwesterly along County Road 610 (Cedar Street) to its intersection with County Road 555 (Race Street); thence southerly along County Road 555 (Race Street) to its intersection with County Road 27 (now County Road 627); thence southerly along County Road 27 (now County Road 627) to its intersection with County Road 70 (now County Road 670); thence southerly on County Road 70 (now County Road 670) to the Center of Mauricetown; thence through Mauricetown westerly on County Road 548 (now County Road 676) to its intersection with the tracks of the Central Railroad of New Jersey (now Conrail); thence northwesterly on the tracks of the Central Railroad of New Jersey (now Conrail) to its intersection with County Road 98 (now County Road 698); thence easterly along County Road 98 (now County Road 698) to the intersection with County Road 38 (now County Road 638); thence northerly along County Road 38 (now County Road 638) to its intersection with S.R. 49 east of Bridgeton; thence westerly along S.R. 49 through Bridgeton to its intersection with West Avenue; thence south on West Avenue to its intersection with County Road 5 (Roadstown Road) (now County Road 626); thence westerly along County Road 5 (Roadstown Road) (now County Road 626) to Roadstown; thence northwesterly along the Roadstown Road to County Road 47 (now County Road 647); thence southwesterly along County Road 47 (now County Road 647) to its intersection with County Road 19 (now County Road 623); thence along County Road 19 (now County Road 623) northwesterly to Gum Tree Corner; thence northwesterly along County Road 19 (now County Road 623) from Gum Tree Corner across Stowe Creek to its intersection with Salem County Road 59 (now County Road 623) (Hancock's Bridge Road); thence northwesterly along County Road 59 (now County Road 623) to its intersection with County Road 51 (now County Road 651) at Coopers Branch; thence northeasterly along County Road 51 (now

County Road 651) to its intersection with S.R. 49 at Quinton; thence northwesterly along S.R. 49 to its intersection with County Road 50 (now County Road 650); thence southwesterly along County Road 50 (now County Road 650) to its intersection with County Road 58 (now County Road 658); thence southerly on County Road 58 (now County Road 658) to its intersection with County Road 24 (now County Road 624); thence westerly along County Road 24 (now County Road 624) to its intersection with County Road 65 (now County Road 637); thence northeasterly along County Road 65 (now County Road 637) to its intersection with County Road 665 (Walnut Street); thence northerly along County Road 65 (now County Road 665) (Walnut Street) to its intersection with County Road 4 (now County Road 633); thence westerly along County Road 4 (now County Road 633) to its intersection with County Road 627; thence northerly along County Road 627 to its intersection with County Road 661; thence easterly along County Road 661 to its intersection with State Road 49; thence northerly along State Road 49 (Front Street) to its intersection with County Road 57 (now County Road 657); thence easterly along County Road 57 (now County Road 657) to its intersection with State Road 45; thence northerly along State Road 45 to its intersection with County Road 540 at Pointers; thence northerly and northwesterly along County Road 540 (Pointers Auburn Road/Deepwater-Slapes Corner Road) to its intersection with the New Jersey Turnpike; thence westerly along the New Jersey Turnpike to its intersection with County Road 33 (now County Road 551); thence southerly along County Road 33 (now County Road 551) to its intersection with State Road 49; thence southeasterly along S.R. 49 to its intersection with County Road 26 (now County Road 632); thence northwesterly along County Road 26 (now County Road 632) to the Killcohook National Wildlife Refuge; thence northwesterly along this northeasterly boundary to the limits of the State's territorial jurisdiction on the Delaware River; provided, however, that the coastal area shall not include all that certain area in Cape May county lying within a line beginning at the intersection of S.R. 47 and County Road 54 (now County Road 654); thence westerly on County Road 54 (now County Road 654); to the intersection of County Road 3 (now County Road 603); thence southeasterly on County Road 3 (now County Road 603) through the intersection of County Road 3 (now County Road 603) with County Road 13 (now County Road 639) to the intersection with County Road 47 (now County Road 647); thence easterly and northerly along County Road 47 (now County Road 647) to its intersection with U.S. Route 9; thence northerly along U.S. Route 9 to its intersection with State Road 47; thence westerly along State Road 47 to its intersection with County Road 54 (now County Road 654).

Source: 13:19-4⁹

¹⁹**13:19-4. "Coastal area" defined**

The "coastal area" shall consist of all that certain area lying between the line as hereinafter described and the line formed by the State's seaward (Raritan Bay and Atlantic Ocean) territorial jurisdiction on the east thereof, the State's seaward (Delaware Bay) territorial jurisdiction on the south and southwest thereof, and the State's seaward (Delaware River) territorial jurisdiction on the west thereof. Beginning at the confluence of Cheesapeake Creek with the Raritan Bay; thence southwesterly along the center line of Cheesapeake Creek to its intersection with the Garden State Parkway; thence southeasterly along the Garden State Parkway to Exit 117 at State Highway 36; thence northeasterly along State Highway 36 to the intersection of Middle Road (County 516); thence easterly along Middle Road to the intersection of Palmer Avenue (County 7); thence northeasterly on Main Street to the intersection of State Highway 36; thence easterly on State Highway 36 to the intersection of Navesink Avenue; thence southerly on Navesink Avenue to the intersection of Monmouth Avenue at Navesink; thence westerly on Monmouth Avenue to its intersection with Browns Dock Road; thence southerly on Browns Dock Road to its intersection with Cooper Road; thence southwesterly on Cooper Road to the intersection of State Highway 35; thence southerly on State Highway 35 to its intersection with State Highway 71; thence southeasterly on State Highway 71 to its crossing of the Central Railroad of New Jersey tracks, now the Consolidated Rail Corporation (Conrail)/New Jersey Transit Corporation (NJ Transit); thence southerly along the Central Railroad of New Jersey tracks (now Conrail/NJ Transit) to its intersection of 6th Avenue (County 2); thence westerly on 6th Avenue (County 2) to the intersection of State Highway 33; thence westerly along State Highway 33 to the crossing of State Highway 18; thence southerly on State Highway 18 to its intersection of Marconi Road; thence southeasterly on Marconi Road to Adrienne Road, continuing south on Adrienne Road to Belmar Boulevard; thence easterly on Belmar Boulevard and 16th Avenue to the intersection of State Highway 71; thence southerly on State Highway 71 to the intersection of State Highway 35; thence northwesterly along State Highway 35 to State Highway 34 at the Brielle Circle; thence northwesterly along State Highway 34 to the Garden State Parkway at Exit 96; thence southwesterly along the Garden State Parkway to the intersection of the Monmouth, Ocean County boundary; thence westerly along that boundary to the intersection of the Central Railroad of New Jersey tracks (now Conrail); thence southwesterly along the tracks of the Central Railroad of New Jersey (now Conrail) to its junction with the tracks of the Pennsylvania Railroad near Whiting; thence easterly along the tracks of the Pennsylvania Railroad to its intersection with the Garden State Parkway near South Toms River; thence southerly along the Garden State Parkway to its intersection with the boundary of the Bass River State Forest; thence southerly, and thence westerly, along the Bass River State Forest to its intersection with the Garden State Parkway in Bass River Township; thence southerly along the Garden State Parkway to its intersection with Alt. 559, and thence northwesterly along Alt. 559 to its intersection with County Road 559 at Gravelly Run; thence northwesterly along County Road 559 to its intersection with U.S. 40 at S.R. 50 at Mays Landing; thence westerly along combined U.S. 40 and S.R. 50 to its intersection with S.R. 40; thence westerly along S.R. 40 to its intersection with S.R. 50; thence southerly on S.R. 50 to its intersection with Buck Hill Road near Buck Hill; thence westerly along Buck Hill (River Road also Head of River Road and Aetna Drive) Road to its intersection with S.R. 49; thence southeasterly along S.R. 49 to its intersection with S.R. 50; thence southeasterly along S.R. 50 to its intersection with County Road 585 (now County Road 610); thence southwesterly along County Road 585 (now County Road 610) to its intersection with S.R. 47 at Dennisville; thence northwesterly along S.R. 47 to its intersection with State Road 49 at Millville;

COMMENT

No change from source statute. This provision defines the geographical boundaries within which the provisions of this chapter apply.

CA-5. Development permits required

A permit issued pursuant to this chapter is required for:

- a. A development located in the coastal area on any beach or dune;
- b. A development located in the coastal area between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development, in:
 - (1) A development, if there is no intervening development with an above ground structure, excluding any shore protection structure or sand fencing, that is either completed or under active construction between the proposed site of the development and the mean high water line of any tidal waters;
 - (2) A residential development having three or more dwelling units if there is an intervening development with an above ground structure, excluding any shore protection structure or sand fencing, that is either completed or under active construction between the proposed site of the dwelling units and the mean high water line of any tidal waters;
 - (3) A commercial development having five or more parking spaces if there is an intervening development with an above ground structure, excluding any shore protection structure or sand fencing, that is either completed or under active construction between the proposed site of the commercial development and the mean high water line of any tidal waters; or

thence through Millville along State Road 49 to its intersection with County Road 610 (Cedar Street); thence southwesterly along County Road 610 (Cedar Street) to its intersection with County Road 555 (Race Street); thence southerly along County Road 555 (Race Street) to its intersection with County Road 27 (now County Road 627); thence southerly along County Road 27 (now County Road 627) to its intersection with County Road 70 (now County Road 670); thence southerly on County Road 70 (now County Road 670) to the Center of Mauricetown; thence through Mauricetown westerly on County Road 548 (now County Road 676) to its intersection with the tracks of the Central Railroad of New Jersey (now Central Railroad of New Jersey (Conrail)); thence northwesterly on the tracks of the Central Railroad of New Jersey (now Conrail) to its intersection with County Road 98 (now County Road 698); thence easterly along County Road 98 (now County Road 698) to the intersection with County Road 38 (now County Road 638); thence northerly along County Road 38 (now County Road 638) to its intersection with S.R. 49 east of Bridgeton; thence westerly along S.R. 49 through Bridgeton to its intersection with West Avenue; thence south on West Avenue to its intersection with County Road 626 (now County Road 626) (Roadstown Road); thence westerly along County Road 626 (now County Road 626) (Roadstown Road) to its intersection with County Road 47 (now County Road 647); thence southwesterly along County Road 47 (now County Road 647) to its intersection with County Road 19 (now County Road 623); thence along County Road 19 (now County Road 623) northwesterly to Gum Tree Corner; thence northwesterly along County Road 19 (now County Road 623) from Gum Tree Corner across Snowe Creek to its intersection with Salem County Road 59 (now County Road 623) (Hancock's Bridge Road); thence northwesterly along County Road 59 (now County Road 623) to its intersection with County Road 51 (now County Road 651) at Coopers Branch; thence northeasterly along County Road 51 (now County Road 651) to its intersection with S.R. 49 at Quinton; thence northwesterly along S.R. 49 to its intersection with County Road 50 (now County Road 650); thence southwesterly along County Road 50 (now County Road 650) to its intersection with County Road 58 (now County Road 658); thence southerly on County Road 58 (now County Road 658) to its intersection with County Road 24 (now County Road 624); thence westerly along County Road 24 (now County Road 624) to its intersection with County Road 65 (now County Road 637); thence northeasterly along County Road 65 (now County Road 637) to its intersection with County Road 665 (Walnut Street); thence northerly along County Road 65 (now County Road 665) (Walnut Street) to its intersection with County Road 4 (now County Road 633); thence westerly along County Road 4 (now County Road 633) to its intersection with County Road 627; thence northerly along County Road 627 to its intersection with County Road 661; thence easterly along County Road 661 to its intersection with State Road 49; thence northerly along State Road 49 (Front Street) to its intersection with County Road 57 (now County Road 657); thence easterly along County Road 57 (now County Road 657) to its intersection with State Road 45; thence northerly along State Road 45 to its intersection with County Road 540 at Pointers; thence northerly and northwesterly along County Road 540 (Pointers Auburn Road) to its intersection with the New Jersey Turnpike; thence westerly along the New Jersey Turnpike to its intersection with County Road 33 (now County Road 551); thence southerly along County Road 33 (now County Road 551) to its intersection with State Road 49; thence southeasterly along S.R. 49 to its intersection with County Road 26 (now County Road 632); thence northwesterly along County Road 26 (now County Road 632) to the Killcohook National Wildlife Refuge; thence northwesterly along this northeasterly boundary to the limits of the State's territorial jurisdiction on the Delaware River; provided, however, that the coastal area shall not include all that certain area in Cape May county lying within a line beginning at the intersection of S.R. 47 and County Road 54 (now County Road 654); thence westerly on County Road 54 (now County Road 654); to the intersection of County Road 3 (now County Road 603); thence southeasterly on County Road 3 (now County Road 603) through the intersection of County Road 3 (now County Road 603) with County Road 13 (now County Road 639) to the intersection with County Road 47 (now County Road 647); thence easterly and northerly along County Road 47 (now County Road 647) to its intersection with U.S. Route 9; thence northerly along U.S. Route 9 to its intersection with State Road 47; thence westerly along State Road 47 to its intersection with County Road 54 (now County Road 654).

L.1973,c.185,s.4; amended 1993,c.190,s.4

(4) A public development or industrial development;

c. A development located in the coastal area between a point greater than 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L.1978, c.14 (C.52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest federal decennial census, that would result, either solely or in conjunction with a previous development, in:

- (1) A residential development having 25 or more dwelling units;
- (2) A commercial development having 50 or more parking spaces; or
- (3) A public development or industrial development;

d. A development located in the coastal area at a point beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L.1978, c.14 (C.52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest federal decennial census, that would result, either solely or in conjunction with a previous development, in:

- (1) A residential development having 75 or more dwelling units;
- (2) A commercial development having 150 or more parking spaces; or
- (3) A public development or industrial development; or

e. Except as otherwise provided in subsection c. and subsection d. of this section, a development in the coastal area at a point beyond 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development, in:

- (1) A residential development having 25 or more dwelling units;
- (2) A commercial development having 50 or more parking spaces; or
- (3) A public development or industrial development.

Source: 13:19-5⁰

²⁰**13:19-5. Development permits required**

A permit issued pursuant to P.L.1973, c.185 (C.13:19 et seq.) shall be required for:

- a. A development located in the coastal area on any beach or dune;
- b. A development located in the coastal area between the mean high water line of any tidal waters, ~~and~~ the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters or ~~the~~ landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development, in:
 - (1) A development if there is no intervening development with an above ground structure, excluding any shore protection structure or sand fencing, that is either completed or under active construction between the proposed site of the development and the mean high water line of any tidal waters;
 - (2) A residential development having three or more dwelling units if there is an intervening development with an above ground structure, excluding any shore protection structure or sand fencing, that is either completed or under active construction between the proposed site of the dwelling units and the mean high water line of any tidal waters;
 - (3) A commercial development having five or more parking spaces if there is an intervening development with an above ground structure, excluding any shore protection structure or sand fencing, that is either completed or under active construction between the proposed site of the commercial development and the mean high water line of any tidal waters; or
 - (4) A public development or industrial development;
- c. A development located in the coastal area between a point greater than 150 ~~land~~ landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L.1978, c.14 (C.52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest federal ~~and~~ decennial census, that would result, either solely or in conjunction with a previous development, in:
 - (1) A residential development having 25 or more dwelling units;
 - (2) A commercial development having 50 or more parking spaces; or
 - (3) A public development or industrial development;

COMMENT

“This act” changed to “this chapter.” The phrase “shall be required” in the introductory sentence has been changed to “is required.” “A development” changed to “any development” in subsection (b)(1).

CA-6. Permit application

a. Any person proposing to construct or cause to be constructed, or to undertake or cause to be undertaken a development in the coastal area shall file an application for a permit with the department, if required by this chapter. The commissioner shall prescribe by regulation the form of the application and the information required to be supplied.

b. The application shall include an environmental impact statement which shall provide the information needed to evaluate the effects of a proposed development upon the environment of the coastal area. The department shall adopt regulations that set forth the contents required in an environmental impact statement, and the conditions under which the commissioner may vary the content requirements of an environmental impact statement or waive the requirement that an environmental impact statement be submitted.

Source: 13:19-6¹

COMMENT

The source section has been divided into two subsection, and proposed subsection (a) has been further divided into two sentences. The reference to applications being filed with “the commissioner” has been changed to “the department.”

In proposed subsection (a) the passage "Any person proposing to construct or cause to be constructed, or to undertake or cause to be undertaken" has been changed to "Any person who proposes to undertake...." The proposed change eliminates unnecessary verbiage, and is more consistent with the 1993 amendments to the source legislation that abandon the terminology basing regulation on the "construction" of a "facility" in favor of the more general term "development."

In proposed subsection (b) the phrase "rules and regulations" has been changed to "regulation."

CA-7. Applications

a. Within 20 working days following receipt of an application, the department shall notify the applicant in writing whether the application is complete. If the application is not complete, the notification shall specify the deficiencies in the application. Within 15 days following the receipt of additional information to correct deficiencies, the department shall notify the applicant whether the amended application is complete. An application shall not be considered filed until it has been declared complete by the department.

d. A development located in the coastal area at a point beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is landward, and which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L.1978, c.14 (C.52:2-17D8), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest federal decennial census, that would result, either solely or in conjunction with a previous development, in:

- (1) A residential development having 75 or more dwelling units;
- (2) A commercial development having 150 or more parking spaces; or
- (3) A public development or industrial development; or

e. Except as otherwise provided in subsection c. and subsection d. of this section, a development in the coastal area at a point beyond 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is landward, that would result, either solely or in conjunction with a previous development, in:

- (1) A residential development having 25 or more dwelling units;
- (2) A commercial development having 50 or more parking spaces; or
- (3) A public development or industrial development.

L. 1973, c.185, § 5; amended 1993, c.190, § 5.

²¹19-6. Application for permit

Any person proposing to construct or cause to be constructed, or to undertake or cause to be undertaken, as the case may be, a development in the coastal area shall file an application for a permit, if so required pursuant to section 5 of P.L.1973, c.185 (C.15:1-9) with the commissioner, on forms and with any information the commissioner may prescribe. The application shall include an environmental impact statement which shall provide the information needed to evaluate the effects of a proposed development upon the environment of the coastal area. The department shall adopt rules and regulations that set forth the contents required in an environmental impact statement, and the conditions under which the commissioner may vary the content requirements of an environmental impact statement or waive the requirement that an environmental impact statement be submitted.

L.1973, c.185, § 6; amended 1993, c.190, § 8.

b. Within 15 days of declaring an application complete for filing, the department shall set a date for either a public hearing or a public comment period. The date set for the public hearing or the start of the public comment period shall be not later than 60 days after the application is declared complete for filing.

Source: 13:19-8²

COMMENT

Subsection (a) has been rewritten for clarity. Minor editing changes in both subsections. "The commissioner" changed to "the department."

CA-8. Hearing, comment period

a. The department may hold a hearing to afford interested parties the opportunity to present their position, orally or in writing, concerning the filed application and any data the department may have developed in reference to the environmental or other relevant effects of the proposed development. If no hearing is held, the department shall provide for a 30-day comment period and shall provide sufficient public notice of the commencement of the comment period.

b. Within 15 days after the hearing, or the close of the comment period if no hearing is held, the department may require an applicant to submit any additional information necessary for complete review of the application.

c. The department shall approve, approve with conditions, or disapprove an application for a permit pursuant to this chapter within 60 days after the hearing or the close of the comment period if no hearing is held. In the event the department requires additional information as provided in subsection b. of this section, the department shall approve, approve with conditions, or disapprove an application within 90 days following receipt of the additional information.

d. The department shall adopt regulations which set forth the conditions under which hearings are held.

Source: 13:19-9³

COMMENT

In subsection (a), the cross-reference in subsection (c) replaced with a reference to "this chapter." The directive to adopt regulations contained in subsection (a) has been placed in a separate, proposed subsection (d) and slightly rewritten. "The commissioner" changed to "the department."

²²**13:19-8. Declaration of completeness of application**

a. Within 20 working days following receipt of an application, the commissioner shall issue a notification to the applicant in writing regarding its completeness. The commissioner may declare the application to be complete for filing or may notify the applicant of specific deficiencies. The commissioner, within 15 days following the receipt of additional information to correct deficiencies, shall issue a notification to the applicant of the completeness of the amended application. The application shall not be considered to be filed until it has been declared complete by the commissioner.

b. The commissioner, within 15 days after the hearing, shall set a date for either a public hearing or a public comment period. The date for the public hearing or the start of the public comment period shall be set not later than 60 days after the application is declared complete for filing.

L.1973, c.185, § 8; amended 1993, c.190, § 9.

²³**13:19-9. Hearing, comment period**

a. The commissioner, or a member of the department designated by the commissioner, may hold a hearing to afford interested parties the opportunity to present, orally or in writing, their position concerning the filed application and any data they may have developed in reference to the environmental or other relevant effects of the proposed development. The department shall adopt rules and regulations which set forth the conditions under which a hearing is to be held. If no hearing is held, the department shall provide for a 30-day comment period and shall provide sufficient public notice as to the commencement of the comment period.

b. The commissioner, within 15 days after the hearing, if one is held, or 15 days after the close of the comment period if no hearing is held, may require an applicant to submit any additional information necessary for the complete review of the application.

c. The department shall approve, approve with conditions, or disapprove an application for a permit pursuant to P.L.1973, c.185 (C.13:19-1 et seq.) within 60 days after the hearing, if one is held, or within 60 days after the close of the comment period if no hearing is held. In the event the commissioner requires additional information as provided in subsection b. of this section, the department shall approve, approve with conditions, or disapprove an application within 90 days following receipt of the additional information.

L.1973, c.185, § 9; amended 1979, c.86, § 3; 1993, c.190, § 10.

CA-9. Issuance of permits

The department shall review filed applications, including any environmental impact statement and all information presented at public hearings or during the comment period, or submitted during the application review period. A permit may be issued pursuant to this chapter only upon a finding that the proposed development:

- a. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards.
- b. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region.
- c. Provides for the collection and disposal of litter, recyclable material and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare.
- d. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies.
- e. Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.
- f. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare.
- g. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archeological areas, and existing public scenic attributes at the site and within the surrounding region.

Source: 13:19-10⁴

COMMENT

“Commissioner” changed to “department.”

CA-10. Issuance of general permit

- a. The department may issue a general permit in lieu of a permit issued pursuant to [section CA-5]. The department shall approve, approve with conditions, or disapprove an application for a general permit pursuant to this section in accordance with [the chapter of this subtitle entitled “Construction permits.”]
- b. The department shall adopt regulations which identify the activities subject to general permit review, and which establish the criteria for the approval or disapproval of a general permit issued pursuant to this section.

Source: 13:19-5.1⁵

²⁴13:19-10. Review of applications; required findings

The commissioner shall review filed applications, including any environmental impact statement and all information presented at public hearings or during the comment period, or submitted during the application review period. A permit may be issued pursuant to this act only upon a finding that the proposed development:

- a. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards.
- b. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region.
- c. Provides for the collection and disposal of litter, recyclable material and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare.
- d. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies.
- e. Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.
- f. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare.
- g. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archeological areas, and existing public scenic attributes at the site and within the surrounding region.

L.1973, c.185, § 10; amended 1993, c.190, § 11.

²⁵13:19-5.1 Issuance of general permit

Notwithstanding any other provision of law, rule or regulation to the contrary, the commissioner is authorized to issue a general permit in lieu of a permit issued pursuant to section 5 of P.L.1973, c.185 (C.13:59). The department shall adopt rules and regulations which identify the activities subject to general permit review, and which establish the criteria for the approval or disapproval of a general permit issued pursuant to this section. The department shall approve, approve with conditions, or disapprove an application for a general permit pursuant to this section in accordance with P.L.1975, c.232 (C.13:109 et al.).

COMMENT

The source provision has been divided into two proposed subsections. The directive to adopt regulations has been moved to proposed subsection (b). "The commissioner" changed to "the department."

CA-11. Permits not required

A permit shall not be required pursuant to this chapter for:

a. A development which has received preliminary site plan approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or a final municipal building or construction permit on or prior to July 19, 1993, or a residential development which has received preliminary subdivision approval or minor subdivision approval on or prior to that date where no subsequent site plan approval is required, provided that, in any of the cases identified above, construction begins within three years of the July 19, 1994, and continues to completion with no lapses in construction activity of more than one year. This subsection shall not apply to any development that required a permit pursuant to this chapter prior to the effective date of this section;

b. The reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and federal law;

c. The enlargement of any development if the enlargement does not result in:

- (1) the enlargement of the footprint of the development; or
- (2) an increase in the number of dwelling units within the development;

d. The construction of a patio, deck or similar structure at a residential development;

e. Services provided, within the existing public right-of-way, by any governmental entity which involve:

(1) the routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways;

(2) public highway lane widening, intersection and shoulder improvement projects which do not increase the number of travel lanes; or

(3) public highway signing, lighting, guardrail and other nonintrusive safety projects; or

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

A development subject to any exemption provided in this section shall be required to satisfy all other applicable requirements of law.

Source: 13:19-5.2⁶

L.1993, c.190, § 6.

²⁶**13:19-5.2 Permits not required, conditions**

A permit shall not be required pursuant to section 5 of P.L.1973, c.185 (C.13:19) for:

a. A development which has received preliminary site plan approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or a final municipal building or construction permit on or prior to the effective date of this section, or a residential development which has received preliminary subdivision approval or minor subdivision approval on or prior to the effective date of this section where no subsequent site plan approval is required, provided that, in any of the cases identified above, construction begins within three years of the effective date of this section, and continues to completion with no lapses in construction activity of more than one year. This subsection shall not apply to any development that required a permit pursuant to P.L.1973, c.185 (C.13:19 et seq.) prior to the effective date of this section;

b. The reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and federal law;

c. The enlargement of any development if the enlargement does not result in:

- (1) the enlargement of the footprint of the development; or
- (2) an increase in the number of dwelling units within the development;

d. The construction of a patio, deck or similar structure at a residential development;

e. Services provided, within the existing public right-of-way, by any governmental entity which involve:

- (1) the routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways;
- (2) public highway lane widening, intersection and shoulder improvement projects which do not increase the number of travel lanes; or

COMMENT

The effective date provisions pertinent to this section and chapter are found at L.1993, c.190, § 26, which states: "This act shall take effect one year from the enactment date of this act, except that section 15, section 19 and section 20 take effect immediately, and section 25 shall take effect upon the completion date provided in subsection b. of section 20." "This act," i.e., L.1993, c.190, was enacted on July 19, 1993, thus the references in subsection a to "the effective date of this section" have been changed to "July 19, 1994". References to the chapter law of the original enactment of this chapter changed to "this chapter."

CA-12. Waiver of permit requirement

The department may waive the permit requirement in this chapter for development in the coastal area for any development that involves the grading or excavation of a dune by a governmental agency if the department finds that such a waiver is warranted as a result of a storm, natural disaster or similar act of God.

Source: 13:19-5.3⁷

COMMENT

"P.L.1973, c.185 (C.13:19-1)" changed to "this chapter." "Commissioner" changed to "department."

CA-13. Denial or conditioning of permit application

a. If an application complies with the criteria listed in [section CA-9], the department may nevertheless deny the permit application or issue the permit subject to conditions. The department may deny the permit application or subject it to conditions if the department finds:

- (1) that the proposed development would violate or tend to violate the purpose and intent of this chapter;
- or
- (2) that the proposed development would materially contribute to an already serious and unacceptable level of environmental degradation or resource exhaustion.

If a determination is made to issue the permit subject to conditions, the conditions must be ones that the department finds reasonably necessary to promote the public health, safety and welfare, to protect public and private property, wildlife and marine fisheries, and to preserve, protect and enhance the natural environment.

b. The construction and operation of a nuclear electricity generating facility shall not be approved unless the department finds that the proposed method for disposal of radioactive waste material to be produced or generated by the facility will be safe, conforms to standards established by the Nuclear Regulatory Commission and will effectively remove danger to life and the environment from such waste material.

Source: 13:19-1f⁸

(3)public highway signing, lighting, guardrail and other nonintrusive safety projects; or
 f. The expansion of an existing, functional amusement pier, provided such expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent, and provided such expansion is located in the area beyond 150 feet seaward of the mean high water line, beach or dune, whichever is most seaward.

A development subject to any exemption provided in this section shall be required to satisfy all other applicable requirements of law.
 L.1993, c.190, § 7.

²⁷**13:19-5.3. Waiving of permit requirement**

The commissioner may waive the permit requirement for development in the coastal area pursuant to P.L.1973, c.185 (C.13:19-1) for any development that involves the grading or excavation of a dune by a governmental agency if the commissioner finds that such a waiver is warranted as a result of a storm, natural disaster or similar act of God.

L.1993, c.190, § 21.

²⁸**13:19-11. Grounds for denial of permit application; conditional permit; approval of nuclear electricity generating facility**

Notwithstanding the applicant's compliance with the criteria listed in section 10 of P.L.1973, c.185 (C.13:19-1) if the commissioner finds that the proposed development would violate or tend to violate the purpose and intent of this act as specified in section 2 of P.L.1973, c.185 (C.13:19-2), or that the proposed development would materially contribute to an already serious and unacceptable level of environmental degradation or resource exhaustion, the commissioner may deny the permit application, or the commissioner may issue a permit subject to such conditions as the commissioner finds reasonably necessary to promote the public health, safety and welfare, to protect public and private property, wildlife and marine fisheries, and to preserve, protect and enhance the natural environment. The construction and operation of a nuclear electricity generating facility shall, however, not be approved by the commissioner unless the commissioner finds that the proposed method for disposal of radioactive waste material to be produced or generated by the facility will be safe, conforms to standards established by the Nuclear Regulatory Commission and will effectively remove danger to life and the environment from such waste material.

COMMENT

The source section has been divided into two subsections. Subsection (a) has been further subdivided into three subparagraphs, and restructured for clarity. "Commissioner" changed to "department."

CA-14. Low, moderate income housing

The department shall not require the provision for low and moderate income housing as a condition for approval of an application to construct or undertake a development in the coastal area pursuant to the provisions of this chapter.

Source: 13:19-11.1⁹

COMMENT

This provision was added to the source act in 1986, to reverse the decision in Matter of Egg Harbor Associates, 185 N.J. Super. 507 (App. Div. 1992), aff'd, 94 N.J. 358 (1993), which upheld the power of the Department of Environmental Protection to adopt regulations under the source act which required developers to provide for low and middle income housing. In the proposed provision, the introductory phrase "notwithstanding the provisions of any regulation to the contrary" has been deleted as superfluous, as the enactment of this provision by definition invalidated the inconsistent regulation.

In addition, in the proposed provision, "rule or regulation" has been changed to "regulation" and the reference to the chapter law and compilation number of the original act have been changed to "this chapter."

CA-15. Continuance in force of issued permit

In the event of rental, lease, sale or other conveyances by an applicant to whom a permit is issued, the permit, with any conditions, shall be continued in force and shall apply to the new tenant, lessee, owner, or assignee as long as there is no change in the nature of the development set forth in the original application.

Source: 13:19-14⁰

COMMENT

"Such" changed to "the"; "so long" changed to "as long."

CA-16. Effect of denial on future submission of new application

The denial of an application shall in no way adversely affect the future submission of a new application.

Source: 13:19-15¹

COMMENT

"Submittal" has been changed to the preferred usage "submission."

L.1973, c.185, § 11; amended 1993, c.190, § 12.

²⁹**13:19-11.1. Low, moderate income housing, no conditions for**

Notwithstanding the provisions of any rule or regulation to the contrary, the department shall not require the provision for low and moderate income housing as a condition for approval of an application to construct or undertake a development in the coastal area pursuant to the provisions of P.L.1973, c.185 (C.13:19 et seq.).

L.1986, c.145, § 1; amended 1993, c.190, § 13.

³⁰**13:19-14. Continuance in force of issued permit**

In the event of rental, lease, sale or other conveyances by an applicant to whom a permit is issued, such permit, with any conditions, 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 nature of the development set forth in the original application.

L.1973, c.185, § 14; amended 1993, c.190, § 14.

³¹**13:19-15. Effect of denial on future submittal of new application**

The denial of an application shall in no way adversely affect the future submittal of a new application.

L.1973, c.185, § 15.

CA-17. Violations and penalties

a. Whenever the department finds that a person has violated any provision of this chapter or any regulation, permit, or order adopted or issued by the department pursuant to this chapter, the department may:

- (1) Issue an order requiring the violator found to be in violation to comply in accordance with subsection b. of this section;
- (2) Bring a civil action in accordance with subsection c. of this section;
- (3) Levy a civil administrative penalty in accordance with subsection d. of this section; or
- (4) Bring an action for a civil penalty in accordance with subsection e. of this section.

Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

b. Whenever the department finds that a person has violated any provision of this chapter, or any regulation adopted, or permit or order issued, by the department pursuant to this chapter, the department may issue an order specifying the provision or provisions of the chapter, regulation, permit, or order of which the person is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the violator of the right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the department a written request for a hearing. After the hearing and upon finding that a violation has occurred, the department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

c. The department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of this chapter, or any regulation adopted, or permit or order issued, by the department pursuant to this chapter, and the court may proceed in the action in a summary manner.

Such relief may include, singly or in combination:

- (1) A temporary or permanent injunction;
- (2) Assessment of the violator for any cost incurred by the department in removing, correcting or terminating the adverse effects upon the land or upon water or air quality resulting from any violation of any provision of this chapter, or any regulation adopted, or permit or order issued, by the department pursuant to this chapter, for which the action under this subsection may have been brought.

d. The department is authorized to assess, in accordance with a uniform policy adopted therefor, a civil administrative penalty of not more than \$25,000 for each violation. No assessment may be levied pursuant to this subsection until after the violator has been notified by certified mail, personal service or any other means authorized under the New Jersey Rules of Court. The notice shall include a reference to the section or provision of this chapter, the regulation, permit, or order issued by the department pursuant to this chapter that has been violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, including any interest that may accrue thereon if the penalty is not paid when due, and a statement of the party's right to a hearing. The ordered party shall have 20 calendar days from receipt of the notice within which to deliver to the department a written request for a hearing. After the hearing and upon finding that a violation has occurred, the department may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 30 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued.

Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court. For the purposes of this subsection, the date that a penalty is due is the date that written notice of the penalty is received by the person responsible for payment thereof, or such later date as may be specified in the notice.

e. Any person who violates the provisions of this chapter, any regulation adopted pursuant thereto, or any permit or order issued by the department pursuant to that act, an administrative order issued pursuant to subsection b. of this section or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, shall be subject, upon order of a court, to a civil penalty of not more than \$25,000 for each violation, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.

Any penalty established pursuant to this subsection may be imposed and collected with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this chapter.

Source: 13:19-18²

³²**13:19-18. Violations, penalties; "Cooperative Coastal Monitoring Enforcement Fund"**

a. Whenever the department finds that a person has violated any provision of P.L.1973, c.185 (C.13:19-18), or any regulation, rule, permit, or order adopted or issued by the department pursuant thereto, the department may:

- (1) Issue an order requiring the person found to be in violation to comply in accordance with subsection b. of this section;
- (2) Bring a civil action in accordance with subsection c. of this section;
- (3) Levy a civil administrative penalty in accordance with subsection d. of this section; or
- (4) Bring an action for a civil penalty in accordance with subsection e. of this section.

Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

b. Whenever the department finds that a person has violated any provision of P.L.1973, c.185, or any regulation or rule adopted, or permit or order issued, by the department pursuant to that act, the department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the department a written request for a hearing. After the hearing and upon finding that a violation has occurred, the department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

c. The department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of P.L.1973, c.185, or any regulation or rule adopted, or permit or order issued, by the department pursuant to that act, and the court may proceed in the action in a summary manner.

Such relief may include, singly or in combination:

- (1) A temporary or permanent injunction;

(2) Assessment of the violator for any cost incurred by the department in removing, correcting or terminating the adverse effects upon the land or upon water or air quality resulting from any violation of any provision of P.L.1973, c.185, or any regulation or rule adopted, or permit or order issued, by the department pursuant to that act, for which the action under this subsection may have been brought.

d. The department is authorized to assess, in accordance with a uniform policy adopted therefor, a civil administrative penalty of not more than \$25,000 for each violation. No assessment may be levied pursuant to this subsection until after the violator has been notified by certified mail, personal service or any other means authorized under the New Jersey Rules of Court. The notice shall include a reference to the section or provision of P.L.1973, c.185, the regulation, rule, permit, or order issued by the department pursuant to that act that has been violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, including any interest that may accrue thereon if the penalty is not paid when due, and a statement of the party's right to a hearing. The ordered party shall have 20 calendar days from receipt of the notice within which to deliver to the department a written request for a hearing. After the hearing and upon finding that a violation has occurred, the department may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 30 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued.

Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court. For the purposes of this subsection, the date that a penalty is due is the date that written notice of the penalty is received by the person responsible for payment thereof, or such later date as may be specified in the notice.

e. Any person who violates the provisions of P.L.1973, c.185, any rule or regulation adopted pursuant thereto, or any permit or order issued by the department pursuant to that act, an administrative order issued pursuant to subsection b. of this section or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, shall be subject, upon order of a court, to a civil penalty of not more than \$25,000 for each violation, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.

Any penalty established pursuant to this subsection may be imposed and collected with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this act.

f. There is created in the department a special revolving fund, to be known as the "Cooperative Coastal Monitoring Enforcement Fund." Except as otherwise provided in this section, monies from penalties, fines, or recoveries of costs collected by the department pursuant to this section on and after the effective date of this section, shall be deposited in the fund. Interest earned on monies deposited in the fund shall be credited to the fund. Unless otherwise specifically provided by law, monies in the fund shall be utilized by the department for the cost of providing aircraft flights for coastal monitoring, surveillance and enforcement activities conducted by the department and for the cost of administering P.L.1973, c.185

COMMENT

The source section has been divided into two proposed sections. This proposed section consists of subsections (a) through (e) of the source section. The references to the chapter law and compilation numbers, and to "this act" have been changed to "this chapter." Subsection (f) has been made into a separate proposed section, see "Cooperative Coastal Monitoring Enforcement Fund" below.

CA-18. Cooperative Coastal Monitoring Enforcement Fund

There is created in the department a special nonlapsing fund, to be known as the "Cooperative Coastal Monitoring Enforcement Fund." Except as otherwise provided in [this section], all monies from penalties, fines, or recoveries of costs collected by the department pursuant to [CA-17], shall be deposited in the fund. Interest earned on monies deposited in the fund shall be credited to the fund. Unless otherwise specifically provided by law, monies in the fund shall be utilized by the department for the cost of providing aircraft overflights for coastal monitoring, surveillance and enforcement activities conducted by the department and for the cost of administering this chapter. The department shall submit annually to the Legislature a report which provides an accounting of all monies deposited in the fund and the purposes for which monies in the fund are disbursed.

Source: 13:19-18 [see above]

COMMENT

This proposed section derives from subsection (f) of the source section. The Fund was first created by the 1993 amendments to the source act. See L.1993, c.190, § 16.

The phrase "on and after the effective date of this section" has been eliminated, as the effective date of the source provision has passed. See L.1993, c.190, § 26 (effective date of amending act is one year from July 19, 1993).

CA-19. Shore Protection Fund created

a. There is created in the Department of the Treasury a special non-lapsing fund to be known as the Shore Protection Fund. The monies in the fund are dedicated and shall only be used to carry out the purposes enumerated in subsection b. of this section. The fund shall be credited with all revenues collected and deposited in the fund pursuant to [section 4 of P.L.1968, c.49 (C.46:15-8)], all interest received from the investment of monies in the fund, and any monies which, from time to time, may otherwise become available for the purposes of the fund. Pending the use of the fund pursuant to the provisions of subsection b. of this section, the monies deposited in the fund shall be held in interest-bearing accounts in public depositories, as defined pursuant to [section 1 of P.L.1970, c.236 (C.17:9-41)], and may be invested or reinvested in such securities as are approved by the State Treasurer. Interest or other income earned on monies deposited into the fund shall be credited to the fund for use as set forth in this section for other monies in the fund.

b. Monies deposited in the Shore Protection Fund shall be used for shore protection projects associated with the protection, stabilization, restoration or maintenance of the shore, including monitoring studies and land acquisition, consistent with the New Jersey Shore Protection Master Plan prepared pursuant to [section 5 of P.L.1978, c.157], and may include the nonfederal share of any State-federal project. The commissioner may, pursuant to appropriations made by law, allocate monies deposited in the fund for shore protection projects of an emergency nature, in the event of storm, stress of weather or similar act of God. Two percent of the monies annually deposited in the fund shall be allocated and annually appropriated for the purposes of funding the Coastal Protection Technical Assistance Service established pursuant to [section 1 of P.L.1993, c.176 (C.18A:64L-1)], of which amount up to \$100,000 annually may be utilized for funding coastal engineering research and development to be conducted by Stevens Institute of Technology in response to requests made by State or local governmental entities.

(C.13:19-1 et seq.). The department shall submit annually to the Legislature a report which provides an accounting of all monies deposited in the fund and the purposes for which monies in the fund are disbursed.

L.1973, c.185, § 18; amended 1993, c.190, § 16.

Source: 13:19-16.1³³

COMMENT

The source of this section is L.1992, c.148, § 1, as amended by L.1993, c.175, § 5 and L.1997, c.384, §2. The 1992 enactment created the fund and provided that a portion of the realty transfer fee imposed by 46:15-7 be paid into the Shore Protection Fund created by L.1992, c.148. The 1993 amendment directed that a portion of the Fund be used to fund certain coastal engineering research. The 1997 amendment corrected the name of the department and a typographical error.

CA-20. Shore protection expenditures

a. The commissioner shall develop a priority system for ranking shore protection projects and establish appropriate criteria therefor. Commencing with the fiscal year beginning on July 1, 1999, and for each fiscal year thereafter, the commissioner shall use the priority system to establish a shore protection project priority list for projects designated to receive funding pursuant to an appropriation made from the Shore Protection Fund, hereinafter referred to as the "fund," established pursuant [CA-19]. The list shall include a description of each project and its purpose, impact, estimated cost, and estimated construction schedule, and an explanation of the manner in which priorities were established. A description of the priority system and the project priority list for the ensuing fiscal year shall be submitted to the Legislature on or before January 31 of each year on a day when both Houses are meeting. The President of the Senate and the Speaker of the General Assembly shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively, and shall cause the project priority list to be introduced in each House in the form of legislative bills authorizing the expenditure of monies appropriated pursuant to [CA-19] for projects on the list, and shall refer these bills to the Senate Economic Growth, Agriculture and Tourism Committee, the Senate Budget and Appropriations Committee, the General Assembly Environment, Science and Technology Committee, and the General Assembly Appropriations Committee, or their successors, for their respective consideration.

b. Within 60 days of the referral thereof, the Senate Economic Growth, Agriculture and Tourism Committee, the Senate Budget and Appropriations Committee, the General Assembly Environment, Science and Technology Committee, and the General Assembly Appropriations Committee, or their successors, shall, either individually or jointly, consider the legislation containing the project priority list, and shall report the legislation, together with any modifications, out of committee for consideration by each House of the Legislature. On or before June 1 of each year, the Legislature shall approve the legislation containing the project priority list, including any amendatory or supplementary provisions thereto. The legislation approved by the Legislature shall authorize the expenditure of monies appropriated to the Department of Environmental Protection from the Shore Protection Fund for the specific projects, including the estimated amounts therefor, on the list.

c. No monies appropriated from the Shore Protection Fund to the Department of Environmental Protection shall be expended for any shore protection project unless the estimated expenditure is authorized

³³ 13:19-16.1 "Shore Protection Fund" created.

1. a. There is created in the Department of the Treasury a special non-lapsing fund to be known as the "Shore Protection Fund." monies in the fund are dedicated and shall only be used to carry out the purposes enumerated in subsection b. of this section. The fund shall be credited with all revenues collected and deposited in the fund pursuant to section 4 of P.L.1968, c.49 (C.46:15-8), all interest received from the investment of monies in the fund, and any monies which, from time to time, may otherwise become available for the purposes of the funding the use thereof pursuant to the provisions of subsection b. of this section. monies deposited in the fund shall be held in interest-bearing accounts in public depositories, as defined pursuant to section 1 of P.L.1970, c.236 (C.17:9-41), and may be invested or reinvested in such securities as are approved by the State Treasurer. Interest or other income earned on monies deposited into the fund shall be credited to the fund for use as set forth in this act for other monies in the fund.

b. Monies deposited in the "Shore Protection Fund" shall be used, in accordance with the priority list approved by the Legislature pursuant to section 1 of P.L.1997, c.384 (C.13:19-16.2), for shore protection projects associated with the protection, stabilization, restoration or maintenance of the shore, including monitoring studies and land acquisition, consistent with the current New Jersey Shore Protection Master Plan prepared pursuant to section 5 of P.L.1978, c.157, and may include the nonfederal share of any State-federal project. The requirements of subsection c. of section 1 of P.L.1997, c.384 (C.13:19-16.2) notwithstanding, the Commissioner of Environmental Protection may, pursuant to appropriations made by law, allocate monies deposited in the fund for shore protection projects of an emergency nature, in the event of storm, stress of weather or similar act of God. Two percent of the monies annually deposited in the fund shall be allocated and annually appropriated for the purposes of funding the Coastal Protection Technical Assistance Service established pursuant to section 1 of P.L.1993, c.176 (C.18A:64L-1), of which amount up to \$100,000 annually may be utilized for funding coastal engineering research and development to be conducted by Stevens Institute of Technology in response to requests therefor made by State or local governmental entities.

L.1992,c.148,s.1; 1992, c.148, s.1; amended 1993, c.176, s.5; 1997, c.384, s.2.

pursuant to legislation approved in accordance with the provisions of subsection b. of this section or unless the shore protection project is of an emergency nature pursuant to the provisions of [CA-19]. The department is authorized to transfer monies between authorized projects to compensate for the differences between the estimated and actual costs of a project. If the Legislature fails to approve legislation within the time frame specified pursuant to subsection b. of this section, the expenditure of monies appropriated from the Shore Protection Fund shall be authorized pursuant to the provisions of the annual appropriations act.

Source: 13:19-16.2⁴

COMMENT

Cross-references changed.

³⁴ **13:19-16.2 Priority system for ranking shore protection projects.**

1. a. The Commissioner of Environmental Protection shall develop a priority system for ranking shore protection projects and shall establish appropriate criteria therefor. Commencing with the fiscal year beginning on July 1, 1999, and for each fiscal year thereafter, the commissioner shall use the priority system to establish a shore protection project priority list for projects designated to receive funding pursuant to an appropriation made from the Shore Protection Fund, hereinafter referred to as the "fund," established pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1). The list shall include a description of each project and its purpose, impact, estimated cost, and estimated construction schedule, and an explanation of the manner in which priorities were established. A description of the priority system and the project priority list for the ensuing fiscal year shall be submitted to the Legislature on or before January 31 of each year on a day when both Houses are meeting. The President of the Senate and the Speaker of the General Assembly shall cause the date of submission to be entered upon the Senate Journal and the Minutes of the General Assembly, respectively, and shall cause the project priority list to be introduced in each House in the form of legislative bills authorizing the expenditure of monies appropriated pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1) for projects on the list, and shall refer these bills to the Senate Economic Growth, Agriculture and Tourism Committee, the Senate Budget and Appropriations Committee, the General Assembly Environment, Science and Technology Committee, and the General Assembly Appropriations Committee, or their successors, for their respective consideration.

b. Within 60 days of the referral thereof, the Senate Economic Growth, Agriculture and Tourism Committee, the Senate Budget and Appropriations Committee, the General Assembly Environment, Science and Technology Committee, and the General Assembly Appropriations Committee, or their successors, shall, either individually or jointly, consider the legislation containing the project priority list, and shall report the legislation, together with any modifications, out of committee for consideration by each House of the Legislature. On or before June 1 of each year, the Legislature shall approve the legislation containing the project priority list, including any amendatory or supplementary provisions thereto. Legislation approved by the Legislature shall authorize the expenditure of monies appropriated to the Department of Environmental Protection from the Shore Protection Fund for the specific projects, including the estimated amounts therefor, on the list.

c. No monies appropriated from the Shore Protection Fund to the Department of Environmental Protection shall be expended for any shore protection project unless the estimated expenditure is authorized pursuant to legislation approved in accordance with the provisions of subsection b. of this section or unless the shore protection project is of an emergency nature pursuant to the provisions of subsection b. of section 1 of P.L.1992, c.148 (C.13:19-16.1). The department is authorized to transfer monies between authorized projects to compensate for the differences between the estimated and actual costs of a project. If the Legislature fails to approve legislation within the time frame specified pursuant to subsection b. of this section, the expenditure of monies appropriated from the Shore Protection Fund shall be authorized pursuant to the provisions of the annual appropriations act.

L.1997,c.384,s.1.

Recommended for Repeal:

13:19-1. Short title³⁵

13:19-17. Rules, regulations³⁶

13:19-20. Construction of act³⁷

13:19-21. Severability³⁸

13:19-13.1. Coastal Area Review Board abolished upon completion date of duties

COMMENT

The source provision, enacted in 1993, abolishes the Coastal Area Review Board upon the completion of its duties.

³⁵**13:19-1. Short title**

This act shall be known and may be cited as the "Coastal Area Facility Review Act."
L.1973, c.185, § 1.

³⁶**13:19-17. Rules, regulations**

a. The department shall, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14-1 et seq.), adopt rules and regulations to effectuate the purposes of this act.

b. Within one year of the enactment date of P.L.1993, c.190 (C.13:59-1 et al.), the department, in consultation with the State Planning Commission and county and municipal governments located in the coastal area, as defined in section 4 of P.L.1973, c.185 (C.43:10-1), shall adopt new rules and regulations to implement P.L.1993, c.190 (C.13:59-1 et al.). Any rules or regulations adopted pursuant to this subsection shall be closely coordinated with the provisions of the State Development and Redevelopment Plan adopted pursuant to P.L.1985, c.398 (C.52:18-1 et al.) and the federal "Coastal Zone Management Act of 1972," 16 U.S.C. {1451 et seq.

L.1973, c.185, § 17; amended 1993, c.190, § 15.

³⁷**13:19-20. Construction of act**

This act shall be liberally construed to effectuate the purpose and intent thereof.

L.1973, c.185, § 20.

³⁸**13:19-21. Severability**

If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

L.1973, c.185, § 21.

³⁹**13:19-13.1. Coastal Area Review Board abolished upon completion date of duties**

a. The Coastal Area Review Board established pursuant to section 13 of P.L.1973, c.185 (C.13:13-1) is, upon the completion date of its duties, abolished, and all powers, functions and duties thereof shall terminate. Any appeal pending before the Coastal Area Review Board prior to the enactment date of this act may be decided by the board. Any appeal initiated on or after the enactment date of this act shall be referred to the Office of Administrative Law.

b. For the purposes of this section, "completion date," with respect to the Coastal Area Review Board, shall mean the date upon which all decisions on appeal to the board from decisions by the commissioner pursuant to P.L.1973, c.185 (C.13:13-1 et seq.), have been rendered by the board, as certified by the voting members thereof. Notice of the certification of the completion date shall be published by the board in the New Jersey Register.

L.1993, c.190, § 20.

Chapter: Coastal wetlands

The source statute was enacted as "The Wetlands Act," L.1970, c.272. It regulates virtually every type of construction on or near tidal wetlands as defined in the Act. The definition of the term "tidal wetlands" includes all such tidelands from Sandy Hook on the Atlantic Coast, down to Cape May, and up the Delaware Bay and Delaware River. The definition expressly includes any wetlands regulated by the Hackensack Meadowlands Development Commission.

As enacted, the legislation directed the Department of Environmental Protection to prepare maps of all state tidal wetlands, and to file the maps in the appropriate county recording offices. Regulation of the defined activities is accomplished through the promulgation of orders and regulations, and a permitting process.

The provisions of the source statutes which mandate the completion of mapping activities by dates long past have been deleted; the continuing obligation to keep the maps has been retained. Once a property appears on a promulgated tidal wetlands map it becomes subject to the regulatory authority of the department under these provisions. The Wetlands Act authorizes the issuance of orders which must be preceded by notice to affected property owners. Once an order is effective, property owners must obtain permits to undertake broadly-defined regulated activities. Note that these regulatory provisions overlay other regulatory schemes and does not displace them. Thus, a property subject to regulations pursuant to the Wetlands Act may also be subject to regulation under CAFRA (see proposed subtitle "Coastal area development") and the Waterfront Development Act (see proposed subtitle "Waterfront and harbor facilities").

Note also that these provisions do not displace the State's ownership interest in tidelands, and its use of that ownership interest to control building and development in coastal areas. See the proposed subtitle "Tidelands" which contains the provisions governing the ownership, sale and lease of state-owned tidelands.

CW-1. Legislative findings and declarations

The Legislature hereby finds and declares that one of the most vital and productive areas of our natural world is the so-called "estuarine zone," that area between the sea and the land; that this area protects the land from the force of the sea, moderates our weather, provides a home for water fowl and for 2/3 of all our fish and shellfish, and assists in absorbing sewage discharge by the rivers of the land; and that in order to promote the public safety, health and welfare, and to protect public and private property, wildlife, marine fisheries and the natural environment, it is necessary to preserve the ecological balance of this area and prevent its further deterioration and destruction by regulating the dredging, filling, removing or otherwise altering or polluting of this area, all to the extent and in the manner provided in this chapter.

Source: 13:9A-1⁰

COMMENT

The source section has been divided into two sections: "Legislative findings and declarations" and "Maps of tidal wetlands." References to "this act" have been changed to "this chapter."

⁴⁰13:9A-1. Legislative intent; inventory and mapping of tidal wetlands; filing in office of county recording officer

a. The Legislature hereby finds and declares that one of the most vital and productive areas of our natural world is ~~the~~ "estuarine zone," that area between the sea and the land; that this area protects the land from the force of the sea, moderates our weather, provides a home for water fowl and for 2/3 of all our fish and shellfish, and assists in absorbing sewage discharge by the rivers of the land; and that in order to promote the public safety, health and welfare, and to protect public and private property, wildlife, marine fisheries and the natural environment, it is necessary to preserve the ecological balance of this area and prevent its further deterioration and destruction by regulating the dredging, filling, removing or otherwise altering or polluting thereof, all to the extent and in the manner provided herein.

b. The Commissioner of Environmental Protection shall, within 2 years of the effective date of this act, make an inventory and maps of all tidal wetlands within the State. The boundaries of such wetlands shall generally define the areas that are at or below high water and shall be shown on suitable maps, which may be reproductions or aerial photographs. Each such map shall be filed in the office of the county recording officer of the county or counties in which the wetlands indicated thereon are located. Each wetland map shall bear a certificate of the commissioner to the effect that it is made and filed pursuant to this act. To be entitled to filing no wetlands map need meet the requirements of L.1970, c.272, § 1, eff. Nov. 5, 1970.

L.1970, c.272, § 1, eff. Nov. 5, 1970.

CW-2. Maps of tidal wetlands

The Department of Environmental Protection shall make an inventory and maps of all tidal wetlands within the State. The boundaries of tidal wetlands shall generally define the areas that are at or below high water and shall be shown on suitable maps, which may be reproductions or aerial photographs. Each map shall be filed in the office of the county recording officer of the county or counties in which the wetlands indicated on the map are located. Each wetland map shall bear a certificate of the department to the effect that it is made and filed pursuant to this chapter. To be entitled to filing, no tidal wetlands map need meet the requirements of S. 47:1-6.

Source: 13:9A-1 [see above]

COMMENT

At the beginning of this section, the phrase "within 2 years of the effective date of this act" has been deleted. A few other minor editing changes have been made (e.g., "such" to "the").

CW-3. Orders regulating coastal wetlands

a. The department may from time to time, for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting, coastal wetlands.

b. As used in this chapter, the term "coastal wetlands" means any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey along the Delaware bay and Delaware river, Raritan bay, Barnegat bay, Sandy Hook bay, Shrewsbury river including Navesink river, Shark river, and the coastal inland waterways extending southerly from Manasquan Inlet to Cape May Harbor, or at any inlet, estuary or tributary waterway or any thereof, including those areas now or formerly connected to tidal waters whose surface is at or below an elevation of 1 foot above local extreme high water, and upon which may grow or is capable of growing some, but not necessarily all, of the following: Salt meadow grass (*Spartina patens*), spike grass (*Distichlis spicata*), black grass (*Juncus gerardi*), saltmarsh grass (*Spartina alterniflora*), saltworts (*Salicornia Europaea*, and *Salicornia bigelovii*), Sea Lavendar (*Limonium carolinianum*), saltmarsh bulrushes (*Scirpus robustus* and *Scirpus paludosus* var. *atlanticus*), sand spurrey (*Spergularia marina*), switch grass (*Panicum virgatum*), tall cordgrass (*Spartina pectinata*), hightide bush (*Iva frutescens* var. *oraria*), cattails (*Typha angustifolia*, and *Typha latifolia*), spike rush (*Eleocharis rostellata*), chairmaker's rush (*Scirpus americana*), bent grass (*Agrostis palustris*), and sweet grass (*Hierochloa odorata*).

Source: 13:9A-2¹

COMMENT

The first part of the source section has been divided into two proposed subsections. The last sentence, excepting the Hackensack Meadowlands from the definition of "coastal wetlands" has been moved to a separate section entitled "Application to Hackensack meadowlands," located adjacent to the other "exception" provisions concerning applicability to state departments and agencies and tidelands.

⁴¹13:9A-2. Authority of commissioner to adopt, modify or repeal orders regulating, altering or polluting coastal wetlands; coastal wetlands defined

The Commissioner may from time to time, for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting, coastal wetlands. For the purposes of this act the term "coastal wetlands" shall mean any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey along the Delaware bay and Delaware Raritan bay, Barnegat bay, Sandy Hook bay, Shrewsbury river including Navesink river, Shark river, and the coastal inland waterways extending southerly from Manasquan Inlet to Cape May Harbor, or at any inlet, estuary or tributary waterway or any thereof, including those areas now or formerly connected to tidal waters whose surface is at or below an elevation of 1 foot above local extreme high water, and upon which may grow or is capable of growing some, but not necessarily all, of the following: Salt meadow grass (*Spartina patens*), spike grass (*Distichlis spicata*), black grass (*Juncus gerardi*), saltmarsh grass (*Spartina alterniflora*), saltworts (*Salicornia Europaea*, and *Salicornia bigelovii*), Sea Lavendar (*Limonium carolinianum*), saltmarsh bulrushes (*Scirpus robustus* and *Scirpus paludosus* var. *atlanticus*), sand spurrey (*Spergularia marina*), switch grass (*Panicum virgatum*), tall cordgrass (*Spartina pectinata*), hightide bush (*Iva frutescens* var. *oraria*), cattails (*Typha angustifolia*, and *Typha latifolia*), spike rush (*Eleocharis rostellata*), chairmaker's rush (*Scirpus americana*), bent grass (*Agrostis palustris*), and sweet grass (*Hierochloa odorata*). The term "coastal wetlands" shall not include any land or real property subject to the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to the provisions of P.L.1968, chapter 404, sections 1 through 84 (C. 13:17 through C. 13:1786).
L.1970, c.272, § 2, eff. Nov. 5, 1971.

CW-4. Public hearing and notice

a. Before adopting, amending, modifying or repealing any order pursuant to this chapter, the department shall hold a public hearing in the county in which the coastal wetlands to be affected are located. Notice of the public hearing shall be mailed to each owner having a recorded interest in affected wetlands, at the address shown in the municipal tax office, at least 21 days prior to the hearing. Notice shall also be published at least twice in each of the three weeks next preceding the date of the hearing in a newspaper of general circulation in the municipality or municipalities in which the coastal wetlands are located.

b. Upon the adoption, amendment, modification or repeal of any order issued pursuant to this chapter, the department shall file a copy of the order, together with a plan of the lands affected, including reference to the filed wetlands map or maps on which the wetlands are shown and a list of the owners of record of the wetlands, in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment. The department shall mail a copy of the order and plan to each owner of record of the affected wetlands.

Source: 13:9A-3²

COMMENT

The source section has been divided into two subsections. The text has been rewritten for clarity and simplicity.

CW-5. Permit for regulated activity

a. No regulated activity shall be conducted upon any wetland without a permit.

b. As used in this section "regulated activity" includes draining, dredging, excavation or removal of soil, mud, sand, gravel, aggregate of any kind or depositing or dumping therein any rubbish or similar material or discharging therein liquid wastes, either directly or otherwise, and the erection of structures, drivings of pilings, or placing of obstructions, whether or not changing the tidal ebb and flow. "Regulated activity" does not include continuance of commercial production of salt hay or other agricultural crops or activities conducted under [section CW-7].

c. Any person proposing to conduct a regulated activity upon any wetland shall file an application for a permit with the department, in the form and with the information that the department prescribes. The application shall include a detailed description of the proposed work and a map showing the area of wetland directly affected, with the location of the proposed work, together with the names of the owners of record of adjacent land and known claimants of rights in or adjacent to the wetlands of whom the applicant has notice. All applications, with any related maps and documents, shall be open for inspection at the office of the department.

d. The applicant for a permit pursuant to this chapter shall give notice of the application to each electric or gas public utility in the state, and to each owner of real property, as shown on the current tax duplicate, located in the State and within 200 feet in all directions of the property which is the subject of the application. The notice shall be given in the manner prescribed by [section 7.1 of P.L.1975, c.291 (C. 40:44D-12)].

e. In granting, denying or limiting any permit the department shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shell fisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in [section CW-1].

Source: 13:9A-4³

⁴²13:9A-3. Public hearing; notice to owner; recordation of orders

The commissioner shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the county in which the coastal wetlands to be affected are located, giving notice thereof to each owner having a recorded interest in such wetlands by mail at least 21 days prior thereto addressed to his address as shown in the municipal tax office records and by publication thereof at least twice in each of the 3 weeks next preceding the date of such hearing in a newspaper of general circulation in the municipality or municipalities in which such coastal wetlands are located.

Upon the adoption of any such order or any order amending, modifying or repealing the same, the commissioner shall cause a copy thereof, together with a plan of the lands affected, including reference to the filed wetlands map or maps on which the same are shown and a list of the owners of record of such lands, to be recorded in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment, and shall mail a copy of such order and plan to each owner of record of such lands affected thereby.

L.1970, c.272, § 3, eff. Nov. 5, 1970.

COMMENT

The order of subsections (a) and (b) of the source section have been reversed. In subsection (b) of the proposed section, the phrase "but is not limited to" preceding "includes" has been eliminated as redundant. The phrase "shall not include" has been changed to "does not include" for purposes of parallelism (i.e., "includes... does not include") and preference for the present tense.

The notice requirement in source subsection (c) has been made into a separate subsection (d). Minor editorial changes have also been made in subsection (c), i.e., elimination of "such" and "thereon."

CW-6. Complaint by property owner

a. Any person having a recorded interest in land affected by any order or permit issued pursuant to this chapter, may, within 90 days after receiving notice of the order or permit, file a complaint in the Superior Court to determine whether the order or permit so restricts or otherwise affects the use of the property as to deprive the person of the practical use of the property and is therefore an unreasonable exercise of the police power because the order or permit constitutes the equivalent of a taking without compensation. If the court finds the order or permit is an unreasonable exercise of the police power, the court shall enter a finding that the order or permit shall not apply to the land of the plaintiff; provided, however, that the finding shall not affect any other land than that of the plaintiff. Any party to the suit may file a copy of the finding to be recorded in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment.

b. The method provided in this section for the determination of whether there has been a taking without compensation shall be exclusive, and this issue shall not be determined in any other proceeding.

Source: 13:9A-6⁴

COMMENT

No change, except editorial changes in language, i.e., elimination of "such," "thereof," "forthwith," "his," and "him," and using the present tense of verbs.

CW-7. Applicability to state departments or agencies

No action by the department under this chapter shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the Department of Environmental Protection, the Tidelands Resource Council and the State Mosquito Control Commission in the department, the

⁴³13:9A-4. Regulated activity; necessity of permit to conduct; application; notice; determination of issuance

a. For purposes of this section "regulated activity" includes but is not limited to draining, dredging, excavation or removal of soil, mud, sand, gravel, aggregate of any kind or depositing or dumping therein any rubbish or similar material or discharging therein liquid wastes, either directly or otherwise, and the erection of structures, wharves, piling, or placing of obstructions, whether or not changing the tidal ebb and flow. "Regulated activity" shall not include continuance of commercial production of salt hay or other agricultural crops or activities conducted under section 7 of this act.

b. No regulated activity shall be conducted upon any wetland without a permit.

c. Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland shall file an application for a permit with the commissioner, in such form and with such information as the commissioner may prescribe and shall provide notice to each electric or gas public utility in the State and to each owner of all real property as shown on the current tax duplicate, located in the State and within 200 feet in all directions of the property which is the subject of such application in the manner prescribed by section 7.1 of P.L.1975, c. 291 (C. 40:25-13). Such application shall include a detailed description of the proposed work and a map showing the area of wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent land and known claimants of rights in or adjacent to the wetlands of whom the applicant has notice. All applications, with any maps and documents relating thereto, shall be open for inspection at the office of the Department of Environmental Protection.

d. In granting, denying or limiting any permit the commissioner shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shell fisheries, wildlife, the protection of life and property from flood, hurricane and other natural disasters, and the public policy set forth in section 1a. of this act.

L.1970, c.272, § 4, eff. Nov. 5, 1970. Amended by L.1983, c.133, § 4, eff. April 13, 1983.

⁴⁴13:9A-6. Complaint by landowner affected by order; recordation of finding

Any person having a recorded interest in land affected by any such order or permit, may, within 90 days after receiving notice thereof, file a complaint in the Superior Court to determine whether such order or permit so restricts or otherwise affects the use of his property as to deprive him of the practical use thereof and is therefore an unreasonable exercise of the police power because the order or permit constitutes the equivalent of a taking without compensation. If the court finds the order or permit to be an unreasonable exercise of the police power, the court shall enter a finding that such order or permit shall not apply to the land of the plaintiff; provided, however, that such finding shall not affect any other land than that of the plaintiff. Any party to the suit may cause a copy of such finding to be recorded forthwith in the office of the county clerk or register of deeds, where it shall be indexed and filed as a judgment.

The method provided in this section for the determination of the issue shall be exclusive, and such issue shall not be determined in any other proceeding.

L.1970, c.272, § 6, eff. Nov. 4, 1970.

State Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of the Revised Statutes.

Source: 13:9A-7⁵

COMMENT

“Act” changed to “chapter;” “Natural Resources Council” changed to “Tidelands Resource Council.”

CW-8. Applicability to tidelands

Nothing in this chapter or any permit issued pursuant to this chapter shall affect the rights of the State in, or the obligations of an owner of tidelands or of upland adjacent to tidelands, with respect to tidelands.

Source: 13:9A-8⁶

COMMENT

Minor editing changes. The phrase "a riparian owner with respect to, riparian lands" has been changed to "an owner of tidelands or of upland adjacent to tidelands, with respect to tidelands."

CW-9. Applicability to Hackensack meadowlands

This chapter shall not apply to any land or real property subject to the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to the provisions of [the chapter entitled “Hackensack Meadowlands” in this subtitle].

Source: 13:9A-2 [see above]

COMMENT

This provision is one of two derived from the source section. The source section contains a definition of the term "coastal wetlands," which then excludes "land or real property subject to the jurisdiction of the Hackensack Meadowlands Development Commission" from the definition. For purposes of consistency in the treatment of exceptions, this portion of the source section has been made into this separate proposed section and placed adjacent to two other "exception" provisions.

CW-10. Violations

a. Any person who violates any order by the commissioner, or violates any of the provisions of this chapter, shall be liable to the State for the cost of restoration of the affected wetland to its condition prior to the violation insofar as that is possible, and shall be punished by a fine of not more than \$1,000.00, to be collected in accordance with the provisions of the Penalty Enforcement Law (N.J.S. 2A:5B et seq.).

b. The department may bring an action to restrain violations of orders issued pursuant to this chapter in a court of competent jurisdiction.

Source: 13:9A-9⁷; 13:9A-5⁴⁸

⁴⁵13:9A-7. **Application of act on powers and duties of certain state departments or agencies**

No action by the commissioner under this act shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the State Department of Environmental Protection, the Natural Resource Council and the State Mosquito Control Commission in said Department, the State Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of the Revised Statutes.

L.1970, c.272, § 7, eff. Nov. 4, 1970.

⁴⁶13:9A-8. **Application of act to riparian lands**

Nothing in this act or any permit issued hereunder shall affect the rights of the State in, or the obligations of a riparian owner with respect to, riparian lands.

L.1970, c.272, § 8, eff. Nov. 4, 1970.

COMMENT

The source sections have been combined. "Act" changed to "chapter", "such" changed to "the."

Repeal as unnecessary:

13:9A-10. Short title⁴⁹

⁴⁷**13:9A-9. Violations; penalties**

Any person who violates any order by the commissioner, or violates any of the provisions of this act, shall be liable to the State for the cost of restoration of the affected wetland to its condition prior to such violation insofar as that is possible, and shall be punished by a fine of not more than \$1,000.00, to be collected in accordance with the provisions of the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.).

L.1970, c. 272, s. 9, eff. Nov. 4, 1970

⁴⁸**13:9A-5. Jurisdiction of violations**

The Superior Court shall have jurisdiction to restrain violations of orders issued pursuant to this act. L.1970, c.272, § 5, eff. Nov. 4, 1970.

⁴⁹**13:9A-10. Short title**

This act may be cited as "The Wetlands Act of 1970."
L.1970, c.272, § 10, eff. Nov. 4, 1970.

Chapter: Freshwater Wetlands

This source statute is modeled after the federal wetlands legislation (see the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. § 1251) and was designed to permit the State to take over the administration of the federal program pursuant to federal law. The federal government has delegated administration of the federal program (i.e., the "section 404" program) to the Department of Environmental Protection. See 40 C.F.R. § 233.71 (59 Fed. Reg. 9933 (Mar. 2, 1994)).

Like the coastal wetlands provisions, this legislation defines "freshwater wetlands" and sets forth a permitting process governing virtually all construction in or near such wetlands.

A property or development project may, depending upon its geographical location, be subject to regulation under this act and under CAFRA (see proposed chapter "Coastal area regulation") and the statutes governing flood hazards (see proposed chapter "Flood hazard areas"), and other acts. Thus, the Freshwater Wetlands Act contains a provision requiring the permit process to be coordinated. See proposed section FW-3. Note also the permit processing requirements that apply universally, e.g., 13:D-101 et seq., to be included in proposed subtitle, "Organization, powers and duties."

FW-1. Legislative findings and declarations

The Legislature finds and declares that freshwater wetlands protect and preserve drinking water supplies by serving to purify surface water and groundwater resources; that freshwater wetlands provide a natural means of flood and storm damage protection, and thereby prevent the loss of life and property through the absorption and storage of water during high runoff periods and the reduction of flood crests; that freshwater wetlands serve as a transition zone between dry land and water courses, thereby retarding soil erosion; that freshwater wetlands provide essential breeding, spawning, nesting, and wintering habitats for a major portion of the State's fish and wildlife, including migrating birds, endangered species, and commercially and recreationally important wildlife; and that freshwater wetlands maintain a critical baseflow to surface waters through the gradual release of stored flood waters and groundwater, particularly during drought periods.

The Legislature further finds and declares that while the State has acted to protect coastal wetlands, it has not, except indirectly, taken equally vigorous action to protect the State's inland waterways and freshwater wetlands; that in order to advance the public interest in a just manner the rights of persons who own or possess real property affected by this chapter must be fairly recognized and balanced with environmental interests; and that the public benefits arising from the natural functions of freshwater wetlands, and the public harm from freshwater wetland losses, are distinct from and may exceed the private value of wetland areas.

The Legislature therefore determines that in this State, where pressures for commercial and residential development define the pace and pattern of land use, it is in the public interest to establish a program for the systematic review of activities in and around freshwater wetland areas designed to provide predictability in the protection of freshwater wetlands; that it shall be the policy of the State to preserve the purity and integrity of freshwater wetlands from random, unnecessary or undesirable alteration or disturbance; and that to achieve these goals it is important that the State expeditiously assume the freshwater wetlands permit jurisdiction currently exercised by the United States Army Corps of Engineers pursuant to the Federal Act and implementing regulations.

Source: 13:9B-1⁵⁰

COMMENT

"Act" changed to "chapter"; no other changes.

FW-2. Definitions

As used in this chapter:

⁵⁰13:9B-1. Short title

This act shall be known and may be cited as the "Freshwater Wetlands Protection Act."
L. 1987, c. 156, s. 1

"Bank" means the Wetlands Mitigation Bank established pursuant to this chapter;

"Council" means the Wetlands Mitigation Council established pursuant to this chapter;

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

"Federal Act" means section 404 of the "Federal Water Pollution Control Act Amendments of 1972" as amended by the "Clean Water Act of 1977" (33 U.S.C. § 1344) and the regulations adopted pursuant to it;

"Freshwater 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 3-parameter approach (i.e. hydrology, soils and vegetation) enumerated in the April 1, 1987 interim-final draft "Wetland Identification and Delineation Manual" developed by the United States Environmental Protection Agency, and any subsequent amendments thereto;

"Freshwater wetlands permit" means a permit to engage in a regulated activity issued pursuant to this chapter;

"Hydrophyte" means plant life adapted to growth and reproduction under periodically saturated root zone conditions during at least a portion of the growing season;

"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 does not mean residential, commercial, office, or industrial buildings;

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

"Regulated activity" means any of the following activities in a freshwater wetland:

(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, including the cutting of trees;

"Transition area" means an area of land adjacent to a freshwater wetland which minimizes adverse impacts on the wetland or serves as an integral component of the wetlands ecosystem.

Source: 13:9B-3¹

⁵¹13:9B-3. Definitions

As used in this act:

"Bank" means the Wetlands Mitigation Bank established pursuant to section 14 of this act;

"Commissioner" means the Commissioner of the Department of Environmental Protection;

"Council" means the Wetlands Mitigation Council established pursuant to section 14 of this act;

"Department" means the Department of Environmental Protection;

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

"Federal Act" means section 404 of the "Federal Water Pollution Control Act Amendments of 1972" as amended by the "Clean Water Act of 1977" (33 U.S.C. § 1344) and the regulations adopted pursuant thereto;

"Freshwater 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 3-parameter approach (i.e.

COMMENT

References to the "act" changed to references to the "chapter"; definitions of department and commissioner eliminated as unnecessary.

FW-3. Permit process

a. The department shall consolidate the processing of wetlands related aspects of other regulatory programs which affect activities in freshwater wetlands with the freshwater wetlands permit process provided in this chapter so as to provide a timely and coordinated permit process consistent with the Federal Act. The other regulatory programs to be consolidated include:

- (1) sewer extension approvals required pursuant to
- (2) permits required pursuant to [the chapter of this subtitle entitled "Coastal area development,"] and
- (3) any permits and approvals required pursuant to [the chapter of this subtitle entitled, "Flood hazard areas"].

b. Within 60 days after the department receives comment on a complete application for a permit from the United States Environmental Protection Agency, or upon receipt of notice from the United States Environmental Protection Agency that no comment will be forthcoming, the department may hold a public hearing on the application for a permit. If a hearing is held, it shall be in the county where the freshwater wetland is located whenever practicable. 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 bulletin of the department.

c. The department shall issue or deny a permit within 90 days of receipt of comments, or notice that comments will not be forthcoming, from the United States Environmental Protection Agency, or within 180 days of submission of a complete application, whichever is later. Until the State assumes the implementation of the Federal Act, the department shall issue or deny a permit within 180 days of submission of a complete application, except as may otherwise be provided by the Federal Act. The department shall review an application for a permit for completeness, and make any necessary requests for further information, within 30 days of receipt of the application for a permit; provided, however, that this deadline shall not apply to requests for further information made by the department on the basis of comments received from the United States Environmental Protection Agency. The department may issue a permit imposing conditions necessary for compliance with this chapter and [the Water Pollution Control Act, P.L. 1977, c. 74 (C. 58:10A et seq.)].

d. The department shall notify the applicant of the issuance or denial of a permit or of any request for a modification of the complete permit application.

e. The fees authorized pursuant to [sections FW-7, FW-8, and FW-15 of this chapter] shall be dedicated to further the specific purposes of this chapter.

hydrology, soils and vegetation) enumerated in the April 1, 1987 interim draft "Wetland Identification and Delineation Manual" developed by the United States Environmental Protection Agency, and any subsequent amendments thereto;

"Freshwater wetlands permit" means a permit to engage in a regulated activity issued pursuant to this act;

"Hydrophyte" means plant life adapted to growth and reproduction under periodically saturated root zone conditions during at least a portion of the growing season;

"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 right-of-way therefor, the basic function of which is to connect two points. Linear development shall not mean residential, commercial, office, or industrial buildings;

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

"Regulated activity" means any of the following activities in a freshwater wetland:

- (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, including the cutting of trees;

"Transition area" means an area of land adjacent to a freshwater wetland which minimizes adverse impacts on the wetland or serves as an integral component of the wetlands ecosystem.

L. 1987, c.156, § 3.

Source: 13:9B-5²

COMMENT

Subsection (a) has been restructured to enumerate the defined "other regulatory programs" in separate sub-paragraphs.

The phrase "including, but not limited to" has been changed to "included." In subsection (b), "such" has been eliminated where superfluous; "wherein" has been changed to "where." In subsection (c) "submittal" has been changed to the more usual "submission."

The notice requirement of subsection (c) has been made into a separate subsection (d); subsection (d) of the source statute has been re-lettered as subsection (e).

FW-4. Activities exempt from permit requirement

The following are exempt from the requirement of a freshwater wetlands permit and transition area requirements unless the United States Environmental Protection Agency's regulations providing for the delegation to the state of the federal wetlands program conducted pursuant to the Federal Act require a permit for any of these activities, in which case the department shall require a permit for those activities so identified by that agency:

a. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food and fiber, or upland soil and water conservation practices; construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches; construction or maintenance of farm roads or forest roads constructed and maintained in accordance with best management practices to assure that flow and circulation patterns and chemical and biological characteristics of freshwater wetlands are not impaired and that any adverse effect on the aquatic environment will be minimized;

b. Normal harvesting of forest products in accordance with a forest management plan approved by the State Forester;

c. Areas regulated as a coastal wetland pursuant to [the chapter of this subtitle entitled "Coastal wetlands;"]

d. Projects for which (1) preliminary site plan or subdivision applications have received preliminary approvals from the local authorities pursuant to the Municipal Land Use Law, [P.L. 1975, c. 291 (C. 40:55D-1 et seq.)] prior to July 1, 1988, (2) preliminary site plan or subdivision applications have been submitted prior to June 8, 1987, or (3) permit applications have been approved by the U.S. Army Corps of Engineers prior to July 1, 1988, which projects would otherwise be subject to State regulation on or after July 1, 1988, shall be governed only by the Federal Act, and shall not be subject to any additional or inconsistent substantive requirements of this chapter. 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. The department shall not require the establishment of a transition area

⁵²13:9B-5. Permit process

a. The department shall consolidate the processing of wetlands related aspects of other regulatory programs which affect activities in freshwater wetlands, including, but not limited to, sewer extension approvals required pursuant to P.L. 1977, c.74 (C. 58:10A et seq.), permits required pursuant to P.L. 1973, c.185 (C. 13:19 et seq.), and any permits and approvals required pursuant to P.L. 1977, c.75 (C. 58:11A et seq.) and P.L. 1962, c.19 (C. 58:16A50 et seq.), with the freshwater wetlands permit process established herein so as to provide a timely and coordinated permit process consistent with the Federal Act.

b. Within 60 days after the department receives comment on a complete application for a permit from the United States Environmental Protection Agency, or upon receipt of notice from the United States Environmental Protection Agency that no comment will be forthcoming, the department may hold a public hearing on the application for a permit. If such a hearing is held, it shall be in the county wherein the freshwater wetland is located whenever practicable. 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 bulletin of the department.

c. The department shall issue or deny a permit within 90 days of receipt of comments, or notice that comments will not be forthcoming, from the United States Environmental Protection Agency, or within 180 days of submittal of a complete application, whichever is later. 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. The department shall review an application for a permit for completeness, and make any necessary requests for further information, within 30 days of receipt of the application for a permit; provided, however, that this deadline shall not apply to requests for further information made by the department on the basis of comments received from the United States Environmental Protection Agency. If the department issues the permit, the department shall send notice thereof to the applicant. If the department denies, or requests a modification of, the complete permit application, the department shall send notice thereof to the applicant. The department may issue a permit imposing conditions necessary for compliance with this act and the "Water Pollution Control Act," P.L. 1977, c.74 (C. 58:10A et seq.).

d. The fees authorized pursuant to sections 8, 9, and 17 of this act shall be dedicated to further the specific purposes of this act. L. 1987, c.156, § 5.

as a condition of any renewal of a permit issued pursuant to the Federal Act prior to July 1, 1988. Projects not subject to the jurisdiction of the United States Army Corps of Engineers and for which preliminary site or subdivision applications have been approved prior to July 1, 1988 shall not require transition areas;

e. The exemptions in subsections (a) and (b) of this section shall not apply to any discharge of dredged or fill material into a freshwater wetland incidental to any activity which involves bringing an area of freshwater wetlands into a use to which it was not previously subject, where the flow or circulation patterns of the waters may be impaired, or the reach of the waters is reduced.

Source: 13:9B-4³

COMMENT

The phrase "the effective date of this act" has been changed to the actual date, i.e., July 1, 1988.

FW-5. Areas exempt from permit requirement

a. Activities in areas under the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to [the chapter of this subtitle entitled "Hackensack Meadowlands"] shall not require a freshwater wetlands permit, or be subject to transition area requirements, except that the discharge of dredged or fill material shall require a permit issued under the provisions of the Federal Act, or under an individual and general permit program administered by the State under the provisions of the Federal Act and applicable State laws.

b. Activities in areas under the jurisdiction of the Pinelands Commission pursuant to [the chapter of this subtitle entitled "Pinelands"] shall not require a freshwater wetlands permit, or be subject to transition area requirements, except that the discharge of dredged or fill material shall require a permit issued under the provisions of the Federal Act, or under an individual and general permit program administered by the State under the provisions of the Federal Act and applicable State laws, provided that the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction.

Source: 13:9B-6⁴

⁵³13:9B-4. Exemptions from permit, transition area requirements

The following are exempt from the requirement of a freshwater wetlands permit and transition area requirements unless the United States Environmental Protection Agency's regulations providing for the delegation to the state of the federal wetlands program conducted pursuant to the Federal Act require a permit for any of these activities, in which case the department shall require a permit for those activities so identified by that agency:

a. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food and fiber, or upland soil and water conservation practices; construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches; construction or maintenance of farm roads or forest roads constructed and maintained in accordance with best management practices to assure that flow and circulation patterns and chemical and biological characteristics of freshwater wetlands are not impaired and that any adverse effect on the aquatic environment will be minimized;

b. Normal harvesting of forest products in accordance with a forest management plan approved by the State Forester;

c. Areas regulated as a coastal wetland pursuant to P.L. 1970, c.272 (C. 13:9A et seq.);

d. Projects for which (1) preliminary site plan or subdivision applications have received preliminary approvals from the local authorities pursuant to the "Municipal Land Use Law," P.L. 1975, c.291 (C. 40:55D et seq.) prior to the effective date of this act, (2) preliminary site plan or subdivision applications have been submitted prior to June 8, 1987, or (3) permit applications have been approved by the U.S. Army Corps of Engineers prior to the effective date of this act, which projects would otherwise be subject to State regulation on or after the effective date of this act, shall be governed only by the Federal Act, and shall not be subject to any additional or inconsistent substantive requirements of this 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. 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 this act. Projects not subject to the jurisdiction of the United States Army Corps of Engineers and for which preliminary site or subdivision applications have been approved prior to the effective date of this act shall not require transition areas;

e. The exemptions in subsections a. and b. of this section shall not apply to any discharge of dredged or fill material into a freshwater wetland incidental to any activity which involves bringing an area of freshwater wetlands into a use to which it was not previously subject, where the flow or circulation patterns of the waters may be impaired, or the reach of the waters is reduced.

L.1987, c.156, § 4.

⁵⁴13:9B-6. Meadowlands, Pinelands exemptions

a. Activities in areas under the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to P.L. 1968, c.404 (C. 13:17-1 et seq.) shall not require a freshwater wetlands permit, or be subject to transition area requirements, except that the discharge of dredged or fill material shall require a permit issued under the provisions of the Federal Act, or under an individual and general permit program administered by the State under the provisions of the Federal Act and applicable State laws.

b. Activities in areas under the jurisdiction of the Pinelands Commission pursuant to P.L. 1979, c.111 (C. 13:18A et seq.) shall not require a freshwater wetlands permit, or be subject to transition area requirements established in this act, except that the discharge of dredged or fill material shall require a permit issued under the provisions of the Federal Act, or under an individual and general permit program administered by the State under the provisions of the Federal Act and applicable State laws, provided that the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction.

L.1987, c.156, § 6.

COMMENT

In subsection (b) the phrase "established in this act" has been deleted as superfluous.

FW-6. Classification system

a. The department shall develop a system for the classification of freshwater wetlands based upon criteria which distinguish among wetlands of exceptional resource value, intermediate resource value, and ordinary resource value.

b. As used in this chapter:

"Freshwater wetlands of exceptional resource value" means those freshwater wetlands which exhibit any of the following characteristics:

(1) Those which discharge into FW-1 waters and FW-2 trout production (TP) waters and 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 which remain suitable for breeding, resting, or feeding by these species during the normal period these species would use the habitat. A habitat shall be considered a documented habitat if the department makes a finding that the habitat remains suitable for use by the specific documented threatened and endangered species, based upon information available to it, including but not limited to, information submitted by an applicant for a freshwater wetlands permit. An applicant shall have the opportunity to request the department that a documented habitat not result in the classification of a freshwater wetland as a freshwater wetland of exceptional value if the applicant can demonstrate the loss of one or more requirements of the specific documented threatened or endangered species, including, but not limited to wetlands or overall habitat size, water quality, or vegetation density or diversity.

"Freshwater wetlands of ordinary value" means freshwater wetlands which do not exhibit the characteristics of freshwater wetlands of exceptional resource value and which are certain isolated wetlands, man-made drainage ditches, swales, or detention facilities.

"Freshwater wetlands of intermediate resource value" means all freshwater wetlands which are not of either exceptional resource value or ordinary value as defined in this section.

"Threatened or endangered species" means those species identified pursuant to The Endangered and Nongame Species Conservation Act, [P.L. 1973, c.309 (C.23:2A-1 et seq.)] or which appear on the federal endangered species list.

"FW-1, FW-2, trout production (TP) waters" means those waters delineated as such by the department under regulations adopted pursuant to the Water Pollution Control Act, [P.L. 1977, c.74 (C.58:10A-1 et seq.)] and the Water Quality Planning Act, [P.L. 1977, c.75 (C.58:11A et seq.)].

c. The classification system established in this section shall not restrict the department's authority to require the creation or restoration of freshwater wetlands pursuant to the provisions of [section FW-13].

Source: 13:9B-7^s**⁵⁵13:9B-7. Classification system**

The department shall develop a system for the classification of freshwater wetlands based upon criteria which distinguish among wetlands of exceptional resource value, intermediate resource value, and ordinary resource value.

a. Freshwater wetlands of exceptional resource value shall be freshwater wetlands which exhibit any of the following characteristics:

(1) Those which discharge into FW waters and FW2 trout production (TP) waters and 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 which remain suitable for breeding, resting, or feeding by these species during the normal period these species would use the habitat. A habitat shall be considered a documented habitat if the department makes a finding that the habitat remains suitable for use by the specific documented threatened and endangered species, based upon information available to it, including but not limited to, information submitted by an applicant for a freshwater wetlands permit. An applicant shall have the opportunity to request the department that a documented habitat not result in the classification of a freshwater wetland as a freshwater wetland of exceptional value if the applicant can demonstrate the loss of one or more requirements of the specific documented threatened or endangered species, including, but not limited to wetlands or overall habitat size, water quality, or vegetation density or diversity.

b. Freshwater wetlands of ordinary value shall be freshwater wetlands which do not exhibit the characteristics enumerated in subsection a. of this section, and which are certain isolated wetlands, man-made drainage ditches, swales, or detention facilities.

COMMENT

The subsections have been re-lettered. In proposed subsection (b), the language of the definitions have been changed from "shall be" to "means," and each definition has been placed in a separate, but un-numbered paragraph. The cross-references in the definitions have been replaced with the words defined in the cross-referenced subsections, for clarity.

FW-7. Letter of interpretation

a. A person proposing to engage in a regulated activity in a freshwater wetland or in an activity which requires a transition area waiver may, prior to applying for a permit or waiver, request from the department a letter of interpretation to establish that the site of the proposed activity is located in a freshwater wetland or transition area.

b. 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.

c. If no additional information is required, the department shall issue a letter of interpretation within 30 days after receiving the request.

d. If additional information is required the department shall issue a letter of interpretation within 45 days after receipt of the information.

e. The department may require an applicant for a letter of interpretation to perform and submit to the department an onsite inspection to determine or verify the general location of the freshwater wetland boundary and the applicable transition area. This inspection shall be subject to approval and verification by the department. If the department determines that onsite inspection by the department is necessary, the department shall make the inspection. If an on-site inspection is required by the department the time specified in this section for issuance of the letter of interpretation shall be extended by 45 days.

f. If a person requesting the letter has not made a reasonable good faith effort to provide the department with information sufficient to make a determination, the department shall issue a letter of interpretation requiring the application for a freshwater wetlands permit or transition area waiver.

g. A person applying for a letter of interpretation may also submit a report of an onsite freshwater wetlands delineation and receive within the time specified in this section a letter of interpretation verifying the actual freshwater wetlands and transition area boundaries.

h. The department may charge a fee not to exceed the costs for reviewing the information submitted, conducting on-site inspections pursuant to subsection e. of this section, and for issuing a letter of interpretation.

i. Any person who requests a letter of interpretation pursuant to the provisions of this act and does not receive a response from the department within the deadlines imposed in this section 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. A person who receives a letter of interpretation pursuant to this section shall be entitled to rely on the determination of the department, except as provided in subsection j. of this section.

j. The department shall transmit to the United States Environmental Protection Agency a copy of any letter of interpretation determining that the site of a proposed regulated activity is not in a freshwater wetland. Any letter of interpretation which determines that the site of a proposed regulated activity is not in a freshwater wetlands shall be subject to review, modification, or revocation by the United States Environmental Protection Agency.

c. Freshwater wetlands of intermediate resource value shall be all freshwater wetlands not included in subsection a. or b. of this section.

d. As used in this section "threatened or endangered species" shall be those species identified pursuant to "The Endangered and Threatened Species Conservation Act," P.L. 1973, c.309 (C. 23:2A et seq.) or which appear on the federal endangered species list, and "FW-2, trout production (TP) waters" shall mean those waters delineated as such by the department under regulations adopted pursuant to the "Water Pollution Control Act," P.L. 1977, c.74 (C. 58:10A et seq.) and the "Water Quality Planning Act," P.L. 1977, c.75 (C. 58:14 et seq.).

e. The classification system established in this section shall not restrict the department's authority to require the creation or restoration of freshwater wetlands pursuant to the provisions of section 13 of this act.

L. 1987, c.156, § 7.

k. The department shall publish in the bulletin of the department a list indicating the status of each application for a permit submitted to the department pursuant to the provisions of this chapter.

Source: 13:9B-8⁶

COMMENT

"Act" changed to "chapter."

FW-8. Application for permit

a. A person proposing to engage in a regulated activity shall apply to the department for a freshwater wetlands permit, for a fee not to exceed the cost of reviewing and processing the application, and on forms and in the manner prescribed by the commissioner by regulation. An agency of the State proposing to engage in a regulated activity shall also apply to the department for a freshwater wetlands permit on forms and in a manner prescribed by the commissioner, but shall not be required to pay a fee.

b. The application shall include the name and address of the applicant, the purpose of the project, the names and addresses of all owners of property adjacent to the proposed project, and at least the following:

(1) A preliminary site plan or subdivision map of the proposed development activities, or another map of the site if no preliminary site plan or subdivision map exists;

(2) A written description of the proposed regulated activity, the total area to be modified, and the total area of the freshwater wetland potentially affected; and

(3) Verification that the notices required by this section have been given.

(4) A statement detailing any potential adverse environmental effects of the regulated activity and any measures necessary to mitigate those effects, and any information necessary for the department to make a finding pursuant to [section FW-9].

c. The applicant shall give notice of the proposed regulated activity to:

(1) the clerk, environmental commission, and planning board of the municipality in which the proposed regulated activity will occur;

⁵⁶**13:9B-8. Letter of interpretation**

a. A person proposing to engage in a regulated activity in a freshwater wetland or in an activity which requires a transition area waiver may, prior to applying for a freshwater wetlands permit or transition area waiver, request from the department a letter of interpretation to establish that the site of the proposed activity is located in a freshwater wetland or transition area.

b. 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.

c. If no additional information is required, the department shall issue a letter of interpretation within 30 days after receiving the request.

d. If additional information is required the department shall issue a letter of interpretation within 45 days after receipt of the information.

e. The department may require an applicant for a letter of interpretation to perform and submit to the department an onsite inspection to determine or verify the general location of the freshwater wetland boundary and the applicable transition area. This inspection shall be subject to approval and verification by the department. If the department determines that onsite inspection by the department is necessary, the department shall make the inspection. If an onsite inspection is required by the department the time specified in this section for issuance of the letter of interpretation shall be extended by 45 days.

f. If a person requesting the letter has not made a reasonable good faith effort to provide the department with information sufficient to make a determination, the department shall issue a letter of interpretation requiring the application for a freshwater wetlands permit or transition area waiver.

g. A person applying for a letter of interpretation may also submit a report of an onsite freshwater wetlands delineation and receive within the time specified in this section a letter of interpretation verifying the actual freshwater wetlands and transition area boundaries.

h. The department may charge a fee not to exceed the costs for reviewing the information submitted, conducting inspections pursuant to subsection e. of this section, and for issuing a letter of interpretation.

i. Any person who requests a letter of interpretation pursuant to the provisions of this act and does not receive a response from the department within the deadlines imposed in this section 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. A person who receives a letter of interpretation pursuant to this section shall be entitled to rely on the determination of the department, except as provided in subsection j. of this section.

j. The department shall transmit to the United States Environmental Protection Agency a copy of any letter of interpretation determining that the site of a proposed regulated activity is not in a freshwater wetland. Any letter of interpretation which determines that the site of a proposed regulated activity is not in a freshwater wetlands shall be subject to review, modification, or revocation by the United States Environmental Protection Agency.

k. The department shall publish in the bulletin of the department a list indicating the status of each application for a permit submitted to the department pursuant to the provisions of this act.

L.1987, c.156, § 8.

- (2) the planning board of the county in which the proposed regulated activity will occur;
- (3) landowners within 200 feet of the site of the proposed regulated activity; and
- (4) all persons who requested to be notified of proposed regulated activities.

The notice may be filed concurrently with notices required pursuant to [P.L. 1975, c. 291 (C. 40:55D-1 et seq.)]. The notice shall describe the proposed regulated activity and advise the parties of their opportunity to submit comments to the department. Notice of the proposed activity shall also be published in a newspaper of local circulation.

Source: 13:9B-9⁷

COMMENT

This lengthy section has been divided into two separate proposed sections entitled "Application for permit" (this proposed section) and "Approval of permits" (see below).

The material retained in this proposed section has been reorganized into four separate subsections, and the application requirements in source subsection (a) have been delineated in separate sub-paragraphs for clarity.

In subsection (a) the specific cross-reference to the Administrative Procedure Act has been replaced with the phrase "by regulation."

FW-9. Approval of permits

The department shall consider the comments of the environmental commission and planning boards of the county and municipality in which a proposed regulated activity is to take place, federal and State agencies of

⁵⁷13:9B-9. Permit application; conditions for issuance

a. A person proposing to engage in a regulated activity shall apply to the department for a freshwater wetlands permit, for a fee not to exceed the cost of reviewing and processing the application, and on forms and in the manner prescribed by the commissioner pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C. 52:14B et seq.). An agency of the State proposing to engage in a regulated activity shall also apply to the department for a freshwater wetlands permit on forms and in a manner prescribed by the commissioner, but shall not be required to pay a fee therefor. The application shall include the name and address of the applicant, the purpose of the project, the names and addresses of all owners of property adjacent to the proposed project, and at least the following:

(1) A preliminary site plan or subdivision map of the proposed development activities, or another map of the site if no preliminary site plan or subdivision map exists, and a written description of the proposed regulated activity, the total area to be modified, and the total area of the freshwater wetland potentially affected;

(2) Verification that a notice has been forwarded to the clerk, environmental commission, and planning board of the municipality in which the proposed regulated activity will occur, the planning board of the county in which the proposed regulated activity will occur, landowners within 200 feet of the site of the proposed regulated activity, and to all persons who requested to be notified of proposed regulated activities, which notice may be filed concurrently with notices required pursuant to P.L. 1975, c.291 (C. 40:55D et seq.), describing the proposed regulated activity and advising these parties of their opportunity to submit comments thereon to the department;

(3) Verification that notice of the proposed activity has been published in a newspaper of local circulation;

(4) A statement detailing any potential adverse environmental effects of the regulated activity and any measures necessary to mitigate those effects, and any information necessary for the department to make a finding pursuant to subsection b. of this section.

b. The department, after considering the comments of the environmental commission and planning boards of the county and municipality wherein the regulated activity is to take place, federal and State agencies of competent jurisdiction, other affected municipalities and counties, and the general public, shall issue a freshwater wetlands permit only if it finds that the regulated activity:

(1) Is water-dependent or requires access to the freshwater wetlands as a central element of its basic function, and has no practicable alternative which would not involve a freshwater wetland or which would have a less adverse impact on the aquatic ecosystem, and which would not have other significant adverse environmental consequences, and also complies with the provisions of paragraph (2) of this subsection; or

(2) Is nonwater-dependent and has no practicable alternative as demonstrated pursuant to section 10 of this act, which would not involve a freshwater wetland or which would have a less adverse impact on the aquatic ecosystem, and which would not have other significant adverse environmental consequences; and

(3) 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

(4) Will not jeopardize the continued existence of species listed pursuant to "The Endangered and Nongame Species Conservation Act," P.L. 1973, c.309 (C. 23:2A1 et seq.) or which appear on the federal endangered species list, and 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 al.); and

(5) Will not cause or contribute to a violation of any applicable State water quality standard; and

(6) Will not cause or contribute to a violation of any applicable toxic effluent standard or prohibition imposed pursuant to the "Water Pollution Control Act," P.L. 1977, c.74 (C. 58:10A et seq.); and

(7) 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 al.); and

(8) Will not cause or contribute to a significant degradation of ground or surface waters; and

(9) Is in the public interest as determined pursuant to section 11 of this act, is necessary to realize the benefits derived from the activity, and is otherwise lawful.

L. 987, c.156, § 9.

competent jurisdiction, other affected municipalities and counties, and the general public. The department shall issue a freshwater wetlands permit only if it finds that the regulated activity:

- a. Is water-dependent or requires access to the freshwater wetlands as a central element of its basic function, and has no practicable alternative which would not involve a freshwater wetland or which would have a less adverse impact on the aquatic ecosystem, and which would not have other significant adverse environmental consequences, and also complies with the provisions of [paragraphs (a)(I) of this section]; or
- b. Is nonwater-dependent and has no practicable alternative as demonstrated pursuant to [section FW-10], which would not involve a freshwater wetland or which would have a less adverse impact on the aquatic ecosystem, and which would not have other significant adverse environmental consequences; and
- c. 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
- d. Will not jeopardize the continued existence of species listed pursuant to The Endangered and Nongame Species Conservation Act, [P.L. 1973, c.309 (C.23:2A-1 et seq.)] or which appear on the federal endangered species list, and 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 al.); and
- e. Will not cause or contribute to a violation of any applicable State water quality standard; and
- f. Will not cause or contribute to a violation of any applicable toxic effluent standard or prohibition imposed pursuant to the Water Pollution Control Act, [P.L. 1977, c.74 (C.58:10A et seq.)]; and
- g. 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 al.); and
- h. Will not cause or contribute to a significant degradation of ground or surface waters; and
- I. Is in the public interest as determined pursuant to [section FW-11], is necessary to realize the benefits derived from the activity, and is otherwise lawful.

Source: 13:9B-9 [see above]

COMMENT

This is the second of two proposed sections which derive from source section 13:9B-9 (see proposed section "Application for permit" above). In this proposed section, the lengthy approved requirements formerly in subsection (b) of the source section have been made into a separate section with lettered subsections.

FW-10. Presumption

- a. It shall be a rebuttable presumption that there is a practicable alternative to any nonwater-dependent regulated activity that does not involve a freshwater wetland, and that such an alternative to any regulated activity would have less of an impact on the aquatic ecosystem. 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, and may include 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.
- b. In order to rebut the presumption established in subsection a. of this section an applicant for a freshwater wetlands permit must demonstrate 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 result in less, adverse impact on an aquatic ecosystem; and

(2) That a reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs to that of the project as proposed that would avoid, or result in less, adverse impact on an aquatic ecosystem will not accomplish the basic purpose of the project; and

(3) 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.

c. In order to rebut the presumption established in subsection a. of this section with respect to wetlands of exceptional resource value, an applicant, in addition to complying with the provisions of subsection b. of this section, must also demonstrate that there is a compelling public need for the proposed activity greater than the need to protect the freshwater wetland that cannot be met by essentially similar projects in the region which are under construction or expansion, or have received the necessary governmental permits and approvals; or that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.

Source: 13:9B-10⁸

COMMENT

No change.

FW-11. Public interest

In determining whether a proposed regulated activity in any freshwater wetland is in the public interest, the department shall consider the following:

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

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

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

d. 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;

e. the quality of the wetland which may be affected and the amount of freshwater wetlands to be disturbed;

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

⁵⁸**13:9B-10. Rebuttable presumption**

a. It shall be a rebuttable presumption that there is a practicable alternative to any freshwater-dependent regulated activity that does not involve a freshwater wetland, and that such an alternative to any regulated activity would have less of an impact on the aquatic ecosystem. 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, and may include 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.

b. In order to rebut the presumption established in subsection a. of this section an applicant for a freshwater wetlands permit must demonstrate 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 result in less, adverse impact on an aquatic ecosystem; and

(2) That a reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs to that of the project as proposed that would avoid, or result in less, adverse impact on an aquatic ecosystem will not accomplish the basic purpose of the project; and

(3) 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.

c. In order to rebut the presumption established in subsection a. of this section with respect to wetlands of exceptional resource value, an applicant, in addition to complying with the provisions of subsection b. of this section, must also demonstrate that there is a compelling public need for the proposed activity greater than the need to protect the freshwater wetland that cannot be met by essentially similar projects in the region which are under construction or expansion, or have received the necessary governmental permits and approvals; or that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.

L. 1987, c. 156, s. 10.

g. the ecological value of the freshwater wetlands and probable impact on public health and fish and wildlife.

Source: 13:9B-11⁵⁹

COMMENT

No change.

FW-12. Accessibility to approved site

If a freshwater wetlands permit is approved and issued pursuant to the provisions of this chapter, the department shall waive or modify the requirement for a transition area to the extent required to provide access to the site of the approved regulated activity.

Source: 13:9B-12⁶⁰

COMMENT

"Act" changed to "chapter." A comma added after "of this chapter."

FW-13. Mitigation

a. The department shall require as a condition of every freshwater wetlands permit that all appropriate measures have been carried out to mitigate adverse environmental impacts, restore vegetation, habitats, and land and water features, prevent sedimentation and erosion, minimize the area of freshwater wetland disturbance and insure compliance with the Federal Act and implementing regulations.

b. The department may require the creation, enhancement, or restoration of an area of freshwater wetlands of equal ecological value to those which will be lost, and shall determine whether the creation, enhancement, or restoration of freshwater wetlands is conducted onsite or offsite. The department shall accept and evaluate a proposal to create, enhance, or restore an area of freshwater wetlands only after the department has evaluated the permit application for which the proposal is made, and shall evaluate the proposal to create, enhance, or restore an area of freshwater wetlands independently of the permit application. The department's evaluation of a proposal to create, enhance, or restore an area of freshwater wetlands shall be conducted in consultation with the United States Environmental Protection Agency.

c. If the department determines that the creation, enhancement, or restoration of freshwater wetlands onsite is not feasible, the department, in consultation with the United States Environmental Protection Agency, may consider the option of permitting: the creation of freshwater wetlands or the enhancement or restoration of degraded freshwater wetlands offsite on private property with the restriction on these freshwater wetlands of any future development; the protection of transition areas or upland areas offsite, on private property, that are deemed by the department to be valuable for the protection of a freshwater wetlands ecosystem, with the restriction on these areas of any future development; or the making of a contribution to the Wetlands Mitigation Bank. The

⁵⁹**13:9B-11. Determination of public interest**

In determining whether a proposed regulated activity in any freshwater wetland is in the public interest, the department shall consider the following:

- a. the public interest in preservation of natural resources and the interest of the property owners in reasonable economic development;
- b. the relative extent of the public and private need for the proposed regulated activity;
- c. where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods, including mitigation, to accomplish the purpose of the proposed regulated activity;
- d. 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;
- e. the quality of the wetland which may be affected and the amount of freshwater wetlands to be disturbed;
- f. the economic value, both public and private, of the proposed regulated activity to the general area; and
- g. the ecological value of the freshwater wetlands and probable impact on public health and fish and wildlife.

L. 1987, c. 156, s. 11.

⁶⁰**13:9B-12. Accessibility to approved site**

If a freshwater wetlands permit is approved and issued pursuant to the provisions of this act the department shall waive or modify the requirement for a transition area to the extent required to provide access to the site of the approved regulated activity.

L. 1987, c. 156, s. 12.

contribution shall be equivalent to the lesser of the following costs: (1) purchasing, and enhancing or restoring, 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. The applicant may also donate land as part of the contribution if the Wetlands Mitigation Council determines that the donated land has potential to be a valuable component of the freshwater wetlands ecosystem. The department shall permit the donation of land as a part of the contribution to the Wetlands Mitigation Bank only after determining that all alternatives to the donation are not practicable or feasible.

Source: 13:9B-13¹

COMMENT

No change.

FW-14. Transition areas

a. There shall be transition areas adjacent only to freshwater wetlands of exceptional resource value and of intermediate resource value. A transition area shall serve 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 and climatologic effects; and

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

b. The width of the transition area shall be determined by the department as follows:

(1) No greater than 150 feet nor less than 75 feet for a freshwater wetland of exceptional resource value;

(2) No greater than 50 feet nor less than 25 feet for a freshwater wetland of intermediate resource value.

c. The minimum width of a transition area established pursuant to this section may be further reduced consistent with a transition area averaging plan approved under [section FW-16].

Source: 13:9B-16²

¹13:9B-13. Mitigation of adverse environmental impacts

a. The department shall require as a condition of a freshwater wetlands permit that all appropriate measures have been carried out to mitigate adverse environmental impacts, restore vegetation, habitats, and land and water features, prevent sedimentation and erosion, minimize the area of freshwater wetland disturbance and insure compliance with the Federal Act and implementing regulations.

b. The department may require the creation, enhancement, or restoration of an area of freshwater wetlands of equal ecological value to those which will be lost, and shall determine whether the creation, enhancement, or restoration of freshwater wetlands is conducted on-site. The department shall accept and evaluate a proposal to create, enhance, or restore an area of freshwater wetlands only after the department has evaluated the permit application for which the proposal is made, and shall evaluate the proposal to create, enhance, or restore an area of freshwater wetlands independently of the permit application. The department's evaluation of a proposal to create, enhance, or restore an area of freshwater wetlands shall be conducted in consultation with the United States Environmental Protection Agency.

c. If the department determines that the creation, enhancement, or restoration of freshwater wetlands onsite is not feasible, the department, in consultation with the United States Environmental Protection Agency, may consider the option of permitting: the creation of freshwater wetlands or the enhancement or restoration of degraded freshwater wetlands on private property with the restriction on these freshwater wetlands of any future development; the protection of transition areas or upland areas on private property, that are deemed by the department to be valuable for the protection of a freshwater wetlands ecosystem, with the restriction on these areas of any future development; or the making of a contribution to the Wetlands Mitigation Bank. The contribution shall be equivalent to the lesser of the following costs: (1) purchasing, and enhancing or restoring, 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. The applicant may also donate land as part of the contribution if the Wetlands Mitigation Council determines that the donated land has potential to be a valuable component of the freshwater wetlands ecosystem. The department shall permit the donation of land as a part of the contribution to the Wetlands Mitigation Bank only after determining that all alternatives to the donation are not practicable or feasible.

L.1987, c.156, § 13; amended 1993, c.298, § 5.

²13:9B-16. Transition areas

a. There shall be transition areas adjacent only to freshwater wetlands of exceptional resource value and of intermediate resource value. A transition area shall serve as:

COMMENT

No change, except "section 18 of this act" to "section FW-16."

FW-15. Prohibited activities

a. The following activities are prohibited in the transition area, except in accordance with a transition area waiver approved by the department pursuant to [section FW-16]:

- (1) Removal, excavation, or disturbance of the soil;
- (2) Dumping or filling with any materials;
- (3) Erection of structures, except for temporary structures of 150 square feet or less;
- (4) Placement of pavements;
- (5) Destruction of plant life which would alter the existing pattern of vegetation.

No transition area waiver shall be needed for normal property maintenance or minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area.

b. A person proposing to engage in a prohibited activity as defined in subsection a. of this section within 150 feet of a freshwater wetland of exceptional resource value, or within 50 feet of a freshwater wetland of intermediate resource value, shall apply to the department for a transition area waiver. The application fee shall not exceed the cost of reviewing and processing the waiver application, and shall be made on forms and in the manner prescribed by the commissioner by regulation. An agency of the State proposing to engage in such an activity in a transition area shall also apply to the department for a transition area waiver on forms and in a manner prescribed by the commissioner but shall not be required to pay a fee.

c. The waiver application shall include at least the following:

- (1) A preliminary site plan or subdivision map of the site, or another map of the site if no preliminary site plan or subdivision map exists, containing proposed activities and a written description of the proposed activity, the total areas to be modified, and the total area of the transition area potentially affected; and
- (2) Verification that a notice has been forwarded to the clerk, environmental commission, and planning board of the municipality, and the planning board of the county wherein the activity is to occur, which notice shall describe the activity and advise these instrumentalities of local government of their opportunity to submit comments thereon to the department; and
- (3) A statement detailing any potential adverse environmental effects of the activity on the freshwater wetlands and any measures that may be necessary to mitigate those effects; and
- (4) A transition area averaging plan, if an averaging plan is required in connection with a transition area waiver requested pursuant to [section FW-16].

d. At the applicant's option, the maximum transition area distances established in subsection b. of [section FW-14], or a lesser transition area distance established pursuant to a waiver approved pursuant to [section FW-16], shall be further reduced, or the transition area adjacent to a portion of a wetlands shall be eliminated,

(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 and climatic effects; and

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

b. The width of the transition area shall be determined by the department as follows:

- (1) No greater than 150 feet nor less than 75 feet for a freshwater wetland of exceptional resource value;
- (2) No greater than 50 feet nor less than 25 feet for a freshwater wetland of intermediate resource value.

c. The minimum width of a transition area established pursuant to this section may be further reduced consistent with a transition area averaging plan approved under section 18 of this act.

L. 1987, c. 156, s. 16.

pursuant to a transition area averaging plan submitted by the applicant, provided that the plan is consistent with the provisions of subsection a. of [section FW-18].

Source: 13:9B-17³

COMMENT

Subsection (a) has been restructured to place the exemption for "normal" activities at the end of the subsection.

Source subsection (b) has been divided into two separate subsections and the subsequent proposed subsections have been renumbered as (b) and (c). In proposed subsection (b), the cross-reference to the Administrative Procedure Act has been eliminated as unnecessary, and has been replaced with a reference to prescribing application forms "by regulation." The first sentence of the subsection has been divided into two sentences for clarity.

In subsection (b), the introductory phrase in the first sentence has been changed from "an activity prohibited pursuant to subsection a." has been changed to "a prohibited activity as defined in subsection a."

FW-16. Transition area waivers

a. The department shall grant a transition area waiver reducing the size of a transition area to not less than the minimum distance established in [subsection b. of section FW-14]; provided that (1) the proposed activity would have no substantial impact on the adjacent freshwater wetland or (2) the waiver is necessary to avoid a substantial hardship to the applicant caused by circumstances peculiar to the property. If the proposed activity is the construction of a stormwater management facility having no feasible alternative on-site location or is linear development having no feasible alternative location, the department shall approve a further transition area waiver or elimination of a portion of a transition area as necessary to permit the activity. A transition area waiver approved pursuant to this subsection shall not require transition area averaging to compensate for the reduction of transition area distance or for partial elimination of the transition area.

b. The department shall also approve transition area waivers reducing the transition area distances established in [subsection b. of section FW-14] and shall also approve waiver applications eliminating portions of transition areas, provided that the applicant submits a transition area averaging plan. The transition area requirements of this chapter shall be satisfied if the transition area averaging plan expands a portion of the transition area to compensate, on a square footage basis, for reduction of a transition area distance or for partial

⁶³13:9B-17. Prohibited activities

a. The following activities, except for normal property maintenance or minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area, are prohibited in the transition area, except in accordance with a transition area waiver approved by the department pursuant to section 18 of this act:

- (1) Removal, excavation, or disturbance of the soil;
- (2) Dumping or filling with any materials;
- (3) Erection of structures, except for temporary structures of 150 square feet or less;
- (4) Placement of pavements;
- (5) Destruction of plant life which would alter the existing pattern of vegetation.

b. A person proposing to engage in an activity prohibited pursuant to subsection a. of this section within 150 feet of a freshwater wetland of exceptional resource value, or within 50 feet of a freshwater wetland of intermediate resource value, shall apply to the department for a transition area waiver, for a fee not to exceed the cost of reviewing and processing the waiver application, and on forms and in the manner prescribed by the commissioner pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C. 52:14B seq.). An agency of the State proposing to engage in such an activity in a transition area shall also apply to the department for a transition area waiver on forms and in a manner prescribed by the commissioner but shall not be required to pay a fee therefor. The waiver application shall include at least the following:

- (1) A preliminary site plan or subdivision map of the site, or another map of the site if no preliminary site plan or subdivision map exists, containing proposed activities and a written description of the proposed activity, the total areas to be modified, and the total area of the transition area potentially affected; and
- (2) Verification that a notice has been forwarded to the clerk, environmental commission, and planning board of the municipality, and the planning board of the county wherein the activity is to occur, which notice shall describe the activity and advise the municipalities of local government of their opportunity to submit comments thereon to the department; and
- (3) A statement detailing any potential adverse environmental effects of the activity on the freshwater wetlands and any measures that may be necessary to mitigate those effects; and
- (4) A transition area averaging plan, if an averaging plan is required in connection with a transition area waiver requested pursuant to section 18 of this act.

c. At the applicant's option, the maximum transition area distances established in subsection b. of section 16 of this act, or a lesser transition area distance established pursuant to a waiver approved pursuant to section 18 of this act, shall be further reduced, or the transition area adjacent to a portion of a wetlands shall be eliminated, pursuant to a transition area averaging plan submitted by the applicant, provided that the plan is consistent with the provisions of subsection a. of section 16 of this act.

L.1987, c.156, § 17.

elimination of a transition area. The applicant shall have the right to determine the area of transition area reduction or partial elimination; provided that the transition area averaging plan will result in a transition area consistent with the provisions of [subsection a. of section FW-14]. If a transition area waiver is approved pursuant to subsection a. of this section, the average transition area required by this subsection shall be based upon the transition area distance established pursuant to [subsection a. of this section]. If no waiver is approved pursuant to subsection a. of this section, the average transition area shall be based upon the maximum applicable transition area distance provided in [subsection b. of section FW-14].

c. Any other provision of this act to the contrary notwithstanding, the transition area distance from a freshwater wetland of exceptional resource value may be reduced to no less than 75 feet except pursuant to [section FW-12]. A transition area waiver shall be approved pursuant to this subsection only if a transition area distance reduction would have no substantial adverse impact on the adjacent freshwater wetlands or if denial of a transition area waiver would result in extraordinary hardship to the applicant because of circumstances peculiar to the subject property. A transition area waiver approved pursuant to this subsection shall be conditioned on a transition area averaging plan which provides an average transition area of not less than 100 feet.

d. The department shall issue or deny an application for a transition area waiver within 90 days of submission of a complete application; provided, however, that if the project or activity for which the transition area waiver is requested also involves a regulated activity in a freshwater wetland, or if an application for a permit to conduct a regulated activity in a freshwater wetland adjacent to the transition area for which the transition area waiver is requested is pending before the department, the department shall approve or deny the transition area waiver within the time period set forth for the approval or denial of a permit in [subsection c. of section FW-3].

Source: 13:9B-18⁴

COMMENT

No change.

⁶⁴13:9B-18. Transition area waivers

a. The department shall grant a transition area waiver reducing the size of a transition area to not less than the minimum distance established in subsection b. of section 16 of this act; provided that (1) the proposed activity would have no substantial impact on the adjacent freshwater wetland or (2) the waiver is necessary to avoid a substantial hardship to the applicant caused by circumstances peculiar to the property. If the proposed activity is the construction of a stormwater management facility having no feasible alternative on-site location or is linear development having no feasible alternative location, the department shall approve a further transition area waiver or elimination of a portion of a transition area as necessary to permit the activity. A transition area waiver approved pursuant to this subsection shall require transition area averaging to compensate for the reduction of transition area distance or for partial elimination of the transition area.

b. The department shall also approve transition area waivers reducing the transition area distances established in subsection b. of section 16 of this act and shall also approve waiver applications eliminating portions of transition areas, provided that the applicant submits a transition area averaging plan. The transition area requirements of this act shall be satisfied if the transition area averaging plan expands a portion of the transition area to compensate, on a square footage basis, for reduction of a transition area distance or for partial elimination of a transition area. The applicant shall have the right to determine the area of transition area reduction or partial elimination; provided that the transition area averaging plan will result in a transition area consistent with the provisions of subsection a. of section 16 of this act. If a transition area waiver is approved pursuant to subsection a. of this section, the average transition area required by this subsection shall be based upon the transition area distance established pursuant to subsection a. of this section. If no waiver is approved pursuant to subsection a. of this section, the average transition area shall be based upon the maximum applicable transition area distance provided in subsection b. of section 16 of this act.

c. Any other provision of this act to the contrary notwithstanding, the transition area distance from a freshwater wetland of exceptional resource value may be reduced to no less than 75 feet except pursuant to section 12 of this act. A transition area waiver shall be approved pursuant to this subsection only if a transition area distance reduction would have no substantial adverse impact on the adjacent freshwater wetlands or if denial of a transition area waiver would result in extraordinary hardship to the applicant because of circumstances peculiar to the subject property. A transition area waiver approved pursuant to this subsection shall be conditioned on a transition area averaging plan which provides an average transition area of not less than 100 feet.

d. The department shall issue or deny an application for a transition area waiver within 90 days of submission of a complete application; provided, however, that if the project or activity for which the transition area waiver is requested also involves a regulated activity in a freshwater wetland, or if an application for a permit to conduct a regulated activity in a freshwater wetland adjacent to the transition area for which the transition area waiver is requested is pending before the department, the department shall approve or deny the transition area waiver within the time period set forth for the approval or denial of a permit in subsection c. of section 5 of this act.

L. 1987, c. 156, s. 18.

FW-17. Taxation

If the department denies an application for a freshwater wetlands permit, the owner of record of the property affected may request, and the local tax assessor shall provide, that this fact be taken into account when the property is valued, assessed, and taxed for property tax purposes.

Source: 13:9B-19⁵

COMMENT

No change.

FW-18. Hearings

An applicant for a freshwater wetlands permit issued pursuant to this chapter may apply to the commissioner for an administrative hearing on any decision to issue or deny a permit made by the department pursuant to this chapter. Upon receipt of such a request, the commissioner shall refer the matter to the Office of Administrative Law for a hearing as a contested case. Within 45 days of receipt of the administrative law judge's decision, the commissioner shall affirm, reject, or modify the decision. The commissioner's action shall be considered final agency action for the purposes of judicial review.

Source: 13:9B-20⁶

COMMENT

The language of this section has been simplified. The phrase "may request the commission for" has been changed to "may apply to the commissioner for." The cross-reference to the Administrative Procedure Act has been deleted as unnecessary. The last part of the last sentence has been shortened to provide that the commissioner's decision shall be final "for the purposes of judicial review."

FW-19. Violations

a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of this chapter, or any regulation adopted, or permit or order issued, pursuant to this chapter, the commissioner may:

- (1) Issue an order requiring any such person to comply in accordance with subsection b. of this section; or
- (2) Bring a civil action in accordance with subsection c. of this section; or
- (3) Levy a civil administrative penalty in accordance with subsection d. of this section; or
- (4) Bring an action for a civil penalty in accordance with subsection e. of this section; or
- (5) Petition the Attorney General to bring a criminal action in accordance with subsection f. of this section.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies.

⁶⁵**13:9B-19. Consideration for tax purposes**

If the department denies an application for a freshwater wetlands permit, the owner of record of the property affected may request, and the local tax assessor shall provide, that this fact be taken into account when the property is valued, assessed, and taxed for property tax purposes. L. 1987, c. 156, s. 19.

⁶⁶**13:9B-20. Administrative hearing**

An applicant for a freshwater wetlands permit issued pursuant to this act may request the commissioner for an administrative hearing on any decision to issue or deny a permit made by the department pursuant to this act. Upon receipt of such a request, the commissioner shall 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 pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C. 52:41B seq.). Within 45 days of receipt of the administrative law judge's decision, the commissioner shall affirm, reject, or modify the decision. The commissioner's action shall be considered the 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. L.1987, c.156, § 20.

b. Whenever, on the basis of available information, the commissioner finds a person in violation of any provision of this chapter, or of any regulation adopted, or permit or order issued, pursuant to this chapter, the commissioner may issue an order:

- (1) specifying the provision or provisions of this chapter, or the regulation, permit or order of which he is in violation;
 - (2) citing the action which constituted the violation;
 - (3) requiring compliance with the provision or provisions violated;
 - (4) requiring the restoration of the freshwater wetland or transition area which is the site of the violation;
- and
- (5) providing notice to the person of his right to a hearing on the matters contained in the order.

c. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of any provisions of this chapter, or any regulation adopted, or permit or order issued, pursuant to this chapter. 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 subsection;
- (3) Assessment of the violator for any costs incurred by the State in removing, correcting, or terminating the adverse effects upon the freshwater wetland resulting from any unauthorized regulated activity for which legal action under this subsection 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 subsection 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;
- (5) A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$10,000.00 for each violation, and each day during which each violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration. No assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service. The notice shall identify the section of the statute, regulation, or order or permit condition violated; recite the facts alleged to constitute a violation; state the amount of the civil penalties to be imposed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in this chapter, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Any civil administrative penalty assessed under this section may be compromised by the commissioner upon the posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation.

e. A person who violates this chapter, an administrative order issued pursuant to subsection b., or a court order issued pursuant to subsection c., who fails to pay a civil administrative assessment in full pursuant to subsection d., shall be subject, upon order of a court, to a civil penalty not to exceed \$10,000.00 per day of such violation, and each day during which the violation continues shall constitute an additional, separate, and distinct

offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). The Superior Court shall have jurisdiction to enforce "the penalty enforcement law" in conjunction with this chapter.

f. A person who willfully or negligently violates this chapter shall be guilty, upon conviction, of a crime of the fourth degree and shall be subject to a fine of not less than \$2,500.00 nor more than \$25,000.00 per day of violation. A second offense under this subsection shall subject the violator to a fine of not less than \$5,000.00 nor more than \$50,000.00 per day of violation. 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 this chapter, or who falsifies, tampers with or knowingly renders inaccurate, any monitoring device or method required to be maintained pursuant to this chapter, shall, upon conviction, be subject to a fine of not more than \$10,000.00.

g. In addition to the penalties prescribed in this section, a notice of violation of this chapter shall be recorded on the deed of the property wherein the violation occurred, on order of the commissioner, 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 commissioner orders the notice of violation removed.

h. If the violation is one in which the department has determined that the restoration of the site to its previolation condition would increase the harm to the freshwater wetland or its ecology, the department may issue an "after the fact" permit for the regulated activity that has already occurred; provided that assessment against the violator for costs or damages enumerated in subsection c. of this section has been made, the creation or restoration of freshwater wetlands resources at another site has been required of the violator, an opportunity has been afforded for public hearing and comment, and the reasons for the issuance of the "after the fact" permit are published in the New Jersey Register and in a newspaper of general circulation in the geographical area of the violation. Any person violating an "after the fact" permit issued pursuant to this subsection shall be subject to the provisions of this section.

I. The burden of proof and degree of knowledge or intent required to establish a violation of this chapter shall be no greater than the burden of proof or degree of knowledge or intent which the United States Environmental Protection Agency must meet in establishing a violation of the Federal Act or implementing regulations.

j. The department shall establish and implement a program designed to facilitate public participation in the enforcement of this chapter which complies with the requirements of the Federal Act and implementing regulations.

k. The department shall make available without restriction any information obtained or used in the implementation of this chapter to the United States Environmental Protection Agency upon a request therefor.

l. The department may require an applicant or permittee to provide any information the department requires to determine compliance with the provisions of this chapter.

m. The department shall have the authority to enter any property, facility, premises or site for the purpose of conducting inspections, sampling of soil or water, copying or photocopying documents or records, and for otherwise determining compliance with the provisions of this chapter.

Source: 13:9B-21⁷

⁶⁷**13:9B-21. Remedies for violations**

a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of this act, or any rule or regulation adopted, or permit or order issued, pursuant to this act, the commissioner may:

- (1) Issue an order requiring any such person to comply in accordance with subsection b. of this section; or
- (2) Bring a civil action in accordance with subsection c. of this section; or
- (3) Levy a civil administrative penalty in accordance with subsection d. of this section; or
- (4) Bring an action for a civil penalty in accordance with subsection e. of this section; or
- (5) Petition the Attorney General to bring a criminal action in accordance with subsection f. of this section.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies.

b. Whenever, on the basis of available information, the commissioner finds a person in violation of any provision of this act, or of any rule or regulation adopted, or permit or order issued, pursuant to this act, the commissioner may issue an order: (1) specifying the provision or provisions of this act, or the rule, regulation, permit or order of which he is in violation; (2) citing the action which constituted the violation; (3) requiring

COMMENT

"Act" changed to "chapter", "rule or regulation" changed to "regulation."

FW-20. Taking without just compensation

a. Any person having a recorded interest in land affected by a freshwater wetlands permit issued, modified or denied pursuant to the provision of this chapter may file an action in a court of competent jurisdiction to determine if the issuance, modification or denial of the freshwater wetlands permit constitutes a taking of property without just compensation.

b. If the court determines that the issuance, modification, or denial of a freshwater wetlands permit by the department pursuant to this chapter constitutes a taking of property without just compensation, the court shall give the department the option of compensating the property owner for the full amount of the lost value, condemning

compliance with the provision or provisions violated; (4) requiring the restoration of the freshwater wetland or transition area which is the site of the violation; and (5) providing notice to the person of his right to a hearing on the matters contained in the order.

c. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of any provisions of this act, or any rule or regulation adopted, or permit or order issued, pursuant to this act. 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 subsection;
- (3) Assessment of the violator for any costs incurred by the State in removing, correcting, or terminating the adverse effects upon the freshwater wetland resulting from any unauthorized regulated activity for which legal action under this subsection 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 subsection 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;
- (5) A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$10,000.00 for each violation, and each day during which each violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration. No assessment shall be levied pursuant to this section until after the party has been notified by certified mail or personal service. The notice shall identify the section of the statute, regulation, or order or permit condition violated; recite the facts alleged to constitute a violation; state the amount of the civil penalties to be imposed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Any civil administrative penalty assessed under this section may be compromised by the commissioner upon the posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation.

e. A person who violates this act, an administrative order issued pursuant to subsection b., or a court order issued pursuant to subsection c., who fails to pay a civil administrative assessment in full pursuant to subsection d., shall be subject, upon order of a court, to a civil penalty not to exceed \$10,000.00 per day of such violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S. 2A:58 et seq.). The Superior Court shall have jurisdiction to enforce "the penalty enforcement law" in conjunction with this act.

f. A person who willfully or negligently violates this act shall be guilty, upon conviction, of a crime of the fourth degree and shall be subject to a fine of not less than \$2,500.00 nor more than \$25,000.00 per day of violation. A second offense under this subsection shall subject the violator to a fine of not less than \$5,000.00 nor more than \$50,000.00 per day of violation. 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 this act, or who falsifies, tampers with or knowingly renders inaccurate, any monitoring device or method required to be maintained pursuant to this act, shall, upon conviction, be subject to a fine of not more than \$10,000.00.

g. In addition to the penalties prescribed in this section, a notice of violation of this act shall be recorded on the deed of the property wherein the violation occurred, on order of the commissioner, 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 commissioner orders the notice of violation removed.

h. If the violation is one in which the department has determined that the restoration of the site ~~pursuit~~ violation condition would increase the harm to the freshwater wetland or its ecology, the department may issue an "after the fact" permit for the regulated activity that has already occurred; provided that assessment against the violator for costs or damages enumerated in subsection c. of this section has been made, the creation or restoration of freshwater wetlands resources at another site has been required of the violator, an opportunity has been afforded for public hearing and comment, and the reasons for the issuance of the "after the fact" permit are published in the New Jersey Register and in a newspaper of general circulation in the geographical area of the violation. Any person violating an "after the fact" permit issued pursuant to this subsection shall be subject to the provisions of this section.

i. The burden of proof and degree of knowledge or intent required to establish a violation of this act shall be no greater than the burden of proof or degree of knowledge or intent which the United States Environmental Protection Agency must meet in establishing a violation of the Federal Act or implementing regulations.

j. The department shall establish and implement a program designed to facilitate public participation in the enforcement of this act which complies with the requirements of the Federal Act and implementing regulations.

k. The department shall make available without restriction any information obtained or used in the implementation of this act to the United States Environmental Protection Agency upon a request therefor.

l. The department may require an applicant ~~per~~mittee to provide any information the department requires to determine compliance with the provisions of this act.

m. The department shall have the authority to enter any property, facility, premises or site for the purpose of conducting inspections, sampling of soil or water, copying or photocopying documents or records, and for otherwise determining compliance with the provisions of this act.

L.1987, c.156, § 21.

the affected property pursuant to the provisions of Title 20 - Eminent Domain of the New Jersey Statutes. or modifying its action or inaction concerning the property so as to minimize the detrimental effect to the value of the property.

Source: 13:9B-22⁸

COMMENT

"Act" changed to "chapter." Various editorial changes.

FW-21. General permits

a. The department shall consider for adoption as general permits, to the extent practicable and feasible, and to the extent that this adoption is consistent to the maximum extent practicable and feasible with the provisions of this chapter, all applicable Nationwide Permits which were approved under the Federal Act as of November 13, 1986 by the U.S. Army Corps of Engineers.

b. The department shall issue a general permit for an activity in a freshwater wetland which is not a surface water tributary system discharging into an inland lake or pond, or a river or stream, and which would not result in the loss or substantial modification of more than one acre of freshwater wetland, provided that this activity will not take place in a freshwater wetland of exceptional resource value. The department shall issue a general permit for a regulated activity in a freshwater wetland located in an area considered a headwater pursuant to the Federal Act if the regulated activity would not result in the loss or substantial modification of more than one acre of a swale or a man-made drainage ditch. The provisions of this subsection shall not apply to any wetlands designated as priority wetlands by the United States Environmental Protection Agency.

c. The department shall issue additional general permits on a Statewide or regional basis for the following categories of activities, if the department determines, after conducting an environmental analysis and providing public notice and opportunity for a public hearing, that the activities will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, will cause only minor impacts on freshwater wetlands, will be in conformance with the purposes of this chapter, and will not violate any provision of the Federal Act:

(1) Maintenance, reconstruction, or repair of roads or public utilities lawfully existing prior to July 1, 1988 or permitted under this chapter, provided that such activities do not result in disturbance of additional wetlands upon completion of the activity;

(2) Maintenance or repair of active irrigation or drainage ditches lawfully existing prior to July 1, 1988 or permitted under this chapter, provided that such activities do not result in disturbance of additional freshwater wetlands upon completion of the activity;

(3) Appurtenant improvements or additions to 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 will not result in new alterations to a freshwater wetland outside of the fill area;

(4) Mosquito management activities determined to be consistent with best mosquito control and freshwater wetlands management practices and for which all appropriate actions to minimize adverse environmental effects have been or shall be taken. Notwithstanding any law, rule or regulation to the contrary, if the department requires public notice to be given prior to the undertaking of mosquito management activities pursuant to a general permit, a permittee that is a county or municipality or county or municipal entity shall be given the option of complying with that requirement by publication of a display advertisement of a least four

⁶⁸13:9B-22. Taking without just compensation

a. Any person having a recorded interest in land affected by a freshwater wetlands permit issued, modified or denied pursuant to the provision of this act may file an action in a court of competent jurisdiction to determine if the issuance, modification or denial of the freshwater wetlands permit constitutes a taking of property without just compensation.

b. If the court determines that the issuance, modification, or denial of a freshwater wetlands permit by the department pursuant to this act constitutes a taking of property without just compensation, the court shall give the department the option of compensating the property owner for the full amount of the lost value, condemning the affected property pursuant to the provisions of the "Eminent Domain Act of 1971," P.L. 1971, c.361 (C. 20:3-1 et seq.), or modifying its action or inaction concerning the property so as to minimize the detrimental effect to the value of the property.

L.1987, c.156, § 22.

column inches in size in at least one newspaper of local circulation and one of regional circulation within the county or municipality;

(5) Activities, as determined by the department, which will have no significant adverse environmental impact on freshwater wetlands, provided that the issuance of a general permit for any such activities is consistent with the provisions of the Federal Act and has been approved by the United States Environmental Protection Agency.

(6) Regulated activities which have received individual or general permit approval or a finding of no jurisdiction by the U.S. Army Corps of Engineers pursuant to the Federal Act, and which have received a grant waiver pursuant to the "National Environmental Policy Act of 1969" (42 U.S.C. | 4321 et seq.); provided, that upon the expiration of a permit any application for a renewal or modification thereof shall be made to the department.

(7) State or federally funded roads planned and developed in accordance with the "National Environmental Policy Act of 1969" and the Federal Act, and with Executive Order Number 53, approved October 5, 1973 and for which application has been made prior to July 1, 1988 to the United States Army Corps of Engineers for an individual or general permit under the Federal Act; provided that upon expiration of a permit any application for a renewal or modification thereof shall be made to the department, and, provided, further, that the department shall not require transition areas as a condition of the renewal or modification of the permit.

(8) Maintenance and repair of storm water management facilities lawfully constructed prior to July 1, 1988 or permitted under this chapter, provided that these activities do not result in disturbance of additional freshwater wetlands upon completion of the activity.

(9) Maintenance, reconstruction, or repair of buildings or structures lawfully existing prior to July 1, 1988 or permitted under this chapter, provided that these activities do not result in disturbance of additional freshwater wetlands upon completion of the activity.

d. The department may, on the basis of findings with respect to a specific application, modify a general permit issued pursuant to this section by adding special conditions. The department may rescind a general permit and require an application for an individual permit if the commissioner finds that additional permit conditions would not be sufficient and that special circumstances make this action necessary to insure compliance with this chapter or the Federal Act.

e. The department shall review general permits adopted or authorized pursuant to subsection c. every five years, which review shall include public notice and opportunity for public hearing. Upon this review the department shall either modify, reissue or revoke a general permit. If a general permit is not modified or reissued within five years of publication in the New Jersey Register, it shall automatically expire.

f. The date of publication of the general permits authorized by subsections a. and b. of this section shall be July 1, 1988.

g. A person proposing to engage in an activity covered by a general permit shall provide written notice to the department containing a description of the proposed activity at least 30 working days prior to commencement of work. The department, within 30 days of receipt of this notification, shall notify the person proposing to engage in the activity covered by a general permit as to whether an individual permit is required for the activity.

Source: 13:9B-23⁹

⁹ 13:9B-23. General permits

a. The department shall consider for adoption as general permits, to the extent practicable and feasible, and to the extent that this adoption is consistent to the maximum extent practicable and feasible with the provisions of P.L.1987, c.156 (C.13:9B-1 et seq.), all applicable Nationwide Permits which were approved under the Federal Act as of November 13, 1986 by the U.S. Army Corps of Engineers.

b. The department shall issue a general permit for an activity in a freshwater wetland which is not a surface water tributary system discharging into an inland lake or pond, or a river or stream, and which would not result in the loss or substantial modification of more than one acre of freshwater wetland, provided that this activity will not take place in a freshwater wetland of exceptional resource value. The department shall issue a general permit for a regulated activity in a freshwater wetland located in an area considered a headwater pursuant to the Federal Act if the regulated activity would not result in the loss or substantial modification of more than one acre of a natural or a man-made drainage ditch. The provisions of this subsection shall not apply to any wetlands designated as priority wetlands by the United States Environmental Protection Agency.

COMMENT

"Act" has been changed to "chapter"; the phrase "the effective date of this act" has been changed to the actual date of July 1, 1988.

FW-22. Temporary emergency permit

a. Notwithstanding the provisions of this chapter or any other act to the contrary, the department may issue a temporary emergency freshwater wetlands permit for a regulated activity if:

- (1) An unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and
- (2) The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this chapter and other applicable State law.

c. The department shall issue additional general permits on a Statewide or regional basis for the following categories of activities, if the department determines, after conducting an environmental analysis and providing public notice and opportunity for a public hearing, that the activities will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, will cause only minor impacts on freshwater wetlands, will be in conformance with the purposes of P.L.1987, c.156 (C.13:9B-1 et seq.), and will not violate any provision of the Federal Act:

- (1) Maintenance, reconstruction, or repair of roads or public utilities lawfully existing prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.) or permitted under P.L.1987, c.156 (C.13:9B-1 et seq.), provided that such activities do not result in disturbance of additional wetlands upon completion of the activity;
- (2) Maintenance or repair of active irrigation or drainage ditches lawfully existing prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.) or permitted under P.L.1987, c.156 (C.13:9B-1 et seq.), provided that such activities do not result in disturbance of additional freshwater wetlands upon completion of the activity;
- (3) Appurtenant improvements or additions to residential dwellings lawfully existing prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.), provided that the improvements or additions require less than a cumulative surface area of 750 square feet of fill and will not result in new alterations to a freshwater wetland outside of the fill area;
- (4) Mosquito management activities determined to be consistent with best mosquito control and freshwater wetlands management practices and for which all appropriate actions to minimize adverse environmental effects have been or shall be taken notwithstanding any law, rule, or regulation to the contrary, if the department requires public notice to be given prior to the undertaking of mosquito management activities pursuant to a general permit, a permittee that is a county or municipality or county or municipal entity shall be given the option of complying with that requirement by publication of a display advertisement of at least four column inches in size in at least one newspaper of local circulation and one of regional circulation within the county or municipality;
- (5) Activities, as determined by the department, which will have no significant adverse environmental impact on freshwater wetlands, provided that the issuance of a general permit for any such activities is consistent with the provisions of the Federal Act and has been approved by the United States Environmental Protection Agency;
- (6) Regulated activities which have received individual or general permit approval or a finding of no jurisdiction by the U.S. Army Corps of Engineers pursuant to the Federal Act, and which have received a grant waiver pursuant to the "National Environmental Policy Act of 1969" (42 U.S.C. 4321 et seq.); provided, that upon the expiration of a permit any application for a renewal or modification thereof shall be made to the department;
- (7) State or federally funded roads planned and developed in accordance with the "National Environmental Policy Act of 1969" and the Federal Act, and with Executive Order Number 53, approved October 5, 1973 and for which application has been made prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.) to the United States Army Corps of Engineers for an individual or general permit under the Federal Act; provided that upon expiration of a permit any application for a renewal or modification thereof shall be made to the department, and, provided, further, that the department shall not require transition areas as a condition of the renewal or modification of the permit;
- (8) Maintenance and repair of stormwater management facilities lawfully constructed prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.) or permitted under P.L.1987, c.156 (C.13:9B-1 et seq.), provided that these activities do not result in disturbance of additional freshwater wetlands upon completion of the activity;
- (9) Maintenance, reconstruction, or repair of buildings or structures lawfully existing prior to the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.) or permitted under P.L.1987, c.156 (C.13:9B-1 et seq.), provided that these activities do not result in disturbance of additional freshwater wetlands upon completion of the activity.

d. The department may, on the basis of findings with respect to a specific application, modify a general permit issued pursuant to this section by adding special conditions. The department may rescind a general permit and require an application for an individual permit if the commissioner finds that additional permit conditions would not be sufficient and that special circumstances make this action necessary to insure compliance with P.L.1987, c.156 (C.13:9B-1 et seq.) or the Federal Act.

e. The department shall review general permits adopted or authorized pursuant to subsection c. every five years, which review shall include public notice and opportunity for public hearing. Upon this review the department shall either modify, reissue or revoke a general permit. If a general permit is not modified or reissued within five years of publication in the New Jersey Register, it shall automatically expire.

f. The date of publication of the general permits authorized by subsections a. and b. of this section shall be the effective date of P.L.1987, c.156 (C.13:9B-1 et seq.).

g. A person proposing to engage in an activity covered by a general permit shall provide written notice to the department containing a description of the proposed activity at least 30 working days prior to commencement of work. The department, within 30 days of receipt of this notification, shall notify the person proposing to engage in the activity covered by a general permit as to whether an individual permit is required for the activity.

L.1987,c.156,s.23; amended L.1995,c.259,s.34

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 under this chapter and shall:

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

(2) Require the restoration of the freshwater wetland within this 90 day period, except that if more than the 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

c. The emergency permit may be issued orally or in writing, except that if it is issued orally, a written emergency permit 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 the Federal Act, and applicable State law, provided that this notification shall be sent no later than 10 days after issuance of the emergency permit.

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

Source: 13:9B-24⁰

COMMENT

"Act" has been changed to "chapter." The phrase "this or any other act" in subsection (a) has been changed to "this chapter or any other act."

FW-23. Regulations

a. The department shall adopt any regulations necessary to implement the provisions of this chapter. The regulations shall include the general permits which the department will issue pursuant to [section FW-21].

b. The department shall adopt, in consultation with the United States Environmental Protection Agency, a list of vegetative species classified as hydrophytes, as defined in [section FW-2], indicative of freshwater wetlands and consistent with the geographical regions of the State.

c. The department shall develop a functional, complete, and up to date composite freshwater wetlands map and inventory using the most recent available data, which shall include, but need not be limited to, aerial photographs and soil inventories at a scale suitable for freshwater wetlands regulatory purposes, and shall 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.

Source: 13:9B-25¹

⁷⁰13:9B-24. Temporary emergency permit

a. Notwithstanding the provisions of this or any other act to the contrary, the department may issue a temporary emergency freshwater wetlands permit for a regulated activity if:

(1) An unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and

(2) The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this act and other applicable State law.

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 under this act and shall:

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

(2) Require the restoration of the freshwater wetland within this 90 day period, except that if more than the 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

c. The emergency permit may be issued orally or in writing, except that if it is issued orally, a written emergency permit 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 the Federal Act, and applicable State law, provided that this notification shall be sent no later than 10 days after issuance of the emergency permit.

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

L.1987, c.156, § 24.

COMMENT

In subsections (a) and (b) the directives that certain actions be undertaken within a specified time period have been changed to delete the time period. The directives themselves, i.e., to adopt regulations, and to prepare a list of vegetative species, have been retained as in context, they are continuing obligations.

FW-24. National Wetlands Inventory maps

The department shall forward to the clerk of each municipality copies of the appropriate National Wetlands Inventory maps for the State prepared by the United States Fish and Wildlife Service and direct the clerk to notify the residents of the municipality of the availability for inspection of these maps, by publication in a newspaper of general circulation. The department shall inform the clerk of each municipality that these maps have not been determined to be accurate for the purposes of locating the actual wetlands boundary, and that the department will be preparing a composite freshwater wetlands map and inventory at the specified uniform scale.

Source: 13:9B-26²

COMMENT

As in the immediately preceding section, the time period within which action must be taken, in this case, the filing of maps, has been eliminated as the time period has long since passed.

FW-25. Assumption of permit jurisdiction

a. The department and the Attorney General shall take all appropriate action to secure the assumption of the permit jurisdiction exercised by the United States Army Corps of Engineers pursuant to the Federal Act.

b. The department shall utilize, to the maximum extent practicable and feasible, forms and procedures for permit applications which are identical to those used by the United States Army Corps of Engineers in issuing permits under the Federal Act.

c. The department shall seek to conduct the review of an application for a freshwater wetlands permit in conjunction with federal personnel responsible for reviewing an application for a permit under the Federal Act.

d. It is the intention of the Legislature that the permit process imposed in this chapter be conducted by the department concurrently with the review conducted by the federal government until such time as the department secures assumption of the permit jurisdiction exercised by the United States Army Corps of Engineers.

Source: 13:9B-27³

⁷¹13:9B-25. Rules, regulations

a. Within 10 months of the enactment of this act, and after a 60 day comment period, the department shall adopt, pursuant to the provisions of the "Administrative Procedure Act," any rules and regulations necessary to implement the provisions of this act. These rules and regulations shall include the general permits which the department will issue pursuant to section 23 of this act.

b. Within one year of the enactment of this act, the department shall adopt, in consultation with the United States Environmental Protection Agency, a list of vegetative species classified hydrophytes, as defined in section 3 of this act, indicative of freshwater wetlands and consistent with the geographical regions of the State.

c. The department shall develop a functional, complete, and up to date composite freshwater wetlands map and inventory using the most recent available data, which shall include, but need not be limited to, aerial photographs and soil inventories at a scale suitable for freshwater wetlands regulatory purposes, and shall 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.

L.1987, c.156, § 25.

⁷²13:9B-26. Distribution of National Wetlands Inventory maps

The department shall, within 180 days of enactment of this act, forward to the clerk of each municipality copies of the appropriate National Wetlands Inventory maps for the State prepared by the United States Fish and Wildlife Service and direct the clerk to notify the residents of the municipality of the availability for inspection of these maps, by publication in a newspaper of general circulation. The department shall inform the clerk of each municipality that these maps have not been determined to be accurate for the purposes of locating the actual wetlands boundary, and that the department will be preparing a composite freshwater wetlands map and inventory at the specified uniform scale.

L.1987, c.156, § 26.

⁷³13:9B-27. Assumption of permit jurisdiction

a. The department and the Attorney General shall take all appropriate action to secure the assumption of the permit jurisdiction exercised by the United States Army Corps of Engineers pursuant to the Federal Act. The department shall make an initial application to the United States Environmental Protection Agency for this assumption within one year of enactment of this act, and shall provide the Governor and the Legislature with a schedule therefor and a copy of the application and supporting material forwarded to the federal government.

b. The department shall utilize, to the maximum extent practicable and feasible, forms and procedures for permit applications which are identical to those used by the United States Army Corps of Engineers in issuing permits under the Federal Act.

COMMENT

No change.

FW-26. Preemption of local regulation

It is the intent of the Legislature that the program established by this chapter for the regulation of freshwater wetlands constitute the only program for this regulation in the State except to the extent that these areas are regulated consistent with the provisions of [section FW-5]. To this end no municipality, county, or political subdivision thereof, shall enact any law, ordinance, or regulation regulating freshwater wetlands, and this chapter shall supersede any law or ordinance regulating freshwater wetlands enacted prior to July 1, 1988.

Source: 13:9B-30⁴

COMMENT

“The effective date of this act” changed to the actual date (July 1, 1988).

Repeal as unnecessary:

13:9B-1. Short title⁷⁵

13:9B-28. Public education program⁷⁶

COMMENT

This provision recommended for repeal as executed.

13:9B-29. Report⁷⁷

COMMENT

This provision recommended for repeal as executed.

c. The department shall seek to conduct the review of an application for a freshwater wetlands permit in conjunction with federal personnel responsible for reviewing an application for a permit under the Federal Act.

d. It is the intention of the Legislature that the permit process imposed in this act be conducted by the department concurrently with the review conducted by the federal government until such time as the department secures assumption of the permit jurisdiction exercised by the United States Army Corps of Engineers.

L.1987, c.156, § 27.

⁷⁴13:9B-30. Local regulation preempted

It is the intent of the Legislature that the program established by this act for the regulation of freshwater wetlands constitute the only program for this regulation in the State except to the extent that these areas are regulated consistent with the provisions of section 6 of this act. To this end no municipality, county, or political subdivision thereof, shall enact, subsequent to the effective date of this act, any law, ordinance, or rules or regulations regulating freshwater wetlands, and further, this act, on and subsequent to its effective date, shall supersede any law or ordinance regulating freshwater wetlands enacted prior to the effective date of this act. Between the enactment and effective date of this act, no municipality, county, or political subdivision thereof shall enact any law, ordinance, or rule and regulation requiring a transition area adjacent to a freshwater wetland; provided however, that any such law, ordinance, or rule and regulation adopted prior to the enactment of this act shall be valid until the effective date of this act.

L.1987, c.156, § 30.

⁷⁵13:9B-1. Short title

This act shall be known and may be cited as the "Freshwater Wetlands Protection Act."

L.1987, c.156, § 1.

⁷⁶13:9B-28. Public education program

The department shall, within one year of the effective date of this act, conduct a public education program on the provisions of this act and the rules and regulations adopted pursuant hereto.

L.1987, c.156, § 28.

⁷⁷13:9B-29. Report

The department shall, within two years of the effective date of this act, prepare and submit a report to the Governor, the President of the Senate and the Speaker of the General Assembly, and the Senate Energy and Environment Committee and the Assembly Energy and Natural Resources Committee, or their designated successors. The report shall describe:

(1) The success or failure of mitigation measures performed in actual development situations, both within the State and in other states, the nature of the mitigation measures, and the state-of-the-art techniques used for mitigation; and

(2) Recommendations for legislative or administrative action necessary to ensure the long term protection of freshwater wetlands from damage and degradation resulting from land use activities, pollution, and hydrologic changes which occur in upstream regions of the same watersheds of particular freshwater wetlands.

L.1987, c.156, § 29.

Chapter - Wetlands mitigation

This chapter combines sections from the Freshwater Wetlands Act, L.1987, c.156 (see chapter entitled "Freshwater wetlands"), with later-enacted provisions concerning wetlands mitigation efforts of counties. The Wetlands Mitigation Bank was established under the control of the Wetlands Mitigation Council, to disburse funds for the purchase of lands suitable for wetlands enhancement, preservation or restoration. see L.1987, c.156, §§13 and 14. The 1993 provisions direct the Council to review certain plans by counties for wetlands mitigation projects. See L.1993, c.298 §§1 to 4.

WM-1. Definitions

As used in this chapter:

"Wetlands" means freshwater wetlands as defined pursuant to [the chapter of this subtitle entitled "Freshwater wetlands,"] or coastal wetlands as defined pursuant to [the chapter of this subtitle entitled "Coastal wetlands."]

"Wetlands creation, enhancement, or restoration" means those activities or techniques designed to create wetlands or enhance or restore degraded wetlands.

"Wetlands permit" means a permit approved and issued by the department for activities regulated pursuant to [the chapter of this subtitle entitled "Freshwater wetlands"] or [the chapter of this subtitle entitled "Coastal wetlands."]

Source: 13:9C-1⁸

COMMENT

The definition of "department" and "council" have been eliminated as unnecessary.

WM-2. Wetlands Mitigation Bank and Council, establishment

a. There is established in the Executive Branch of State Government the Wetlands Mitigation Bank. For the purpose of complying with Article V, section IV, paragraph 1 of the New Jersey Constitution, the bank is allocated within the Department of Environmental Protection. Notwithstanding this allocation, the bank shall be independent of any supervision or control by the department or the commissioner, or any other officer or employee of the department.

b. The bank shall be governed by the Wetlands Mitigation Council which shall comprise seven members as follows: the Commissioner of Environmental Protection, who shall serve ex officio; and six members of the general public to be appointed by the Governor with the advice and consent of the Senate, two of whom shall be appointed from persons recommended by recognized building and development organizations; two of whom shall be appointed from persons recommended by recognized environmental and conservation organizations; and two of whom shall be appointed from institutions of higher learning in the State. Each of the members appointed from the general public shall serve for a term of three years and until a successor is appointed and qualified. All vacancies, except those created through the expiration of term, shall be filled for the unexpired term only, and in the same manner, and with a member having the same class, as the original appointment. Each member shall be eligible for reappointment, but may be removed by the Governor for cause.

⁷⁸13:9C-1. Definitions

As used in this act:

"Council" means the Wetlands Mitigation Council established pursuant to section 14 of P.L.1987, c.156 (C.13:9B

"Department" means the Department of Environmental Protection.

"Wetlands" means freshwater wetlands as defined pursuant to P.L.1987, c.156 (C.13:9B et al.), or coastal wetlands as defined pursuant to P.L.1970, c.272 (C.13:9A1 et seq.).

"Wetlands creation, enhancement, or restoration" means those activities or techniques designed to create wetlands or enhance or restore degraded wetlands.

"Wetlands permit" means a permit approved and issued by the department for activities regulated pursuant to P.L.1987, c.156 (C.13:9B et al.) or P.L.1970, c.272 (C.13:9A1 et seq.).

L.1993, c.298, § 1.

c. A majority of the membership of the council shall constitute a quorum for the transaction of council business. Action may be taken and motions and resolutions adopted by the council at any meeting by the affirmative vote of a majority of the full membership of the council.

d. The Governor shall appoint a chairman from the public members and the council may appoint such other officers as may be necessary. The council may appoint staff or hire experts that it may require within the limits of appropriations made for these purposes.

e. Members of the council shall serve without compensation, but may be reimbursed for expenses necessarily incurred in the discharge of their official duties.

f. The council may call to its assistance employees that are necessary and made available to it from any agency or department of the State or its political subdivisions.

g. The council, in consultation with the department, may adopt any regulations necessary to carry out its responsibilities.

Source: 13:9B-14⁹

COMMENT

Subsection (a) has been divided into two sentences. The passage in subsection (b) referring to staggering the terms of the first members of the Mitigation Bank has been deleted as executed.

Minor editing changes; deleting "thereof"; changing "such...as" to "that." In subsection (g), the reference to the Administrative Procedure Act has been eliminated as unnecessary. "Rules and regulations" has been shortened to "regulations."

WM-3. Wetlands Mitigation Council, powers

a. The Wetlands Mitigation Council shall be responsible for disbursements of funds from the bank to finance mitigation projects. The council shall have the power to purchase land to provide areas for the enhancement or restoration of degraded freshwater wetlands, to engage in the enhancement or restoration of degraded freshwater wetlands on any public lands, including public lands other than those acquired by the bank, and to preserve freshwater wetlands and transition areas determined to be of critical importance in protecting freshwater wetlands.

b. The council may contract with nonprofit organizations, the Division of Fish, Game and Wildlife in the department, the United States Fish and Wildlife Service, and other appropriate agencies to carry out its responsibilities, and may aggregate mitigation actions to achieve economies of scale. Any contract proposed by the

⁹**13:9B-14. Wetlands Mitigation Bank; council membership**

a. There is established in the Executive Branch of State Government the Wetlands Mitigation Bank. For the purpose of complying with Article V, section IV, paragraph 1 of the New Jersey Constitution, the bank is allocated within the Department of Environmental Protection but, notwithstanding this allocation, the bank shall be independent of any supervision or control by the department or the commissioner, or any other officer or employee thereof.

b. The bank shall be governed by the Wetlands Mitigation Council which shall comprise seven members as follows: the Commissioner of Environmental Protection, who shall serve ex officio; and six members of the general public to be appointed by the Governor with the advice and consent of the Senate, two of whom shall be appointed from persons recommended by recognized building and development organizations; two of whom shall be appointed from persons recommended by recognized environmental and conservation organizations; and two of whom shall be appointed from institutions of higher learning in the State. Each of the members appointed from the general public shall serve for a term of three years and until a successor is appointed and qualified, except that of the members first appointed, two shall serve terms of one year, and two shall serve terms of two years. All vacancies, except those created through the expiration of term, shall be filled for the unexpired term only, and in the same manner, and with a member having the same class, as the original appointment. Each member shall be eligible for reappointment, but may be removed by the Governor for cause.

c. A majority of the membership of the council shall constitute a quorum for the transaction of council business. Action may be taken and motions and resolutions adopted by the council at any meeting thereof by the affirmative vote of a majority of the full membership of the council.

d. The Governor shall appoint a chairman from the public members and the council may appoint such other officers as may be necessary. The council may appoint such staff or hire such experts as it may require within the limits of appropriations made for these purposes.

e. Members of the council shall serve without compensation, but may be reimbursed for expenses necessarily incurred in the discharge of their official duties.

f. The council may call to its assistance such employees as are necessary and made available to it from any agency or department of the State or its political subdivisions.

g. The council may adopt, pursuant to the "Administrative Procedure Act," and in consultation with the department, any rules and regulations necessary to carry out its responsibilities.

L.1987, c.156, § 14.

council pursuant to this subsection shall be subject to review and approval by the United States Environmental Protection Agency.

c. The council, in consultation with the United States Environmental Protection Agency, 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 enhancement, restoration, or other mitigation efforts;

or

- (4) Research to enhance the practice of mitigation.

Source: 13:9B-15⁰

COMMENT

The last sentence of subsection a. pertaining to the council assisting in the preparation of a report pursuant to L.1987, c.156, § 29, has been eliminated as executed (the report was required to be submitted within two years of July 1, 1988).

WM-4. Responsibilities of the department, council

a. The Department of Environmental Protection, in addition to its responsibilities under [the chapter of this subtitle entitled “Freshwater wetlands”] and [the chapter of this subtitle entitled “Coastal wetlands,”] shall adopt regulations to assist counties in identifying areas suitable for wetlands creation, enhancement, or restoration, and which shall be used by the Wetlands Mitigation Council to approve or disapprove areas so identified by the governing body of a county.

b. If the governing body of a county submits to the council a map of areas proposed for use in wetlands creation, enhancement, or restoration, and any supporting documents or information that the council may require, the council shall review and approve or disapprove the submission within 120 days of receiving it. The council may conduct site visits and evaluations as may be necessary within that time to confirm the suitability for wetlands creation, enhancement, or restoration of the areas being proposed. The council may approve some of the areas identified by the county while disapproving other areas, stating the reasons for the disapproval of areas in writing.

c. Whenever the department issues a wetlands permit within a county with an approved list of areas suitable for wetlands creation, enhancement, or restoration and the department is requiring wetlands creation, enhancement, or restoration as a condition of the permit, the department may utilize the list of sites approved by

⁸⁰**13:9B-15. Powers of Wetlands Mitigation Council**

a. The Wetlands Mitigation Council shall be responsible for disbursements of funds from the bank to finance mitigation projects. The council shall have the power to purchase land to provide areas for the enhancement or restoration of degraded freshwater wetlands, to engage in the enhancement or restoration of degraded freshwater wetlands on any public lands, including public lands other than those acquired by the bank, and to preserve freshwater wetlands and transition areas determined to be of critical importance in protecting freshwater wetlands. The council shall assist the department in preparing the portions of the report required pursuant to section 29 of this act which pertain to mitigation.

b. The council may contract with nonprofit organizations, the Division of Fish, Game and Wildlife in the department, the United States Fish and Wildlife Service, and other appropriate agencies to carry out its responsibilities, and may aggregate mitigation actions to achieve economies of scale. Any contract proposed by the council pursuant to this subsection shall be subject to review and approval by the United States Environmental Protection Agency.

c. The council, in consultation with the United States Environmental Protection Agency, 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 enhancement, restoration, or other mitigation efforts; or
- (4) Research to enhance the practice of mitigation.

L.1987,c.156,s.15; amended 1993,c.298,s.6.

the council for that county in identifying the areas in which the wetlands creation, enhancement, or restoration activities are to take place.

Source: 13:9C-2¹

COMMENT

"Receipt thereof" changed to "receiving it."

WM-5. Identification, inventory of areas suitable for use in county

a. The governing body of a county may, in consultation with the municipalities within its territorial jurisdiction, identify and inventory areas within the county that it deems suitable for use in wetlands creation, enhancement, or restoration in the event a wetlands permit is issued by the Department of Environmental Protection and the department requires the creation, enhancement, or restoration of wetlands as a condition of the permit.

b. Upon identification, the governing body shall forward to the council a map of the areas and any supporting documents or information that the council may require in order to review and approve or disapprove the use of those areas for wetlands creation, enhancement, or restoration purposes.

Source: 13:9C-3²

COMMENT

No change.

WM-6. Nonapplicability of act

a. Nothing in this act shall be construed to discourage or prevent the creation, enhancement, or restoration of wetlands on the site of the approved regulated activity or to discourage or prevent the use of any area suitable for the creation, enhancement, or restoration of wetlands because the area was not previously approved by the council pursuant to [section WM-4].

b. No State, regional, county, or local governmental entity, agency, or authority may deny or disapprove a permit, approval, or other authorization, which is required pursuant to law, rule, regulation, or local resolution or ordinance in order to develop a parcel or engage in any other activities thereon, because the parcel is located within an area approved by the council pursuant to [section WM-4] as being suitable for wetlands creation, enhancement, or restoration.

⁸¹13:9C-2. Responsibilities of the department, council

a. The Department of Environmental Protection, in addition to its responsibilities under P.L.1987, c.156 (C.13:9B) and P.L.1970, c.272 (C.13:9A-1 et seq.), and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B et seq.), shall adopt, within six months of the effective date of this act, rules and regulations to assist counties in identifying areas suitable for wetlands creation, enhancement, or restoration, and which shall be used by the Wetlands Mitigation Council to approve or disapprove areas so identified by the governing body of a county.

b. If the governing body of a county submits to the council a map of areas proposed for use in wetlands creation, enhancement, or restoration, and any supporting documents or information that the council may require, the council shall review and approve or disapprove the submittal within 120 days of receipt thereof. The council may conduct site visits and evaluations as may be necessary within that time to confirm the suitability for wetlands creation, enhancement, or restoration of the areas being proposed. The council may approve some of the areas identified by the county while disapproving other areas, stating the reasons for the disapproval of areas in writing.

c. Whenever the department issues a wetlands permit within a county with an approved list of areas suitable for wetlands creation, enhancement, or restoration and the department is requiring wetlands creation, enhancement, or restoration as a condition of the permit, the department may utilize the list of sites approved by the council for that county in identifying the areas wherein the wetlands creation, enhancement, or restoration activities are to take place.

L.1993, c.298, § 2.

⁸²13:9C-3. Identification, inventory of areas suitable for use in county

a. The governing body of a county may, in consultation with the municipalities within its territorial jurisdiction, identify and inventory areas within the county that it deems suitable for use in wetlands creation, enhancement, or restoration in the event a wetlands permit is issued by the Department of Environmental Protection and the department requires the creation, enhancement, or restoration of wetlands as a condition of the permit.

b. Upon identification, the governing body shall forward to the council a map of the areas and any supporting documents or information that the council may require in order to review and approve or disapprove the use of those areas for wetlands creation, enhancement, or restoration purposes.

L.1993,c.298,s.3.

Source: 13:9C-4³

COMMENT

No change.

⁸³**13:9C-4. Nonapplicability of act**

a. Nothing in this act shall be construed to discourage or prevent the creation, enhancement, or restoration of wetlands on the site of the approved regulated activity or to discourage or prevent the use of any area suitable for the creation, enhancement, or restoration of wetlands because the area was not previously approved by the council pursuant to section 2 of this act.

b. No State, regional, county, or local governmental entity, agency, or authority may deny or disapprove a permit, approval, or other authorization, which is required pursuant to law, rule, regulation, or local resolution or ordinance in order to develop a parcel or engage in any other activities thereon, because the parcel is located within an area approved by the council pursuant to section 2 of this act as being suitable for wetlands creation, enhancement, or restoration.

L.1993,c.298,s.4.

Chapter - Flood hazard areas

FH-1. Legislative findings

It is in the interest of the safety, health, and general welfare of the people of the State that legislative action be taken to empower the Department of Environmental Protection to delineate and mark flood hazard areas, to authorize the department to adopt land use regulations for the flood hazard area, to control stream encroachments, to coordinate effectively the development, dissemination, and use of information on floods and flood damages that may be available, to authorize the delegation of certain administrative and enforcement functions to county governing bodies and to integrate the flood control activities of the municipal, county, state and federal governments.

Source: 158:16A-50⁴

COMMENT

Subsection (a), expressing the short title of the source act, has been eliminated as unnecessary.

FH-2. Definitions

As used in this chapter:

"Channel" means a watercourse with definite bed and banks which confine and conduct continuously or intermittently flowing water;

"Flood fringe area" means that portion of the flood hazard area not delineated as the floodway;

"Flood hazard area" means the floodway and the flood fringe area as determined by the department [under section FH-3];

"Floodway" means the channel of a natural stream and portions of the flood hazard area adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any natural stream;

"Person" includes all political subdivisions of this State or any agencies or instrumentalities of this State.

"Relative risk" means the varying degrees of hazard to life and property in a flood hazard area which are occasioned by differences in depth and velocity of flood waters covering and flowing over it;

Source: 58:16A-51⁵

COMMENT

The lettering of the individual definitions has been eliminated and the definitions have been alphabetized. The definition of "Department" has been eliminated as unnecessary.

⁴58:16A-50. Short title; declaration of policy

a. This act shall be known and may be cited as the "Flood Hazard Area Control Act."

b. It is in the interest of the safety, health, and general welfare of the people of the State that legislative action be taken to empower the Department of Environmental Protection to delineate and mark flood hazard areas, to authorize the Department of Environmental Protection to adopt land use regulations for the flood hazard area, to control stream encroachments, to coordinate effectively the development, dissemination, and use of information on floods and flood damages that may be available, to authorize the delegation of certain administrative and enforcement functions to county governing bodies and to integrate the flood control activities of the municipal, county, State and Federal Governments.

L.1962, c.19, § 1. Amended by L.1972, c.185, § 2eff. Dec. 14, 1972; L.1979, c.359, § 2eff. Jan. 31, 1980.

⁵58:16A-51. Definitions

As used in this act, unless the context indicates another or different meaning or intent:

(a) "Channel" means a watercourse with definite bed and banks which confine and conduct continuously or intermittently flowing water;

(b) "Floodway" means the channel of a natural stream and portions of the flood hazard area adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any natural stream;

(c) "Flood hazard area" means the floodway and the flood fringe area as determined by the department under section 3 hereof;

(d) "Relative risk" means the varying degrees of hazard to life and property in a flood hazard area which are occasioned by differences in depth and velocity of flood waters covering and flowing over it;

(e) "Flood fringe area" means that portion of the flood hazard area not delineated as the floodway;

(f) "Department" means the Department of Environmental Protection.

(g) "Person" means and shall include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

L.1962, c.19, § 2. Amended by L.1972, c.185, § 3eff. Dec. 14, 1972; L.1979, c.359, § 3eff. Jan. 31, 1980.

The introductory phrase "unless the context indicates another or different meaning or intent" has been eliminated as superfluous.

The definition of the term "person" has been edited to eliminate reference to corporations and other entities as they are included in the definition of "person" in Title 1 Acts, Laws and Statutes. See R.S. 1:1-2. The portion of the definition that pertains to the State and its political subdivisions has been retained as it has substantive effect. See Leonard v. State Highway Dept., 29 N.J. Super. 188, 196 (App. Div. 1954)(definition of "person in R.S. 1:1-2 does not include municipality or State.")

FH-3. Flood hazard areas

a. The department shall study the nature and extent of the areas affected by flooding in the State. The department shall adopt regulations which delineate as flood hazard areas those areas that, in the judgment of the department, the improper development and use of would constitute a threat to the safety, health, and general welfare from flooding. The delineations shall identify the various subportions of the flood hazard area for reasonable and proper use according to relative risk, including the delineation of floodways necessary to preserve the flood carrying capacity of natural streams. The department may revoke, amend, alter, or modify the regulations if in its judgment the public interest so warrants.

b. The department shall, wherever practicable, make floodway delineations identical to the floodway delineations approved by the Federal Government for the National Flood Insurance Program.

c. The department shall establish a procedure for reducing any delineated flood hazard area when a change has been made which increases the flood carrying capacity of the concerned stream at that location.

Source: 58:16A-52⁶

COMMENT

In subsection (a) the cross-reference to the Administrative Procedure Act has been eliminated as unnecessary. "Rules and regulations" has been changed to "regulations." Other minor editorial changes.

FH-4. Markers

The department may conspicuously mark in the field (1) any flood hazard area delineated by the department, and (2) any other area the department may deem necessary to effectuate the purposes of this chapter. The department may erect markers on any property belonging to the State, or any agency or instrumentality of the State. Markers may be erected on any county, municipal, or private property provided that the county, municipality, or owner consents. No person may remove, deface or otherwise disturb any marker erected under the provisions of this chapter.

Source: 58:16A-53⁷

⁸⁶58:16A-52. Delineation of flood hazard areas

a. The department shall study the nature and extent of the areas affected by flooding in the State. After public hearing upon notice, and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14-1 et seq.), the department shall adopt rules and regulations which delineate as flood hazard areas such areas as, in the judgment of the department, the improper development and use of which would constitute a threat to the safety, health, and general welfare from flooding. Subdelineations shall identify the various subportions of the flood hazard area for reasonable and proper use according to relative risk, including the delineation of floodways necessary to preserve the flood carrying capacity of natural streams. The department may, after public hearing upon notice and pursuant to the aforesaid "Administrative Procedure Act," revoke, amend, alter, or modify such regulations if in its judgment the public interest so warrants.

b. The department shall wherever practicable, make floodway delineations identical to the floodway delineations approved by the Federal Government for the National Flood Insurance Program.

c. The department shall establish a procedure for reducing any delineated flood hazard area when a change has been made which increases the flood carrying capacity of the concerned stream at that location.

L.1962, c.19, § 3. Amended by L.1979, c.359, § 4 eff. Jan. 31, 1980.

⁸⁷58:16A-53. Markers

The department may conspicuously mark in the field (1) any flood hazard area delineated by the department, and (2) any other area the department may deem necessary to effectuate the purposes of this act. The department may erect markers on any property belonging to the State, or any agency or instrumentality thereof. Such markers may be erected on any county, municipal, or private property provided that such county, municipality, or owner shall have consented thereto. No person may remove, deface or otherwise disturb any marker erected under the provisions of this act.

L.1962, c.19, § 4. Amended by L.1979, c.359, § 13 eff. Jan. 31, 1980.

COMMENT

"Act" changed to "chapter"; "such" changed to "the"; and "shall have consented" changed to "consents."

FH-5. Regulation of development and use

a. The department may adopt, amend and repeal regulations and issue orders concerning the development and use of land in any delineated floodway. The regulations shall be designed to preserve the delineated floodways and to minimize the threat to the public safety, health and general welfare. The regulations or orders may require the approval of the department for specified changes in the use of land within any such floodway.

b. Provision shall be made by the department for the waiver of strict compliance with the regulations, according to definite criteria, where necessary to alleviate hardship.

c. The commissioner shall not require a permit for the repair of any dam used for agricultural purposes within a special agricultural production areas designated pursuant to N.J.A.C. 7:50-5.14 in the floodhazard area.

Source: 58:16A-55⁸⁸; 58:16A-55.7⁸⁹

COMMENT

The phrase "is authorized to adopt" is changed to "may adopt"; "rules and regulations" changed to "regulations"; and "such" changed to "the." The first sentence in subsection (a) has been divided into two sentences. The source of subsection c. is P.L.1996, c.402, §2 (C.58:16A-55.7).

FH-6. Preexisting structures

No regulation adopted pursuant to [section FH-5 or FH-14] shall prevent the repair or rebuilding of any lawful preexisting structure within a flood hazard area, if the structure was damaged by a flood or by any other means.

Source: 58:16A-55.1⁹⁰

COMMENT

"Rules and regulations" changed to "regulations." The phrase "within a flood hazard area" moved, and conforming editorial changes made.

FH-7. 100 year design flood

a. No structure or alteration within the area which would be inundated by the 100 year design flood of any nondelineated stream shall be made, rebuilt or renewed by any person without the approval of the department and without complying with such conditions as the department may prescribe for preserving such area and providing for the flow of water therein to safeguard the public against danger from the waters impounded or affected by such structure or alteration. No such approval by the department shall impair or affect any property rights otherwise existing which might be invaded by the construction or maintenance of any such structure or alteration.

⁸⁸58:16A-55. Land in designated floodway; rules, regulations and orders concerning development and use; waiver

(a) The department is authorized to adopt, amend and repeal rules and regulations and to issue orders concerning the development and use of land in any delineated floodway which shall be designed to preserve its flood carrying capacity and to minimize the threat to the public safety, health and general welfare. Such rules and regulations or orders may require the approval of the department for specified changes in the use of land within any such floodway.

(b) Provision shall be made by the department for the waiver, according to definite criteria, of strict compliance with the rules and regulations, where necessary to alleviate hardship.

L.1972, c.185, § 4, eff. Dec. 14, 1972. Amended by L.1979, c.359, § 3, eff. Jan. 31, 1980.

⁸⁹58:16A-55.7 Exemptions to requirement for permit to repair dam

The Commissioner of Environmental Protection shall not require a permit for the repair of any dam used for agricultural purposes within a special agricultural production area designated pursuant to N.J.A.C.7:50-5.14 in the floodhazard area.

L.1995, c.402, s.2

⁹⁰58:16A-55.1. Repair or rebuilding of lawful preexisting structure within flood hazard area

No rule or regulation adopted pursuant to section 4 or 7 of P.L.1972, c.185 (C. 58:16A or 58) shall prevent the repair or rebuilding within a flood hazard area of any lawful preexisting structure which was damaged by a flood or by any other means.

L.1977, c.385, § 1, eff. Feb. 10, 1978.

b. The department may adopt, amend or repeal regulations and issue orders concerning the making, rebuilding or renewing of any structure or alteration and the development or use of land in the area which would be inundated by the 100 year design flood of any nondelineated stream. The regulations shall be designed to preserve the flood carrying capacity of the stream to minimize the threat to the public safety, health and general welfare. The regulations shall include a provision which exempts, according to definite criteria, certain minor structures or alterations of a specific size or type from the provisions of subsection a. of this section.

Source: 58:16A-55.2

COMMENT

In subsection (b) the phrase "is authorized to pursuant to the 'Administrative Procedure Act'" etc., has been changed to "may adopt regulations." "Such" has been changed to "the."

FH-8. Application under Municipal Land Use Law

No application for development as defined in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), for a structure within the area which would be inundated by the 100 year design flood of any nondelineated stream or for a change in land use within a delineated floodway or any State-administered and delineated flood fringe area when such change would require departmental approval, may be granted by any municipality to any person without application to and approval by the department as required pursuant to this chapter.

Source: 58:16A-55.3

COMMENT

"Act" changed to "chapter."

FH-9. County stormwater control and drainage plans

Any county governing body may prepare a stormwater control and drainage plan for the county. The plans shall be prepared after consultation and discussion with the department and with adjacent counties and shall consider and evaluate the impact of any developments within the county or upstream from the county on the streams within the county and downstream from the county. The plans may be financed in part from the "Emergency Flood Control Bond Act" (P.L.1978, c.78). County stormwater control and drainage plans prepared provided in this chapter shall be utilized by the department in deciding to approve or disapprove any application submitted pursuant to this chapter.

Source: 58:16A-55.4

⁹¹58:16A-55.2. Structure or alteration with area subject to inundation by 100 year design flood of nondelineated stream; approval; conditions

a. No structure or alteration within the area which would be inundated by the 100 year design flood of nondelineated stream shall be made, rebuilt or renewed by any person without the approval of the department and without complying with such conditions as the department may prescribe for preserving such area and providing for the flow of water therein to safeguard the public against danger from the waters impounded or affected by such structure or alteration. No such approval by the department shall impair or affect any property rights otherwise existing which might be invaded by the construction or maintenance of any such structure or alteration.

b. The department is authorized, pursuant to the "Administrative Procedure Act" P.L.1968, c. 410 (C. 52:14B seq.), to adopt, amend or repeal rules and regulations and to issue orders concerning the making, rebuilding or renewing of any structure or alteration and the development or use of land in the area which would be inundated by the 100 year design flood of nondelineated stream, which rules and regulations shall be designed to preserve the flood carrying capacity of the stream to minimize the threat to the public safety, health and general welfare. Such rules and regulations shall include a provision which exempts, according to definite criteria, certain minor structures or alterations of a specific size or type from the provisions of subsection a. of this section.

L.1979, c.359, § 6, eff. Jan. 31, 1980.

⁹²58:16A-55.3. Application for development under Municipal Land Use Law; approval by department

No application for development as defined in the Municipal Land Use Law, "P.L.1975, c. 291 (C. 40:55D-1 et seq.), for a structure within the area which would be inundated by the 100 year design flood of any nondelineated stream or for a change in land use within a delineated floodway or any State-administered and delineated flood fringe area when such change would require departmental approval, may be granted by any municipality to any person without application and approval by the department as required pursuant to this act.

L.1979, c. 359, s. 9, eff. Jan. 31, 1980.

COMMENT

Minor editorial changes.

FH-10. County water resources associations

Any county governing body may by ordinance or resolution as appropriate, create a county water resources association which may include the chief administrative officer of any county planning agency, county engineers office, county utilities authority, county health department, county mosquito commission, county soil conservation district, or county parks agency and any other public or private members. The county water resources association shall advise the county governing body, shall coordinate the flood control and water management programs for the county and shall have such powers as the county governing body may delegate to it concerning water management in the ordinance or resolution of creation.

Source: 58:16A-55.5⁵

COMMENT

No change.

FH-11. Delegation of power to approve or disapprove application to county governing body

The department may delegate its power to approve or disapprove any application made to it pursuant to this chapter and its power to enforce any aspect of this chapter to a county governing body which agrees to accept such designation and in the department's judgment is capable of utilizing the regulations and standards adopted by the department for the administration of this program. The department shall review this delegation at least biannually and may revoke the delegation for failure to properly administer the delegated powers. The county governing body may charge the same fees promulgated by the commissioner pursuant to [section CP-5 of the chapter entitled "Construction permits"] when such powers are delegated to it.

Source: 58:16A-55.6⁶

COMMENT

Minor editorial changes.

FH-12. Minimum standards for local regulations

The department shall promulgate minimum standards for the adoption of local regulations concerning the development and use of land in the flood fringe area designed to minimize the threat to the public safety, health and general welfare.

⁹³58:16A-55.4. County stormwater control and drainage plans; utilization on determinations of approval

Any county governing body may prepare a stormwater control and drainage plan for the county. Such plans shall be prepared after consultation and discussion with the Department of Environmental Protection and with adjacent counties and shall consider and evaluate the impact of any developments within the county or upstream from the county on the streams within the county and downstream from the county. Such plans may be financed in part from the "Emergency Flood Control Bond Act" (P.L.1978, c. 78). County stormwater control and drainage plans prepared as herein provided shall be utilized by the department in deciding to approve or disapprove any application submitted pursuant to this act.

L.1979, c.359, § 10, eff. Jan. 31, 1980.

⁹⁴58:16A-55.5. County water resources associations

Any county governing body may by ordinance or resolution as appropriate, create a county water resources association which may include the chief administrative officer of any county planning agency, county engineers office, county utilities authority, county health department, county mosquito commission, county soil conservation district, or county parks agency and any other public or private members. The county water resources association shall advise the county governing body, shall coordinate the flood control and water management programs for the county and shall have such powers as the county governing body may delegate to it concerning water management in the ordinance or resolution of creation.

L.1979, c.359, § 11, eff. Jan. 31, 1980.

⁹⁵58:16A-55.6. Delegation of power to approve or disapprove application to county governing body

The Department of Environmental Protection may delegate its power to approve or disapprove any application made to it pursuant to this act and its power to enforce any aspect of this act to a county governing body which agrees to accept such designation and in the department's judgment is capable of utilizing the rules, regulations and standards adopted by the department for the administration of this program. The department shall review this delegation at least biannually and may revoke such delegation for failure to properly administer such delegated powers. The county governing body may charge the same fees promulgated by the commissioner pursuant to P.L.1975, c.232 (C. 133) when such powers are delegated to it.

L.1979, c.359, § 12, eff. Jan. 31, 1980.

Source: 58:16A-56⁶

COMMENT

"Rules and regulations" changed to "regulations."

FH-13. Adoption of local regulations

Within 12 months after the delineation of any flood hazard area, and at least 12 months after the promulgation of standards by the department, the affected municipality or other responsible entity shall adopt regulations concerning the development and use of land in the flood fringe area which at least conform to the standards promulgated by the department.

Source: 58:16A-57⁷

COMMENT

"Rules and regulations" changed to "regulations."

FH-14. Failure to adopt or enforce local regulations

If any affected municipality or other responsible entity fails to adopt or fails to enforce regulations concerning the development and use of land in the flood fringe area which at least conform to the standards promulgated by the department within the specified period, thereafter the department may adopt such regulations which shall be applicable to the particular flood fringe area. Such regulations may require application to and approval by the department for such development or use within any such flood fringe area.

Source: 58:16A-58⁸

COMMENT

"Rules and regulations" changed to "regulations."

FH-15. Inapplicability of regulations to lands regulated by Wetlands Act of 1970

Any regulations adopted pursuant to this chapter shall not apply to the extent that lands affected are regulated pursuant to [the chapter of this subtitle entitled "Coastal wetlands."]

Source: 58:16A-60⁹

COMMENT

"Rules and regulations" changed to "regulations."

⁶**58:16A-56. Minimum standards for local rules and regulations**

The department shall promulgate minimum standards for the adoption of local rules and regulations concerning the development and use of land in the flood fringe area designed to minimize the threat to the public safety, health and general welfare.

L.1972, c.185, § 5, eff. Dec. 14, 1972.

⁷**58:16A-57. Rules and regulations by affected municipality or other responsible entity for development and use of land in flood fringe area**

Within 12 months after the delineation of any flood hazard area, and at least 12 months after the promulgation of standards by the department, the affected municipality or other responsible entity shall adopt rules and regulations concerning the development and use of land in the flood fringe area which at least conform to the standards promulgated by the department.

L.1972, c.185, § 6, eff. Dec. 14, 1972.

⁸**58:16A-58. Failure to adopt or enforce local rules and regulations; action by department**

If any affected municipality or other responsible entity fails to adopt or fails to enforce rules and regulations concerning the development and use of land in the flood fringe area which at least conform to the standards promulgated by the department within the specified period, thereafter the department may adopt such rules and regulations which shall be applicable to the particular flood fringe area. Such rules and regulations may require application to and approval by the department for such development or use within any such flood fringe area.

L.1972, c.185, § 7, eff. Dec. 14, 1972. Amended by L.1979, c.359, § 14ff. Jan. 31, 1980.

⁹**58:16A-60. Inapplicability of rules and regulations to lands regulated by Wetlands Act of 1970**

Any rules and regulations adopted pursuant to this act shall not apply to the extent that lands affected thereby are regulated pursuant to "the Wetlands Act of 1970" (P.L.1970, c.272) (C. 13:9A et seq.).

L.1972, c.185, § 9, eff. Dec. 14, 1972.

FH-16. Establishment of full value of lands for assessment

Local assessors shall consider the impact of regulations issued pursuant to this chapter in establishing full value of lands designated as floodways or as flood fringe areas.

Source: 58:16A-61⁰⁰

COMMENT

Minor editorial changes.

FH-17. Local regulations more restrictive than state standards

Any municipal or other entity vested with authority to adopt regulations concerning the development and use of land may adopt requirements more restrictive than those contained in the regulations adopted by the department for the floodway or more restrictive than those contained in the minimum standards promulgated by the department.

Source: 58:16A-62⁰¹

COMMENT

Minor editorial changes.

FH-18. Violations and penalties

a. Any person who knowingly violates a provision of this chapter or a regulation or order adopted pursuant to this chapter shall be subject to a penalty of not more than \$2,500.00 for each offense. Any person who otherwise violates a provision of this chapter shall be subject to a penalty of not more than \$1,500.00 for each offense, both to be collected by the department in a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.), and in any court of competent jurisdiction where injunctive relief has been requested. If the violation is of a continuing nature, each day which it continues shall constitute an additional, separate and distinct offense. The department may in its discretion compromise and settle any claim for a penalty under this section in any amount that may appear appropriate and equitable under all of the circumstances. All moneys and costs recovered in any such action, shall be paid to the Environmental Services Fund.

b. The department may institute a summary action in a court of competent jurisdiction for injunctive relief against any person who violates any provision of this chapter or any regulation promulgated pursuant to this chapter.

Source: 58:16A-63⁰²

¹⁰⁰58:16A-61. Establishment of full value of lands for assessment

Local assessors shall consider the impact of rules or regulations issued pursuant to this act in establishing full value of lands designated as floodways or as flood fringe areas.

L.1972, c.185, § 10, eff. Dec. 14, 1972.

¹⁰¹58:16A-62. Local rules and regulations more restrictive than state standards; authorization

Any municipal or other entity vested with authority to adopt rules and regulations concerning the development and use of land may adopt requirements more restrictive than those contained in the rules and regulations adopted by the department for the floodway and than those contained in the minimum standards promulgated by the department.

L.1972, c.185, § 11, eff. Dec. 14, 1972.

¹⁰²58:16A-63. Violation of act; penalty

(a) Any person who knowingly violates a provision of this act or a rule, regulation or order adopted pursuant to this act shall be subject to a penalty of not more than \$2,500.00 for each offense and any person who otherwise violates a provision of this act shall be subject to a penalty of not more than \$1,500.00 for each offense, both to be collected by the department in a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.), and in any court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court shall have jurisdiction to enforce said penalty enforcement law. If the violation is of a continuing nature each day which it continues shall constitute an additional, separate and distinct offense. The department is hereby authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the department as may appear appropriate and equitable under all of the circumstances. All moneys recovered in any such action, together with the costs recovered therein, shall be paid to the Environmental Services Fund.

(b) If any person violates any of the provisions of this act or any rule or regulation promulgated pursuant to the provisions of this act, the department may institute an action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation or violations and the said court may proceed in the action in a summary manner.

L.1972, c.185, § 12; amended 1979, c.359, § 7; 1991, c.91, § 532.

COMMENT

Both subsections have been rewritten for clarity.

FH-19. Effect of act on powers, duties and functions of department of environmental protection

The powers, duties and functions vested in the Department of Environmental Protection under this chapter shall not be construed to limit in any manner the functions, powers and duties vested in the department under any other provision of law.

Source: 58:16A-65¹⁰³

COMMENT

“Act” changed to “chapter”; minor editorial changes.

FH-20. Notice of intent

a. The provisions of any other law, or any rule or regulation adopted pursuant thereto, to the contrary notwithstanding, a county or municipality, or designated agency thereof, before undertaking any project to clean, clear, or desnag a stream within its jurisdiction, shall submit to the Department of Environmental Protection or to any State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, a written notice of intent to undertake a project to clean, clear, or desnag a stream and a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall certify that:

- (1) the project is being undertaken solely for the purpose of stream cleaning, clearing, or desnagging;
- (2) the removal of any material will not extend below the natural stream bed;
- (3) the activities will not alter the natural stream banks;
- (4) the activities will consist of the removal only of accumulated sediments, debris, and garbage from a stream with a natural stream bed or the removal of any accumulated material from a stream previously channelized with concrete or similar artificial material;
- (5) every effort will be made to perform work from only one stream bank and that vegetation and canopy on the more southerly or westerly banks will be preserved for stream shading; and
- (6) the activities are necessary and in the public interest.

The notice shall also include a description of the nature of the project, a description, including a photograph, of the reach of the stream in which the activity is to take place, and an identification of the regulatory water quality classification of the stream in which the activity is to take place. The reach of the stream may be provided by the submission of a photostatic copy of the United States Geological Survey topographic quadrangle.

b. For any project that includes sediment removal, in addition to the conditions enumerated in subsection a. of this section, the following conditions must be met:

- (1) the applicant shall provide a statement from the engineer that the stream floods and that such flooding results or can result in property damage necessitating the proposed cleaning, clearing, or desnagging;
- (2) the stream to be cleaned, cleared, or desnagged is not classified as pinelands waters or category one waters;
- (3) the stream bed is 15 feet or less in average width;

¹⁰³58:16A-65. Effect of act on powers, duties and functions on state department environmental protection

The powers, duties and functions vested in the State Department of Environmental Protection under the provisions of this act shall not be construed to limit in any manner the functions, powers and duties vested in the State Department of Environmental Protection under any other provisions of the law.

L.1972, c.185, § 14, eff. Dec. 14, 1972.

(4) the stream corridor to be cleaned, cleared, or desnagged is less than 500 feet in length;

(5) the stream is not in a municipality, as defined by the department, that is known to have federally or State listed threatened or endangered species associated with its wetlands. Regulated activities in these municipalities shall be coordinated with federal agencies;

(6) the applicant shall provide a certification by the engineer that the material to be removed is not beyond the natural stream bed;

(7) the applicant shall submit surface color photographs of the areas of the stream to be cleaned, cleared, or desnagged and of the access points; and

(8) the applicant shall incorporate appropriate timing restrictions as required by the department.

c. Upon receipt of a notice and certification submitted pursuant to this section, the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, as the case may be, shall, except as provided otherwise in this subsection, have 15 days to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or desnagging not be done in this particular case. For a project involving the removal of sediment, the department shall have 60 days prior to the commencement of activities to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or desnagging not be done in that particular case. If the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, as the case may be, makes such a determination, it shall provide the applicant with the technical reasons therefor. For the purposes of this subsection, if the department's technical reasons therefor are based upon the inability to determine the natural stream bed, the department shall, at the request of the applicant, assist in identifying the natural stream bed. The department may not prohibit the removal of any garbage no matter how long it has been in the stream, nor shall the department require extensive mapping or other engineering services which involve significant expense to the municipality.

d. Upon completion of the project to clean, clear, or desnag a stream involving the removal of sediment within its jurisdiction, the applicant shall submit to the department a written notice that the project has been completed in accordance with the conditions outlined in subsection b. of this section. The notice shall contain a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall certify that all the conditions in subsection b. of this section have been adhered to.

e. As used in this section:

"Applicant" means a county or municipality, or designated agency thereof;

"Category one waters" means, for the purposes of sediment removal, those waters designated by the Department of Environmental Protection, for purposes of implementing the antidegradation policies of the ["Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.)], for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources. These waters may include, but are not limited to:

(1) Waters originating wholly within federal, interstate, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated by the department as FW1;

(2) Waters classified by the department as FW2 trout production waters and their tributaries;

(3) Surface waters classified by the department as FW2 trout maintenance waters or FW2 nontrout waters that are not more than 750 feet upstream of waters classified by the department as FW2 trout production waters;

(4) Shellfish waters of exceptional resource value; or

(5) Other waters and their tributaries that flow through, or border, federal, State, county or municipal parks, forest, fish and wildlife lands, and other special holdings;

"Department" means the Department of Environmental Protection;

"FW" means the general surface water classification applied to fresh waters;

"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 and not subjected to any man-made wastewater discharges;

"FW2" means the general surface water classification applied to those fresh waters that are not designated as FW1 or pinelands waters;

"Trout maintenance waters" means waters designated by the department for the support of trout throughout the year; and

"Trout production waters" means waters designated by the department for use by trout for spawning or nursery purposes during their first summer.

f. Any person or governmental entity violating the provisions of this section shall be subject to penalties imposed for violations of [this subtitle].

Source: 58:16A-67⁰⁴

¹⁰⁴

58:16A-67. Written notice of intent to undertake a project to clean, clear, or snag stream; definitions

a. The provisions of any other law or any rule or regulation adopted pursuant thereto, to the contrary notwithstanding, a county or municipality, or designated agency thereof, before undertaking any project to clean, clear, or snag a stream within its jurisdiction, shall submit to the Department of Environmental Protection or to any State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or snagging project, a written notice of intent to undertake a project to clean, clear, or snag a stream and a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall certify that:

- (1) the project is being undertaken solely for the purpose of stream cleaning, clearing, or snagging;
- (2) the removal of any material will not extend below the natural stream bed;
- (3) the activities will not alter the natural stream banks;
- (4) the activities will consist of the removal only of accumulated sediments, debris, and garbage from a stream with a natural stream bed or the removal of any accumulated material from a stream previously channelized with concrete or similar artificial material;
- (5) every effort will be made to perform work from only one stream bank and that vegetation and canopy on the more southerly or westerly banks will be preserved for stream shading; and
- (6) the activities are necessary and in the public interest.

The notice shall also include a description of the nature of the project, a description, including a photograph, of the reach of the stream in which the activity is to take place, and an identification of the regulatory water quality classification of the stream in which the activity is to take place. The reach of the stream may be provided by the submission of a photostatic copy of the United States Geological Survey topographic quadrangle.

b. For any project that includes sediment removal, in addition to the conditions enumerated in subsection a. of this section, the following conditions must be met:

- (1) the applicant shall provide a statement from the engineer that the stream floods and that such flooding results or can result in property damage necessitating the proposed cleaning, clearing, or snagging;
- (2) the stream to be cleaned, cleared, or snagged is not classified as pinelands waters or category one waters;
- (3) the stream bed is 15 feet or less in average width;
- (4) the stream corridor to be cleaned, cleared, or snagged is less than 500 feet in length;
- (5) the stream is not in a municipality, as defined by the department, that is known to have federally or State listed threatened or endangered species associated with its wetland. Regulated activities in these municipalities shall be coordinated with federal agencies;
- (6) the applicant shall provide a certification by the engineer that the material to be removed is not beyond the natural stream bed;
- (7) the applicant shall submit surface color photographs of the areas of the stream to be cleaned, cleared, or snagged and of the access points; and
- (8) the applicant shall incorporate appropriate timing restrictions as required by the department.

c. Upon receipt of a notice and certification submitted pursuant to this section, the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or snagging project, as the case may be, shall, except as provided otherwise in this subsection, have 15 days to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or snagging not be done in this particular case. For a project involving the removal of sediment, the department shall have 60 days prior to the commencement of activities to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or snagging not be done in that particular case. If the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or snagging project, as the case may be, makes such a determination, it shall provide the applicant with the technical reasons therefor. For the purposes of this subsection, if the department's technical reasons therefor are based upon the inability to determine the natural stream bed, the department shall, at the request of the applicant, assist in identifying the natural stream bed. The department may not prohibit the removal of any garbage no matter how long it has been in the stream, nor shall the department require extensive mapping or other engineering services which involve significant expense to the municipality.

d. Upon completion of the project to clean, clear, or snag a stream involving the removal of sediment within its jurisdiction, the applicant shall submit to the department a written notice that the project has been completed in accordance with the conditions outlined in subsection b. of this section. The notice shall contain a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the

COMMENT

In subsection f., the reference to the Flood Hazard Area Control Act has been changed to "this subtitle."

FH-20A. Municipal flood control plans

a. Any municipality, either alone or jointly with any other municipality, may establish a plan, with the approval of the department, for the size and location of flood control facilities, including detention basins, in order to minimize flood damage, to reduce stormwater runoff from new or existing development, or to induce water recharge into the ground where practical. Notwithstanding any provision of this subsection to the contrary, for new development the standards adopted pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.) shall be applicable. This subsection shall apply only to municipally-owned flood control facilities, including detention basins, constructed on public property.

b. Any municipality, either alone or jointly with any other municipality, may establish a plan, with the approval of the department, to maintain the water level of any lake or reservoir within its borders at a level necessary to provide an equivalent surface water safe yield established by the department for any affected water supply system and protection against flooding. Any such plan shall (1) comply with the provisions of R.S.23:5-29, P.L.1981, c.262 (C.58:1A-1 et seq.), and R.S.58:4-1 et seq., (2) include a calculation of the quantity of storage necessary to achieve a given level of flood control protection, (3) consider the environmental impact upon aquatic resources and fish spawning, the impact upon recreational use, and the financial impact upon all users of the lake or reservoir, and (4) consider any other criteria deemed necessary by the department. The department shall hold a public hearing prior to approval of a plan to seek input on the plan from any municipality that borders the lake or reservoir, or borders a river, stream or brook that feeds into or flows from that lake or reservoir. The department shall issue its decision on the plan in writing and transmit a copy thereof to each affected municipality and water supply purveyor prior to the effective date of the decision. No plan that jeopardizes safe yield and the provision of adequate water supply or reduces current safe yield levels of any lake or reservoir shall be approved by the department. No plan within the area of jurisdiction of the New Jersey Water Supply Authority may be established without the approval of the authority.

c. Nothing in this section shall be construed to supersede any other State law that applies to the construction of flood control facilities or the regulation of water levels in lakes or reservoirs.

certification is made by a licensed professional engineer. The engineer shall certify that all the conditions in subsection b. of this section have been adhered to.

e. As used in this section:

"Applicant" means a county or municipality, or designated agency thereof;

"Category one waters" means, for the purposes of sediment removal, those waters designated by the Department of Environmental Protection, for purposes of implementing the degradation policies of the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources. These waters may include, but are not limited to:

(1) Waters originating wholly within federal, interstate, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated by the department as FW1;

(2) Waters classified by the department as FW2 trout production waters and their tributaries;

(3) Surface waters classified by the department as FW2 trout maintenance waters or FW2 trout waters that are not more than 750 feet upstream of waters classified by the department as FW2 trout production waters;

(4) Shellfish waters of exceptional resource value; or

(5) Other waters and their tributaries that flow through, or border, federal, State, county or municipal parks, forest, fish and wildlife lands, and other special holdings;

"Department" means the Department of Environmental Protection;

"FW" means the general surface water classification applied to fresh waters;

"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 and not subjected to any man-made wastewater discharges;

"FW2" means the general surface water classification applied to those fresh waters that are not designated as FW1 waters;

"Trout maintenance waters" means waters designated by the department for the support of trout throughout the year; and

"Trout production waters" means waters designated by the department for use by trout for spawning or nursery purposes during their first summer.

f. Any person or governmental entity violating the provisions of this section shall be subject to penalties imposed for violations of the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

L.1993,c.376,s.1; amended 1997, c.286, s.1.

Source: 58:16A-68⁰⁵

COMMENT

No change.

FH-21. Flood early warning system

a. The department shall, in consultation with the United States Army Corps of Engineers and in coordination with the Office of Emergency Management in the Division of State Police, develop a flood early warning system.

b. The flood early warning system shall consist of weather, rainfall and stream data collection devices required to enable the National Weather Service to predict with reasonable accuracy what areas are likely to flood, at what levels, and the specific locations of overflow.

Source: 58:16A-100⁰⁶

COMMENT

“Commissioner of the Department of Environmental Protection” changed to “department.”

FH-22. Notification of emergency management organizations and police

a. As soon as the flood early warning system indicates and the Office of Emergency Management has been notified by the National Weather Service that an area is in danger of flooding, the Office of Emergency Management shall notify the emergency management organizations in the counties, which shall then notify the local police department or the municipal emergency management organization, as appropriate.

b. Once the determination is made to evacuate persons in the flood area, the Office of Emergency Management shall request that local news media broadcast the following message every quarter hour on the quarter hour.

"The Office of Emergency Management has been advised by the National Weather Service that the (body of water) is approaching critical flood stage and the properties adjacent to (streets, roads, avenues, other

¹⁰⁵ **58:16A-68. Municipal plan for flood control facilities**

a. Any municipality, either alone or jointly with any other municipality, may establish a plan, with the approval of the Department of Environmental Protection, for the size and location of flood control facilities, including detention basins, in order to minimize flood damage, to reduce stormwater runoff from new or existing development, or to induce water recharge into the ground where practicable. Notwithstanding any provision of this subsection to the contrary, for new development the standards adopted pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.) shall be applicable. This subsection shall apply only to municipally-owned flood control facilities, including detention basins, constructed on public property.

b. Any municipality, either alone or jointly with any other municipality, may establish a plan, with the approval of the Department of Environmental Protection, to maintain the water level of any lake or reservoir within its borders at a level necessary to provide an equivalent surface water safe yield established by the department for any affected water supply system and protection against flooding. Any such plan shall (1) comply with the provisions of R.S.23:5-29, P.L.1981, c.262 (C.58:1A-1 et seq.), and R.S.58:4-1 et seq., (2) include a calculation of the quantity of storage necessary to achieve a given level of flood control protection, (3) consider the environmental impact upon aquatic resources and fish spawning, the impact upon recreational use, and the financial impact upon all users of the lake or reservoir, and (4) consider any other criteria deemed necessary by the department. The department shall hold a public hearing prior to approval of a plan to seek input on the plan from any municipality that borders the lake or reservoir, or borders a river, stream or brook that feeds into or flows from that lake or reservoir. The department shall issue its decision on the plan in writing and transmit a copy thereof to each affected municipality and water supply purveyor prior to the effective date of the decision. No plan that jeopardizes safe yield and the provision of adequate water supply reduces current safe yield levels of any lake or reservoir shall be approved by the department. No plan within the area of jurisdiction of the New Jersey Water Supply Authority may be established without the approval of the authority.

c. Nothing in this section shall be construed to supersede any other State law that applies to the construction of flood control facilities or the regulation of water levels in lakes or reservoirs.

L.1997, c.286, s.2.

¹⁰⁶ **58:16A-100. Flood early warning system**

a. The Commissioner of the Department of Environmental Protection shall, in consultation with the United States Army Corps of Engineers and in coordination with the Office of Emergency Management in the Division of State Police, develop a flood early warning system.

b. The flood early warning system shall consist of weather, rainfall and stream data collection devices required to enable the National Weather Service to predict with reasonable accuracy what areas are likely to flood, at what levels, and the specific locations of overflow.

L.1984, c.154, § 1, eff. Sept. 19, 1984.

general addresses or vicinities) in the municipalities of are in danger of flooding at a level of feet. All persons located in those areas should take appropriate action to evacuate the area in an orderly fashion."

Source: 58:16A-101⁰⁷

COMMENT

No change.

Recommended for Repeal:

58:16A-59. Adoption of rules and regulations by department; requirements

58:16A-64. Liberal construction⁰⁹

COMMENT

This provision is superfluous in light of general principles of construction.

58:16A-66. Severability¹⁰

COMMENT

This provision is superfluous in light of R.S. 1:1-10 (stating the same principle as one of general applicability to all statutes).

¹⁰⁷**58:16A-101. Notification of emergency management organizations and police; news broadcast**

a. As soon as the flood early warning system indicates and the Office of Emergency Management has been notified by the National Weather Service that an area is in danger of flooding, the Office of Emergency Management shall notify the emergency management organizations in the counties, which shall then notify the local police department or the municipal emergency management organization, as appropriate.

b. Once the determination is made to evacuate persons in the flood area, the Office of Emergency Management shall request that local news media broadcast the following message every quarter hour on the quarter hour.

"The Office of Emergency Management has been advised by the National Weather Service that the (body of water) is approaching critical flood stage and the properties adjacent to (streets, roads, avenues, other general addresses or vicinities) in the municipalities of are in danger of flooding at a level of feet. All persons located in those areas should take appropriate action to evacuate the area in an orderly fashion."

L.1984, c.154, § 2, eff. Sept. 19, 1984.

¹⁰⁸**58:16A-59. Adoption of rules and regulations by department; requirements**

No rule or regulation adopted by the department pursuant to sections four or seven of this act shall become effective until after notice and public hearing before the department as required by the Administrative Procedures Act (C. 52:24 seq.).

L.1972, c.185, § 8, eff. Dec. 14, 1972.

¹⁰⁹**58:16A-64. Liberal construction**

This act shall be liberally construed to effectuate the purpose and intent thereof.

L.1972, c.185, § 13, eff. Dec. 14, 1972.

¹¹⁰**58:16A-66. Severability**

If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

L.1972, c.185, § 15, eff. Dec. 14, 1972.

Tentative - Move following provisions to proposed subtitle Navigation

WD-7 Harbor of refuge in Sandy Hook bay

In addition to any other powers conferred by this chapter, the department shall have the power to cooperate with the federal government, the county of Monmouth, and the borough of Atlantic Highlands in providing and maintaining a harbor of refuge in Sandy Hook bay near the borough of Atlantic Highlands.

Source: 12:5-9¹¹

COMMENT

The department advises that this provision has continuing importance. The state's maintenance of a "harbor of refuge" authorizes federal entities to undertake certain dredging work.

13:19-31. Findings, declarations, determinations

The Legislature finds and declares that the New Jersey shore is a valuable environmental and economic resource, and that every effort should be made to ensure the continued viability of the shoreline; that periodic storms threaten to destroy portions of the shore and property located upland of the shore, especially in areas where beach and dune maintenance has been neglected; that although federal shore protection and disaster relief aid has helped to mitigate the adverse effects of subsequent storms on particular beachfronts, many beaches remain ineligible for these types of federal aid due to ignorance of the eligibility requirements; and that many shore municipalities could qualify for federal aid in the future if they implement the basic beach maintenance techniques specified in federal guidelines.

The Legislature therefore determines that it is altogether fitting and proper for the State to provide informational and educational services to shore municipalities concerning the eligibility requirements for federal shore protection and disaster relief aid.

Source: 13:19-31¹²

COMMENT

13:19-32. DEP guidance document on federal aid, availability; "coastal municipality" defined

a. The Department of Environmental Protection shall prepare a guidance document which provides information to coastal municipalities on eligibility requirements for receiving federal monies related to shore protection projects and disaster aid. The document shall provide detailed information which describes the policies, programs or other actions required of a municipality to qualify for these federal monies, and shall include a section which explains what a municipality must do to create and maintain an engineered beach.

¹¹¹ **12:5-9. Harbor of refuge in Sandy Hook bay**

In addition to the powers conferred by the provisions of the act to which this act is a supplement, the Board of Commerce and Navigation is hereby authorized and empowered to cooperate with the Federal government, the county of Monmouth, and the borough of Atlantic Highlands in providing and maintaining a harbor of refuge in Sandy Hook bay near the borough of Atlantic Highlands.

L.1939, c.30, p. 45, § 1. Amended by L.1939, c.374, p. 902, § 1.

¹¹² **13:19-31. Findings, declarations, determinations**

The Legislature finds and declares that the New Jersey shore is a valuable environmental and economic resource, and that every effort should be made to ensure the continued viability of the shoreline; that periodic storms threaten to destroy portions of the shore and property located upland of the shore, especially in areas where beach and dune maintenance has been neglected; that although federal shore protection and disaster relief aid has helped to mitigate the adverse effects of subsequent storms on particular beachfronts, many beaches remain ineligible for these types of federal aid due to ignorance of the eligibility requirements; and that many shore municipalities could qualify for federal aid in the future if they implement the basic beach maintenance techniques specified in federal guidelines.

The Legislature therefore determines that it is altogether fitting and proper for the State to provide informational and educational services to shore municipalities concerning the eligibility requirements for federal shore protection and disaster relief aid.

L.1995, c.19, § 1.

b. Upon completion of the guidance document, the Department of Environmental Protection shall notify all coastal municipalities of the availability of the guidance document. The department shall provide copies of the guidance document to a municipality upon request.

c. As used in this act, "coastal municipality" means any municipality located within the coastal area as defined in section 4 of P.L.1973, c.185 (C.13:19).

Source: 13:19-32¹³

¹³**13:19-32. DEP guidance document on federal aid, availability; "coastal municipality" defined**

a. The Department of Environmental Protection shall prepare a guidance document which provides information to coastal municipalities on eligibility requirements for receiving federal monies related to shore protection projects and disaster aid. The document shall provide detailed information which describes the policies, programs or other actions required of a municipality to qualify for these federal funds, and shall include a section which explains what a municipality must do to create and maintain an engineered beach.

b. Upon completion of the guidance document, the Department of Environmental Protection shall notify all coastal municipalities of the availability of the guidance document. The department shall provide copies of the guidance document to a municipality upon request.

c. As used in this act, "coastal municipality" means any municipality located within the coastal area as defined in section 4 of P.L.1973, c.185 (C.13:19-4).

L.1995, c.19, § 2.