

# Laws and Regulations

This section of laws, regulations, and permit information is by no means comprehensive. It does provide:

- an introduction to the responsibilities of certain Federal and State agencies,
- an overview of some relevant laws,
- a look at the Basic Industrial Stormwater General Permit, and
- a synopsis of information about other pertinent permits and licenses.

## Select Federal Agencies and Their Jurisdictions

The **Environmental Protection Agency (EPA)** is responsible for ensuring that environmental protections are considered in U.S. policies concerning economic growth, energy, transportation, agriculture, industry, international trade, and natural resources; ensuring that national efforts to reduce environmental risk are based on the best available scientific information; and providing access to information on how business, state and local governments, communities, and citizens can prevent pollution and protect human health and the environment. The Office of Water is responsible for implementing, among other laws, the Clean Water Act, portions of the Coastal Zone Act Reauthorization Amendments of 1990, the Resource Conservation and Recovery Act, and the Marine Plastics Pollution Research and Control Act. Activities are targeted to prevent pollution wherever possible and to reduce risk to people and ecosystems in the most cost effective manner.

The mission of the **National Oceanic and Atmospheric Administration (NOAA)**, an agency within the U.S. Department of Commerce, is to describe and predict changes in the earth's environment and to conserve and wisely manage the nation's coastal and marine resources to ensure sustainable economic opportunities. NOAA provides a wide range of observational, assessment, research, and predictive services for estuarine and coastal ocean regions. NOAA developed an array of programs to address national-scale estuarine issues and specific problems affecting individual estuarine and coastal ocean systems. In partnership with EPA, NOAA implements the Coastal Zone Act Reauthorization Amendments of 1990.

The **United States Army Corps of Engineers (USACE)** is responsible for ensuring adequate flood control, hydropower production, navigation, water supply storage, recreation, and fish and wildlife habitat. The Corps contracts and regulates coastal engineering projects, particularly harbor dredging and beach nourishment projects. They also review and permit coastal development and artificial reef projects. A joint permit from the NJDEP and the USACE is required for all dredging projects.

The **United States Coast Guard**, a part of the Department of Homeland Security, protects the public, the environment, and U.S. economic interests. They promote

maritime safety and marine environmental protection, enforce maritime law, tend all federal navigation aids, and regulate and monitor recreational and commercial vessels and waterfront facilities

## Select State Agencies and Their Jurisdictions

The mission of the **New Jersey Department of the Environment (NJDEP)** is to assist the residents of New Jersey in preserving, restoring, sustaining, protecting and enhancing the environment to ensure the integration of high environmental quality, public health and economic vitality. NJDEP coordinates all natural resources activities within the state affecting the state's bays, rivers, tributaries, fisheries, forests, parks, wildlife, and geology. The Department is responsible for implementing rules, policies, and programs that provide the State with clean air, clean and plentiful water, safe and healthy communities, healthy ecosystems, abundant open space, and an open and effective government. NJDEP is the lead organization for the sewage pumpout program and issues general permits for marina activities.

The **New Jersey State Police, Marine Services Unit** is a support unit for marine activities. The Unit develops and conducts training courses, reviews marine accidents, processes NJ Boat Safety Certificates, and performs other marine related functions including enforcement of environmental laws.

The **New Jersey Department of Transportation, Office of Maritime Resources (OMR)** advances public education on all maritime and marine issues and serves as the primary advisory body and lead agency for support of New Jersey's \$50 billion maritime industry that includes boat manufacturing and sales, marine trades, recreational and commercial boating and maritime environmental resources. OMR supports technology research and development and investigates innovative dredge material management technologies to ensure a balance between development and the protection of ecosystems.

## Select Federal Laws of Interest to Marinas

### Clean Air Act Amendments, 1990

The "gasoline marine final rule," part of the 1990 Clean Air Act Amendments establishes emission standards for new spark-ignition gasoline marine engines. The rule applies to outboard engines and gasoline marine engines used in personal watercraft and jet boats. Because sterndrive and inboard engines offer cleaner technologies, emission standards were not set for these types of engines.

Boat engines currently in use are not affected by this regulation. The regulation requires manufacturers of outboard and personal watercraft marine engines to achieve yearly emission reductions by meeting a corporate average emission standard. This allows them to build some engines with emission levels lower than the emission standard and some engines with emission levels higher than the standard, provided the manufacturer's overall corporate average is at or below the standard.

### Clean Vessel Act

The Clean Vessel Act (CVA) provides funds to states to construct, renovate, and operate pumpout stations and to conduct boater environmental education. Contact the Marine Trades Association of New Jersey for information about receiving grant funding to install a pumpout system.

## Laws and Regulations

### Coastal Zone Act Reauthorization Amendment of 1990

The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) provided the impetus for the Clean Marina Program. Section 6217 of the Amendments require that nonpoint source pollution from marinas be contained. Through the Clean Marina Program, New Jersey is promoting voluntary adoption of best management practices to minimize the impact of marinas on surrounding land and water.

### Federal Water Pollution Control Act

The Federal Water Pollution Control Act, commonly known as the Clean Water Act, addresses many facets of water quality protection. It provides the authority for the National Pollutant Discharge Elimination System (NPDES) permit program for point sources of pollution. The Act prohibits the discharge of oil or hazardous substances into U.S. navigable waters. It also prohibits the use of chemical agents like soaps, detergents, surfactants, or emulsifying agents to disperse fuel, oil, or other chemicals without the permission of the U.S. Coast Guard.

All vessels 26 feet in length and over must display a placard that is at least 5 by 8 inches, made of durable material, and fixed in a conspicuous place in the machinery spaces or at the bilge pump control station. The placard must read:

#### **Discharge of Oil Prohibited**

The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters of the United States or the waters of the contiguous zone if such discharge causes a film or sheen upon, or discoloration of, the surface of the water, or causes a sludge or emulsion beneath the surface of the water. Violators are subject to a penalty of \$5,000.

The Clean Water Act requires that the U.S. Coast Guard be notified anytime a spill produces a sheen on the water. Failure to report a spill may result in civil penalties.

The Act further requires that all recreational boats with installed toilets have an operable marine sanitation device on board (see “State Laws” below).

Because of the harm associated with petroleum, the discharge of oil is absolutely prohibited. The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters of the United States or the waters of the contiguous zone if such discharge causes a film or sheen upon, or discoloration of, the surface of the water, or causes a sludge or emulsion beneath the surface of the water. Violators are subject to a penalty of \$5,000.

The Interagency National Response Center must be notified any time a spill produces a sheen on the water. Call the National Response Center at 1-800-424-8802. Report the location, source, size, color, substance, and time of the spill. Failure to report a spill may result in fines.

The Clean Water Act (33 CFR 153.305) also prohibits the use of soaps or other dispersing agents to dissipate oil on the water or in the bilge without the permission of the Coast Guard. Soaps, emulsifiers, and dispersants cause the petroleum to sink in the water column and mix with sediments where they will remain for years. Also, the soaps themselves are pollutants. You may be fined up to \$25,000 per incident for the unauthorized use of soap or other dispersing agents on the water or in the bilge.

The Clean Water Act established the Section 404 Permit Program, under which the Secretary of the Army, acting through the Chief of the Engineers of the United States Army Corps of Engineers, may issue permits for the discharge of dredged or fill material into “waters of the United States” as identified in the Clean Water Act. Section 404(g)(1) of the Clean Water Act provides that the Governor of any state can apply to the Administrator of the Environmental Protection Agency to administer its own individual and general permit program for the discharge of dredged or fill material into state regulated waters within its jurisdiction.

The State of New Jersey assumed the Section 404 Program under the Clean Water Act on March 2, 1994 for discharges of dredged or fill material into waters of the United States in New Jersey that are not currently used, or susceptible for use, in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to the ordinary high water mark, including wetlands adjacent thereto where the United State Army Corps of Engineers retains jurisdiction. In these non-assumable waters and adjacent wetlands both a State Freshwater Wetlands permit and a Federal 404 Permit issued by the United States Army Corps of Engineers are required.

### Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) or Superfund Amendments and Reauthorization Act of 1986 (SARA Title III)

EPCRA (40 CFR 355) is enforced by the EPA and managed by the NJDEP Community Right to Know Program (CRTK). EPCRA applies to storage and handling of hazardous materials (chemicals) and requires that facilities report storage of certain chemicals in quantities above designated thresholds to state and local authorities. The CRTK collects, processes, and disseminates the chemical inventory, environmental release and materials accounting data. This information is used by the public, emergency planners, and first responders to determine the chemical hazards in the community.

EPCRA consists of Sections that prescribe reporting to state and local authorities. These are discussed below by Section.

- Section 311, hazardous chemical storage reporting, or the community right to know standards. The Occupational Safety and Health Administration requires employers to retain copies of Material Safety Data Sheets (MSDS) for each hazardous chemical at the facility that is available to employees. The MSDS must be provided by distributors of the hazardous material. You must complete a “Section 311- List of Chemicals Form” if you have chemicals that have MSDSs, and you meet one of the following conditions:
  - 1) you store any substance listed as an “extremely hazardous substance” in quantities equal to or greater than the listed “threshold planning quantity” as found in 40 CFR355.30e(2)(1),
  - 2) you store 10,000 lbs. or more of any hazardous substance requiring an MSDS.

## Laws and Regulations

You must provide the report to the CRTK and to local emergency coordinators within three months of first having reportable quantities of hazardous chemicals at your facility, and it must be updated when new hazardous chemicals are stored in reportable quantities.

- Section 312, annual reporting.  
If you are subject to Section 311 reporting, you must submit an annual “NJ Community Right to Know Survey” to the CRTK. This requires an inventory of hazardous chemicals and their storage locations. The survey must be submitted to CRTK, local fire and police departments, local emergency planning committee, and the Right to Know County Lead Agency by 1 March yearly.
- Section 302, emergency planning notification form.  
If you store any of the listed 356 “extremely hazardous substances” (EHS) in excess of the reporting threshold on the federal EPCRA 302 list of extremely hazardous substances, you must submit the CRTK surveys within 60 days of when the substance becomes present at your facility. If you must file, you must also designate a facility emergency coordinator.
- Section 304, accidental release notification.  
Although any spill of a chemical substance into New Jersey waters must be reported to NJDEP, you only need to report a chemical spill to the federal government under certain circumstances.

### Marine Plastic Pollution Research and Control Act

The Marine Plastic Pollution Research and Control Act (MPPRCA) is the U.S. law that implements an international pollution prevention treaty known as MARPOL. The MPPRCA of 1987 (Title II of Public Law 100-220) restricts the overboard discharge of garbage. Its emphasis is on plastics; it is illegal to dispose of plastic materials into the water anywhere. The disposal of other garbage is restricted according to a vessel’s distance from shore. Remains from fish cleaning are sometimes an exception. The discharge of fish waste into New Jersey waters is undesirable, and in some instances illegal, such as in the Manasquan River.

Within U.S. lakes, rivers, bays, sounds, and within 3 nautical miles from shore, it is illegal to dump plastic, paper, rags, glass, metal, crockery, dunnage (lining and packing material, nets, lines, etc.), and food. Between 3 and 12 nautical miles from shore, it is illegal to dump plastic and any other garbage that is greater than one inch in size. Between 12 and 25 nautical miles from shore, it is illegal to dump plastic and dunnage. Beyond 25 nautical miles, it is illegal to dump plastic.

The dumping restrictions apply to all vessels operating in all navigable waters of the United States and the 200-mile Exclusive Economic Zone. All vessels greater than 26 feet must display a MARPOL placard outlining the garbage dumping restrictions. All vessels over 40 feet must also have a written waste management plan on board.

Under the national law, ports and terminals, including recreational marinas, must have adequate and convenient “reception facilities” for their regular customers. That is, marinas must be capable of receiving garbage from vessels that normally do business with them (including transients).

## Oil Pollution Act of 1990

The Oil Pollution Act of 1990 (OPA) was written in direct response to the Exxon Valdez oil spill. The law primarily addresses commercial oil shipping (e.g., tankers must be double-hulled, captains may lose their licenses for operating a vessel under the influence of drugs or alcohol). However, some of the requirements apply to recreational boating. Most notably, the responsible party for any vessel or facility that discharges oil is liable for the removal costs of the oil and any damages to natural resources; real or personal property; subsistence uses; revenues, profits, and earning capacity; and public services like the cost of providing increased or additional public services. The financial liability for all non-tank vessels is \$600 per gross ton, or \$500,000, whichever is greater. Also, substantial civil penalties may be imposed for failing to report a spill, for discharging oil, for failure to remove oil, failure to comply with regulations, and gross negligence.

## Organotin Antifoulant Paint Control Act of 1988

The Organotin Antifoulant Paint Control Act restricts the use of organotin antifouling paints, including tributyl tin-based paints. Tributyl tin (TBT) paints may be used only on boats longer than 82 feet (25 meters), or any length aluminum-hulled vessels, and on outboard motors and lower drive units. Under the provision of the state antifoulant paint regulations, marina operators must obtain a license from the NJDEP to purchase and apply organotin antifouling paints and must have a licensed pesticide applicator on staff. It is illegal for anybody without a license to distribute, sell, use, or possess antifoulants containing tributyl tin. The only exception is for spray cans that are 16 ounces or less and which do not exceed the “acceptable release rate” of less than or equal to 4.0 micrograms per square centimeter per day. TBT paints are not anticipated to be available much longer, as a result of EPA and the last US producer of TBT reaching agreement on the phase-out of TBT products. For additional information contact NJDEP’s Bureau of Pesticide Compliance at 609-984-6568.

## Refuse Act of 1899

The Refuse Act of 1899 prohibits throwing, discharging, or depositing any refuse matter of any kind (including trash, garbage, oil, and other liquid pollutants) into waters of the United States.

## Resource Conservation and Recovery Act

The Federal Resource Conservation and Recovery Act (RCRA) provides the legal authority to establish standards for handling, transporting, and disposing of hazardous wastes. RCRA and the State’s Solid Waste regulations (N.J.A.C. 7:26-1 et seq.), Hazardous Waste regulations (N.J.A.C. 7:26g et seq.), and Recycling regulations (7:26a et seq.) govern the management of hazardous waste in the State of New Jersey.

Hazardous wastes are ignitable, corrosive, reactive, and/or toxic substances. New Jersey references EPA’s list of hazardous wastes in the State’s hazardous waste law. The NJDEP website at [www.state.nj.us/dep/dshw](http://www.state.nj.us/dep/dshw) provides a waste classification form. The form includes a list of many of the contaminants of concern. Lists of facilities and transporters that handle hazardous wastes are also available on the NJDEP website.

## Laws and Regulations

Most marinas deal with limited quantities of hazardous waste and thus are considered “conditionally exempt small quantity generators.” Facilities that generate less than 100 kg (about 220 lbs. or 30 gallons) of hazardous waste per month and which do not accumulate more than 1,000 kg (about 2,200 lbs.) of waste at any one time are considered “conditionally exempt small quantity generators.” Conditionally exempt small quantity generators are not required to register with the EPA and do not need a hazardous waste generator identification number. Send hazardous waste from small quantity generators to a disposal facility that is permitted, licensed, or registered by the State to manage municipal or industrial solid waste.

Hazardous waste “generators” are those individuals or companies that produce greater than 100 kilograms (about 220 pounds or 30 gallons) of hazardous waste during one calendar month or who store more than 1,000 kg (about 2,200 lbs.) at any one time. The following requirements apply to all hazardous waste generators.

- All generators and transporters of hazardous waste must have an Environmental Protection Agency (EPA) identification number provided by the NJDEP. To apply for an identification number, use EPA Form 8700-12 (available from NJDEP).
- Store hazardous waste in UL listed or Factory Mutual approved containers labeled and marked according to Department of Transportation regulations. Refer to 49 CFR 178. Mark the date accumulation begins on each container. Store containers on pallets to prevent corrosion and in an area able to contain any leaks. Keep containers closed when not adding or removing waste. Inspect containers weekly.
- Store quantities of waste greater than 100 kg (220 lbs.) but less than 1,000 kg (2,200 lbs.) for a maximum of 180 days. Any quantity of waste greater than 1,000 kg may be stored for a maximum of 90 days.
- Prepare a written emergency contingency plan if you generate more than 100 kg (220 lbs. or 30 gallons) of hazardous waste per month or accumulate more than 1,000 kg at any one time. Copies must be given to NJDEP and local agencies.
- Document all hazardous waste training in each employee’s personnel file. All personnel who handle hazardous waste must receive training to ensure compliance with the state regulations.
- Transporters must be registered and are listed on the NJDEP web page.
- Anyone who sends hazardous waste offsite for treatment, storage, or disposal must prepare a manifest. Ensure that all of the information on the manifest is correct. The hazardous waste manifest must accompany all hazardous wastes “from cradle to grave.” It is your responsibility to ensure that the driver and the vehicle are certified to handle hazardous waste. Each hazardous waste transporter must sign the manifest, as should the operator of the treatment, storage, disposal facility. A final copy must be returned to the generator once the waste is properly treated, stored, or disposed of.
- Submit a report to NJDEP every two years that summarizes hazardous waste activities during odd-numbered years. It is recommended, but not mandatory, to also report figures for even-numbered years.
- Retain all records, including manifests and waste analysis and annual reports, for at least three years. The files must be available for NJDEP’s inspection.

## Select State Laws of Interest to Marinas

### Marine Sanitation Devices

It is illegal to discharge raw sewage from a vessel within U.S. territorial waters, i.e., anywhere other than three or more miles out into the open ocean. The Federal Clean Water Act and New Jersey's Marine Sewage Treatment Act (P.L. 1988, Chapter 117) require that any vessel with an installed toilet be equipped with a certified Type I, Type II, or Type III marine sanitation device (MSD):

- Type I systems mechanically cut solids, disinfect the waste with a chemical additive or with chlorine disassociated from salt water with an electronic jolt, and discharge the treated sewage overboard. The fecal coliform bacteria count of the effluent may be no greater than 1,000 per 100 milliliters and may not contain any floating solids.
- Type I and II systems are similar except that the Type IIs treat the sewage to a higher standard: effluent fecal coliform bacteria levels may not exceed 200 per 100 milliliters, and total suspended solids may not be greater than 150 milligrams per liter. Type IIs also require more space and have greater operating energy requirements.
- Type III systems do not allow for sewage discharge. The most common form of a Type III system is a holding tank. Other forms include recirculating and incinerating systems.

Vessels 65 feet and under may have any of the three types of MSDs. Vessels over 65 feet must have a Type II or III system. Additionally, Type I and Type II systems must display a certification label affixed by the manufacturer. A certification label is not required on Type III systems.

The State law allows a vessel with an installed toilet to have a "Y" valve or other means to by-pass the sanitation system. Within State waters all pathways for overboard discharge of raw sewage must be secured.

The "Y" valve may be secured with a padlock or a non-reusable nylon tie known as a wire tie. Alternatively, the valve handle can be moved to the closed position and removed.

State law prohibits the discharge of sewage in "No Discharge" zones. No Discharge zones are proposed by the State and approved or "designated" by the U.S. Environmental Protection Agency. Vessels with an installed toilet typically have a "Y" valve or other means to bypass the sanitation system. Within the state's No Discharge Zones, all pathways for over-board discharge of raw sewage must be secured. The "Y" valve may be secured with a padlock or a non-reusable nylon tie known as a wire tie. Alternatively, the valve handle can be moved to the closed position and removed.

MSD requirements do not apply to vessels with portable toilets. Empty portable toilets ashore. Remember, it is illegal to discharge raw sewage to any State waterway. Most pumpout facilities have wand attachments to empty portable toilets. Some marinas have portable toilet dump stations. Ask your marina operator how to dispose of waste from portable toilets.

Finally, any vessel with an installed toilet that is offered as a non-captained charter must be equipped with an operational MSD. The lease agreement signed by the leasing party must include a paragraph outlining the operator's responsibility.

### Pumpout Systems

The State's Marine Sewage Treatment Act of 1988 requires:

- All publicly owned or operated marinas, which accommodate vessels equipped with marine sanitation devices, to provide sewage pumpout facilities and portable toilet emptying receptacles.
- Installation of a pumpout system is required as a condition of receiving a Waterfront Development permit from the NJDEP. NJDEP has required MSD pumpout facilities as a condition of approval for new or expanded marinas of 10 or more slips since February 6, 1986.

### No Discharge Areas

A No Discharge Area (NDA) is an area of water that requires greater environmental protection and where even treated sewage may not be discharged from a boat. When operating in a NDA, Type I and Type II systems must be secured to prevent discharge. All freshwater lakes, reservoirs, and rivers not capable of interstate vessel traffic are defined by the Federal Clean Water Act as No Discharge Areas. States, with the approval of the U.S. Environmental Protection Agency, may establish NDAs in other State waters. As New Jersey continues its efforts to cleanup State waters, certain areas may be considered for NDA designation. The following rivers are classified as NDA's: Hudson River, Navesink River, Shrewsbury River, Shark River, Manasquan River and Barnegat Bay.

### Pollutant Discharge Prohibited

The New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-6) prohibits the discharge of any pollutant into state waters without a discharge permit.

### The Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.)

The Coastal Area Facility Review Act (CAFRA) applies to projects near coastal waters in the southern part of the State. The CAFRA area begins where the Cheesequake Creek enters Raritan Bay in Old Bridge, Middlesex County. It extends south along the coast around Cape May, and then north along the Delaware Bay ending at the Kilcohook National Wildlife Refuge in Salem County. The inland limit of the CAFRA is an irregular line that follows public roads, railroad tracks, and other features. The width of the CAFRA area varies from a few thousand feet to 24 miles. The law divides the CAFRA area into zones, and regulates different types of development in each zone.

CAFRA regulates a wide variety of residential, commercial, or industrial development, including construction, relocation, and enlargement of buildings or structures; and associated work, such as excavation, grading, site preparation, and the installation of shore protection structures. CAFRA prescribes designs for new marinas that promote water quality and protect public health.

The Coastal Area Facility Review Act requires that coastal development employ a site design that, to the extent feasible, minimizes the amount of impervious coverage on a project site. In addition, the development must use the best available technology to minimize the amount of stormwater generated, minimize the rate and volume of off-site stormwater runoff, maintain existing on-site infiltration, simulate natural drainage systems, and minimize the discharge of pollutants to ground or surface waters. Consistent with the provisions of the Stormwater Management Rule, the overall goal of the post-construction stormwater management system design shall be the reduction from the predevelopment level of total suspended solids and soluble contaminants in the stormwater.

CAFRA exempts certain minor activities such as maintenance, plantings, decks or similar structures at a residence, rebuilding a damaged structure on the same building footprint (if it was damaged after 7/19/94). Contact the NJDEP, Land Use Regulation Program for a complete list of available exemptions.

### The Waterfront Development Law

The Waterfront Development Law (N.J.S.A. 12:5-3) is a very old law, passed in 1914, that seeks to limit problems that new development could cause for existing navigation channels, marinas, moorings, other existing uses, and the environment.

Development in a tidally flowed New Jersey waterway requires a Waterfront Development Permit. Examples of regulated projects include installation of docks, piers, pilings, bulkheads, marinas, bridges, pipelines, cables, and dredging.

Outside of the CAFRA area, the Waterfront Development Law also regulates the area adjacent to the water, extending from the mean high water line to the first paved public road, railroad or surveyable property line. The regulated area extends at least 100 feet but no more than 500 feet inland from the tidal water body. NJDEP must authorize construction, reconstruction, alteration, expansion or enlargement of structures, excavation, and filling that would occur in the regulated area.

The Waterfront Development Program exempts the repair, replacement, or reconstruction of some legally existing docks, piers, bulkheads and buildings, if the structure existed before 1978 and if other conditions are met.

### Wetlands Act of 1970

The land immediately adjacent to tidal waters often contains coastal wetlands. These wetland areas are a vital coastal resource serving as habitat for many creatures. The wetlands also serve as buffers that protect upland areas from the flooding and damage caused by storms.

The Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) requires NJDEP to regulate development in coastal wetlands. Any time land is located near tidal water there is a good possibility of coastal wetlands on the property. Some signs that may indicate the presence of wetlands are tall reeds and grasses, or ground that is often soggy. The regulated coastal wetlands are shown on maps prepared by the NJDEP. Unlike NJDEP's freshwater wetlands maps, the coastal wetlands maps are used to determine jurisdiction. You must have a coastal wetlands permit to excavate, dredge, fill or place a structure on any coastal wetland shown on the maps.

### Tidelands Act

The Tidelands Act (N.J.S.A. 12:3) protects “riparian lands” that are currently or formerly flowed by the tide of a natural waterway. This includes lands that were previously flowed by the tide but have been filled and are no longer flowed by the tide. Tidelands are owned by the citizens of New Jersey. You must first get permission from the state and pay for the use of these lands, in the form of a tidelands license, lease or grant.

### Freshwater Wetlands Protection Act

Wetlands are commonly referred to as swamps, marshes, or bogs. However, many wetlands in New Jersey are forested and do not fit the classic picture of a swamp or marsh. Previously misunderstood as wastelands, wetlands are now being recognized for their vital ecological and socioeconomic contributions.

In New Jersey and throughout the United States, wetlands are protected on public and private property. Wetlands contribute to the social, economic, and environmental health of our nation in many ways:

- Wetlands protect drinking water by filtering out chemicals, pollutants, and sediments that would otherwise clog and contaminate our waters.
- Wetlands soak up runoff from heavy rains and melting snows, providing natural flood control.
- Wetlands release stored flood waters during droughts.
- Wetlands provide critical habitats for a major portion of the state’s fish and wildlife, including endangered, commercial and recreational species.
- Wetlands provide high quality open space for recreation and tourism.

Many of these values were not widely appreciated until the 1970s and 1980s. Over the last two hundred years, the United States has lost over 117 million acres of wetlands through dredge and fill activities, drainage, development, pollution, and natural causes. Erosion, flooding, and sedimentation has resulted. Furthermore, the decrease in wetlands has decreased populations of waterfowl, fish, and shellfish. With over 54 percent of the total wetlands in the continental United States already lost, and an additional 200,000 acres disappearing every year, protecting our remaining wetlands has become a critical national priority.

In 1994, NJDEP assumed responsibility for administering the federal wetlands program (also known as the 404 program) in delegable waters of the state. In non-delegable waters, the USACE retains jurisdiction under federal law, and both federal and state requirements apply. A project in non-delegable waters requires two permits, one from NJDEP and one from the USACE. New Jersey protects wetlands under the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. This law also protects transition areas or “buffers” around freshwater wetlands from development which would impair the wetlands’ ability to provide the values listed above.

The following activities are regulated in freshwater wetlands:

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 so as to alter the existing elevation of groundwater or surface water, regardless of the duration of such alteration, by:
  - i. Adding or impounding a sufficient quantity of stormwater or other water to modify vegetation, values or functions of the wetland; or
  - ii. Draining, ditching or otherwise causing the depletion of the existing groundwater or surface water so as to modify the existing vegetation, values or functions of the wetland;
3. The dumping, discharging or filling with any materials;
4. The driving of pilings;
5. The placing of obstructions, including the depositing, construction, installing or otherwise situating any obstacle which will affect the values or functions of a freshwater wetland;
6. The destruction of plant life which would alter the character of a freshwater wetland, including killing vegetation by applying herbicides or by other means, the physical removal of wetland vegetation, and/or the cutting of trees; and
7. Placement of any portion of a residential development project.

Also regulated is the discharge of dredged or fill material into state open waters, except for a discharge into a non-delegable state open water which is subject to the Waterfront Development Law.

The following are some of the activities that are not regulated:

1. The placement of temporary structures (such as observation blinds, waterfowl blinds, artificial nesting structures, or sign posts) for observing, managing, or harvesting fish or wildlife, provided that the structures:
  - i. Do not have permanent foundations;
  - ii. Do not require the deposition of fill material; and
  - iii. Have a footprint no larger than 32 square feet;
2. Hand trimming of trees or other vegetation, provided the trimming does not alter the character of the freshwater wetland; and
3. The driving of one or more pilings in a State open water, if the pilings are not regulated by the USACE under the Federal 404 program. The USACE regulates the placement of pilings if the placement would have the effect of a discharge of fill material.
  - i. Activities that generally do not have the effect of a discharge of fill material and thus are not regulated are:
    - (A) Placing pilings for linear projects, such as bridges, elevated walkways, and utility line structures; and
    - (B) Placement of pilings for piers or docks:
  - ii. Activities that generally do have the effect of a discharge of fill material and thus are regulated include, but are not limited to:
    - (A) Projects where the pilings are so closely spaced that sedimentation rates would be increased;
    - (B) Projects in which the pilings themselves effectively would replace the bottom of a water body;
    - (C) Projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States;

## Laws and Regulations

- (D) Projects involving the placement of pilings which would result in the adverse alteration or elimination of the aquatic functions; and
- (E) Projects where the pilings are intended to be used for structural support of a building such as a commercial or residential structure.

### Underground Storage Tanks

A regulated underground storage tank, that is a tank more than 2,000 gallons in capacity with more than 10% of its volume below the ground surface containing motor fuel, non-petroleum hazardous substances or heating oil, must have spill, overflow, and corrosion protection (N.J.A.C. 7:14B). An underground storage tank (UST) must also have a verifiable leak detection method and a current registration with NJDEP. Also required are routine testing for cathodic protection, investigation of suspected releases, routine inspection of spill catchment basins, dispenser sumps and piping sumps, permits for repairs, and various record-keeping regarding testing, leak detection and repairs. All work performed that is required by regulation must be conducted by an individual certified by the State.

## Environmental Permits and Licenses

### Basic Industrial Stormwater General Permit (NJ0088315)

#### Who must obtain a permit?

In 1990, EPA implemented regulations requiring permits for stormwater discharges from certain activities. The stormwater permit program requires that certain marinas classified by the Office of Management and Budget with North American Industry Classification System (NAICS) number be covered by a National Pollution Discharge Elimination System (NPDES) permit. Any marina or boat yard that conducts boat maintenance activities, including washing, or discharging wastewater must have a permit authorization.

In New Jersey, a Basic Industrial Stormwater General Permit (NJ0088315) is available to industrial facilities that have eliminated or can eliminate generally, within 18 months of authorization for existing discharges, all exposure of industrial “source materials” to stormwater discharges to surface waters. “Source materials” include, but are not limited to: waste materials; industrial machinery and fuels; and lubricants, solvents, and detergents that are related to the process or other industrial activities, that could be a source of pollutants, etc. Materials or machinery that are not exposed to stormwater are not “source material.” Exposure may be eliminated, for example, by covering the materials or activities or by moving the materials or activities indoors. Since stormwater pollution from industrial “source materials” is prevented by compliance with this permit, it does not have numeric effluent limitations, nor does it require stormwater sampling. For complete and specific requirements for the Basic Permit, please refer to the latest edition of the NJPDES rules.

The General Permit requires that permittees prepare a Stormwater Pollution Prevention Plan (SPPP), and submit the SPPP Preparation Certification to NJDEP within six months of the facility’s permit authorization date.

The Basic Industrial Stormwater General Permit does not authorize non-stormwater discharges to surface and/or ground water. The discharge of process wastewater including vessel wash water and discharges from secondary containment other than stormwater to surface or ground water may require a separate permit from NJDEP. Further information concerning requirements for these types of discharges can be obtained from NJDEP (609) 633-3869.

### **How does one apply for the permit?**

To obtain coverage, an applicant must submit a Request for Authorization (RFA) form and a USGS quadrangle map that identifies the facility location to the New Jersey Department of the Environmental Protection (NJDEP) along with the required application fee. The fee must be paid annually along with submission of the annual recertification form. All necessary forms and instructions can be obtained by calling NJDEP at (609) 633-7021.

The principal requirement of the Basic Industrial Stormwater General Permit is the preparation and implementation of a Stormwater Pollution Prevention Plan (SPPP). The SPPP is an inventory of your facility that identifies potential areas where stormwater may come in contact with contaminants and a plan to remove exposure of stormwater to those contaminants. Implementation of the SPPP will usually include the elimination of stormwater contact with contaminants using simple and cost-effective best management practices such as covering materials with a tarp, building a shed or roof, or designating specific maintenance areas. The permittee must also perform annual inspection.

### **Sediment Control and Stormwater Management**

New Jersey has designed a comprehensive erosion and sediment control program to reduce the impacts from stormwater runoff, to retard nonpoint pollution from sediment and to conserve and protect the land, water, air and other environmental resources of the State. New Jersey Law (P.L. 1975, Chapter 251, N.J.S.A 4:29-39 et seq.) requires that any construction project that disturbs 5,000 square feet or more of land must have an approved plan for soil erosion and sediment control before construction can begin. Plans are submitted to and approved by the local Soil Conservation District. For construction projects that propose 0.25 acres of impervious surface and/or 1 acre or more of site disturbance, authorization must be obtained from NJDEP (N.J.A.C. 7:8).

### **Accidental Discharge of Oil or Hazardous Substances**

State law prohibits the discharge of oil. New Jersey's Spill Compensation and Control Act (N.J.S.A 58:10-23.11) states:

The Legislature finds and declares that the discharge of petroleum products and other hazardous substances within or outside the jurisdiction of this State constitutes a threat to the economy and environment of this State. The Legislature intends by the passage of this act to exercise the powers of this State to control the transfer and storage of hazardous substances and to provide liability for damage sustained within this State as a result of any discharge of said substances, by requiring the prompt containment and removal of such pollution and substances, and to provide a fund for swift and adequate compensation to resort businesses and other persons damaged by such discharges, and to provide for the defense and indemnification of certain persons under contract with the State for claims or actions resulting from the provision of services or work to mitigate or cleanup a release or discharge of hazardous substances.

- All spills must be reported immediately to the NJDEP at 1-877-WARN DEP, the National Response Center at (800) 424-8802, and your county health department.

## Laws and Regulations

- Within 10 days of becoming aware of a release, you must submit a written description of the release.
- The stormwater pollution prevention plan required as a condition of a Basic Industrial Stormwater General Permit must be modified to include a description of the release and to identify measures to prevent and respond to a recurrence.
- Facilities that have more than one anticipated discharge per year of the same hazardous substance or oil, which is caused by events occurring within the scope of the relevant operating system shall, likewise, report the release to NJDEP and identify measures to prevent or minimize such releases. Contact the Bureau of Release Prevention at 609-633-0610.

### Air Pollution Control Act (N.J.A.C. 7:27 Subchapter 8)

An air permit is required if the marina dispenses gasoline or other volatile fuel products from an aboveground or underground storage tank greater than 2,000 gallons in volume. An air permit is also required if the marina uses equipment in a surface coating operation such as spray painting in which the quantity of coating or cleaning material used in any one hour is equal or greater than one half gallon or liquid.

A General Permit (GP-014) is available for Storage and Transfer of Service Station Fuels at Small Gasoline Distributors using stage 1 vapor recovery.

