

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION ISSUES PROPOSED REVISION TO THE FRESHWATER WETLANDS PROTECTION ACT RULES - MAY 2017

The New Jersey Department of Environmental Protection (NJDEP) Division of Land Use Regulation (DLUR) issued proposed revisions to the Freshwater Wetlands Protection Act Rules (FWPA) (N.J.A.C. 7:7A) on May 1, 2017. The proposal sets forth a comprehensive rework of the regulations to reorganize the rules to make them similar in format and standardize the permitting requirements with the program rules in other DLUR regulatory programs. The FWPA rules are proposed to be recodified with amendments. Minor changes are also proposed to the Flood Hazard Control Act Rules (N.J.A.C. 7:13) and Coastal Zone Management Rules (N.J.A.C. 7:7). Some significant proposed rule changes include:

Letter of Interpretation - The NJDEP is proposing to provide applicants with the option of submitting a Letter of Interpretation (LOI) application through the NJDEP electronic filing system with an Electronic LOI (E-LOI), except for submission of hard copies of the wetland delineation plan to the NJDEP. DLUR is also proposing that all issued LOIs be recorded with the deed of the property with the County Clerk, similar to the existing flood hazard area verification process.

General Permit 4 for Hazardous Site Investigation and Cleanup - Proposed clarification that certification is required from a Licensed Site Remediation Professional (LSRP) that the area of impact to regulated features is the minimum necessary. Feasible alternative remediation methods that would result in less area of wetlands must be presented with an explanation of why these remediation measures were not chosen.

Use of Multiple General Permits - The NJDEP is proposing to eliminate the provision that exists in the current rules which prohibits disturbances exceeding 0.5 acres under General Permit No. 6 (isolated wetlands) from being combined with any other general permit except for General Permit No. 6A (transition areas of isolated wetlands).

Transition Area Waivers - For some waivers, not including buffer averaging, the NJDEP proposes to modify the regulations so that it is at the NJDEP's discretion whether or not a deed restriction of the remaining wetland transition area onsite will be required. Currently this is required for all transition area waivers except a waiver for redevelopment.

Consent - The rule proposal includes a requirement that all applications include written consent from a right-of-way or easement holder when project-related activities are proposed in the right-of-way or easement.

A copy of the rule proposal can be found at: <http://www.state.nj.us/dep/rules/proposals/20170501a.pdf>.

Comments to the NJDEP should be submitted by June 30, 2017. To discuss this rule proposal and how it might be applicable to your project, please contact your Langan Project Manager or:

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