

THIS IS A COURTESY COPY OF THE FRESHWATER WETLANDS PROTECTION ACT, N.J.S.A. 13:9B-1 ET SEQ. THE OFFICIAL VERSION IS PUBLISHED IN THE NEW JERSEY STATUTES. IF THERE ARE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE STATUTE, THE OFFICIAL VERSION WILL GOVERN.

“Freshwater Wetlands Protection Act”

UPDATED THROUGH P.L. 2016, ch.32, and JR 3 of 2016

13:9B-1. Short title

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

13:9B-2. Findings, 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 act 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

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and implementing regulations.

13:9B-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. s. 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. 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 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 rights-of-way therefor, the basic function of which is to connect two

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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.

13:9B-4 Exemptions from permit, transition area requirements.

4. 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; the installation of temporary farm structures with only a dirt or fabric floor, including hoopouses and polyhouses, and any grading or land contouring associated therewith on lands that were actively cultivated on or before July 1, 1988, have been in active agricultural use since then, were in active agricultural use at the time that the

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temporary farm structures were or are to be erected, and are identified as "ModAg" farmed wetlands on the Wetland Maps promulgated by the Department of Environmental Protection in 1988; maintenance of cranberry bogs and blueberry fields including, but not limited to, periodic flooding, sanding, control or suppression of weeds or brush in or around the bog or field, and pest control or suppression; maintenance, repair, or cleaning of dams, ditches, underdrains, floodgates, irrigation systems, or other drainage or water control facilities for cranberry bogs or blueberry fields; activities for the renewal or rehabilitation of a cranberry bog, including, but not limited to, removal of undesirable soil or vegetation, grading and leveling, installation, reconfiguration, repair or replacement of water control or supply systems or facilities, removal, relocation, or construction of internal dams, and planting of new vines in an appropriate soil layer; 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-1 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-1 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

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subject, where the flow or circulation patterns of the waters may be impaired, or the reach of the waters is reduced.

f. For the purposes of the exemptions in subsection a. of this section, a cranberry bog, blueberry field, or portion thereof, on which any of the activities specifically pertaining to cranberry bogs or blueberry fields listed in that subsection has occurred within the prior five years shall be considered an established, ongoing farming operation, and shall not be deemed abandoned. The lack of a commercial harvest or production of a crop on or from the bog or field shall not be a determining factor as to whether the agricultural use has been abandoned.

13:9B-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-1 et seq.), permits required pursuant to P.L. 1973, c. 185 (C. 13:19-1 et seq.), and any permits and approvals required pursuant to P.L. 1977, c. 75 (C. 58:11A-1 et seq.) and P.L. 1962, c. 19 (C. 58:16A-50 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

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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-1 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.

13:9B-5.1 Regulation of freshwater wetlands area.

38. Notwithstanding the provisions of P.L.1987, c.156 (C.13:9B-1 et seq.), or any rule or regulation adopted pursuant thereto, to the contrary, major Highlands development as defined in section 3 of P.L.2004, c.120 (C.13:20-3) that includes a regulated activity as defined in section 3 of P.L.1987, c.156 (C.13:9B-3) in a freshwater wetland or freshwater wetland transition area located in the Highlands preservation area as defined in section 3 of P.L.2004, c.120 (C.13:20-3) shall also be regulated pursuant to sections 32 through 37 of P.L.2004, c.120 (C.13:20-30 through C.13:20-35).

13:9B-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-1 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.

13:9B-7. Classification system

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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-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.

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.

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 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 "FW-1, 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-1 et seq.) and the "Water Quality Planning Act," P.L. 1977, c. 75 (C. 58:11A-1 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

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of section 13 of this act.

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 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.

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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.

13:9B-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-1 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-1 et seq.), describing the proposed regulated

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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 paragraphs (3)-(9) 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. 23:2A-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. s. 1531 et al.); and

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(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-1 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. s. 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.

13:9B-10. Rebuttable 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

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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.

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.

13:9B-12. Accessibility to approved site

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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.

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

13. 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 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 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.

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13:9B-13.1 Permit not required for certain restoration work on manmade drainage ditch.

35. Notwithstanding any rules or regulations to the contrary, no permit shall be required of a county or municipality by the Department of Environmental Protection for the purpose of performing restoration work on any manmade drainage ditch located in the jurisdiction, provided that the restoration activity does not deviate in any manner from the original cross sectional area and location. For the purposes of this section, "ditch" means a linear topographic depression with bed and banks of human construction which conveys water to or from a site, but does not include channelized or redirected water courses.

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.

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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.

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

15. 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;

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- (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.

13:9B-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:

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

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

b. 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.

13:9B-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

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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-1 et 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 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 18 of this act.

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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, s. 17.

13:9B-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 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 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

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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.

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.

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. 52:14B-1 et 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.

13:9B-21 Remedies for violations.

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21. a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, 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 P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an order: (1) specifying the provision or provisions of P.L.1987, c.156, or the rule, regulation, permit or order of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration to address any adverse effects upon the freshwater wetland or transition area resulting from any violation; and (5) providing notice to the person of the 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 P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

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(3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects upon the freshwater wetland or transition area resulting from any violation for which a civil action has been commenced and brought under this subsection;

(4) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection. Recovery of damages and costs under this subsection shall be paid to the State Treasurer;

(5) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, 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, duration and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. 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 the penalty is being assessed. 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 basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 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 35-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 P.L.1987, c.156, and the payment of any assessment shall not be deemed to affect

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the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including any portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 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, interest shall accrue on the amount of the penalty commencing on the date 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 a later date as may be specified in the notice.

e. A person who violates any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, or 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, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 per day of the 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 of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999" in conjunction with this act.

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to P.L.1987, c.156, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of

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N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day of violation, or by imprisonment, or both.

g. In addition to the penalties prescribed in this section, the commissioner may record a notice for a violation of any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, which 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 shall remain attached thereto until such time as the violation has been remedied and the commissioner orders the notice of violation removed. Any fees or other charges that are assessed against the department by either the clerk or register of deeds and mortgages of the county wherein the affected property is located for the recording of the notice of violation on the deed required pursuant to this subsection shall be paid by the owner of the affected property or the person committing the violation. The commissioner shall immediately order the notice removed once the violation is remedied or upon other conditions set forth by the commissioner.

h. If the violation is one in which the department has determined that the restoration of the site to its pre-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 any recovery of costs or damages ordered pursuant to subsection c. of this section has been satisfied, 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 any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, 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 the provisions of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, which complies with the requirements of the Federal Act and implementing regulations.

k. The department shall make available without restriction any information obtained or

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used in the implementation of P.L.1987, c.156 to the United States Environmental Protection Agency upon a request therefor.

l. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of P.L.1987, c.156.

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 P.L.1987, c.156.

13:9B-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.

13:9B-23. General permits

23. 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

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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 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;

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(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

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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.

13:9B-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.

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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.

13:9B-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 as 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.

13:9B-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.

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13:9B-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.

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.

13:9B-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.

13:9B-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

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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.

13:9B-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.