

THIS IS A COURTESY COPY OF SUBCHAPTER 16 (ENFORCEMENT), ADOPTED AUGUST 17, 2009, OF THE FRESHWATER WETLANDS PROTECTION ACT RULES. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

SUBCHAPTER 16 ENFORCEMENT

N.J.A.C. 7:7A-16.1 General provisions

(a) For the purposes of this subchapter (N.J.A.C. 7:7A-16), the term "applicable law and/or condition" means one or more applicable provisions or conditions of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; and/or any letter of interpretation, permit, agreement, transition area waiver, order, settlement, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto.

(b) The burden of proof and degrees of knowledge or intent required to establish a violation of the Freshwater Wetlands Protection Act or of any permit, order, rule or regulation promulgated pursuant thereto shall be no greater than the burden of proof or degree of knowledge or intent which USEPA must meet in establishing a violation of the Federal Act or implementing regulations.

(c) If the Department finds that a person is or has been violating any applicable law and/or condition, the Department may take one or more of the following actions:

1. Issue an administrative order under N.J.A.C. 7:7A-16.3;
2. Bring a civil action under N.J.A.C. 7:7A-16.4;
3. Assess a civil administrative penalty under N.J.A.C. 7:7A-16.5 through 16.13, and in accordance with the grace period requirements set forth at N.J.A.C. 7:7A-16.20;
4. Bring an action for a civil penalty under N.J.A.C. 7:7A-16.14; and/or
5. Bring a criminal action under N.J.A.C. 7:7A-16.15.

(d) For each violation under this chapter, each day during which each violation continues shall constitute an additional, separate, and distinct violation for which a separate penalty may be assessed.

(e) Each violation of any applicable law and/or condition shall constitute an additional, separate, and distinct violation for which a separate penalty may be assessed.

(f) The Department's pursuit of any of the remedies available under this subchapter shall not preclude the Department's pursuit of any of the other remedies for the same or another violation. Compliance with any Department enforcement order, including payment of a penalty, shall not preclude the Department from pursuing any of the other remedies available under this subchapter in connection with the violation for which the order was issued.

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(g) Each applicant and/or permittee shall provide, upon the request of the Department, any information the Department requires to determine compliance with any applicable law and/or condition.

N.J.A.C. 7:7A-16.2 USEPA review

The Department shall make available without restriction any information obtained or used in the enforcement of the Freshwater Wetlands Protection Act, the Water Pollution Control Act, and/or this chapter, to USEPA upon request.

N.J.A.C. 7:7A-16.3 Administrative order

(a) Whenever, on the basis of available information, the Department finds a person in violation of any applicable law and/or condition, the Department may issue an order:

1. Specifying each provision of the applicable law and/or condition which has been, or is being violated;
2. Citing the action which constituted the violation;
3. Requiring immediate compliance with the provision or provisions violated;
4. Requiring the restoration or rehabilitation of the freshwater wetlands, State open waters or transition area which is the site of the violation; and
5. Providing notice of the right to a hearing on the matters contained in the order.

N.J.A.C. 7:7A-16.4 Civil action

(a) Whenever, on the basis of available information, the Department finds a person in violation of any applicable law and/or condition, the Department may institute a civil action in Superior Court for appropriate relief. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;
2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this section;
3. Assessment of the violator for any costs incurred by the State in removing, correcting, or terminating the adverse effects upon the freshwater wetlands, State open waters or transition areas resulting from any unauthorized regulated activity for which legal action under this section may have been brought;

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4. Assessment against the violator for compensatory damages for any loss or destruction of natural resources, including but not limited to wildlife, fish, aquatic life, habitat, plants, or historic or archaeological resources and for any other actual damages caused by an unauthorized regulated activity. Assessments under this section shall be paid to the State Treasurer except that compensatory damages shall be paid by specific order of the court to any persons who have been aggrieved by the unauthorized regulated activity; and /or
5. A requirement that the violator restore or rehabilitate the site of the violation to the maximum extent practicable, as defined in N.J.A.C. 7:7A-1.4 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. If the violator does not do so, the Department may take corrective action, and will assess the violator pursuant to this chapter.

N.J.A.C. 7:7A-16.5 Civil administrative penalty

(a) Whenever, on the basis of available information, the Department finds a person in violation of any provision of the Freshwater Wetlands Protection Act, or of any permit, transition area waiver, letter of interpretation, agreement, order, settlement, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto, the Department may assess a civil administrative penalty of no more than \$25,000 for each violation, not including any amount assessed for economic benefit as determined under N.J.A.C. 7:7A-16.13. The amount of the civil administrative penalty for each such violation shall be determined under N.J.A.C. 7:7A-16.8 through 16.13.

(b) Whenever, on the basis of available information, the Department finds a person in violation of any provision of the Water Pollution Control Act, or of any permit, approval, agreement, transition area waiver, order, settlement, exemption, or rule promulgated or approved pursuant thereto, the Department may assess a civil administrative penalty of no more than \$50,000 for each violation. The amount of the civil administrative penalty for each such violation shall be determined under the Department's rules implementing the enforcement provisions of that law at N.J.A.C. 7:14-8.

(c) The Department may, in its discretion, settle a civil administrative penalty assessed under this subchapter, in accordance with N.J.A.C. 7:7A-16.6(d). However, if the Department settles a penalty for a violation of the Water Pollution Control Act, the settlement is subject to N.J.A.C. 7:14-8.

N.J.A.C. 7:7A-16.6 Assessment, settlement and payment of a civil administrative penalty

(a) To assess a civil administrative penalty, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This notice of civil administrative penalty assessment shall:

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1. Identify each section of the applicable law and/or condition violated;
2. Concisely state the facts alleged to constitute the violation;
3. Specify the amount of the civil administrative penalty and state the basis thereof; and
4. Advise the violator of the right to request an adjudicatory hearing under N.J.A.C. 7:7A-16.7.

(b) The violator shall pay a civil administrative penalty immediately upon receipt of the Department's final order in a contested case, or as soon as a notice of civil administrative penalty assessment becomes a final order as follows:

1. If no hearing is requested under N.J.A.C. 7:7A-16.7, a notice of civil administrative penalty assessment becomes a final order on the 36th day after the violator receives the notice of civil administrative penalty assessment;
2. If the Department denies a hearing request under N.J.A.C. 7:7A-16.7(c) or (d), a notice of civil administrative penalty assessment becomes a final order upon the violator's receipt of the denial; or
3. If the Department grants a hearing, a notice of civil administrative penalty assessment becomes a final order upon the violator's receipt of a final order in the contested case.

(c) 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, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed under this subchapter, based on an evaluation of the factors at (d)1 through 4 below. As provided at N.J.A.C. 7:7A-16.5(c), this subsection does not apply to penalties assessed for violations of the Water Pollution Control Act:

1. Mitigating or extenuating circumstances not previously considered in the assessment of penalties;
2. The violator's timely implementation of measures leading to compliance, which measures were not previously considered in the assessment of penalties, including measures to

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clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The violator's full payment of a specified part of a civil administrative penalty, if payment is made within a time period established by the Department in an administrative order, and if the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or
4. Any other terms or conditions acceptable to the Department.

N.J.A.C. 7:7A-16.7 Appeal of an administrative order and/or notice of civil administrative penalty assessment

(a) A violator may request an adjudicatory hearing to contest an administrative order, and/or a notice of civil administrative penalty assessment issued under this chapter. To request an adjudicatory hearing, the violator shall submit the following information in writing to the Department at the addresses in (b) below:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the findings of fact in the administrative order and/or notice of civil administrative penalty assessment, stated in short and plain terms;
3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall state this and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;
4. Information supporting the request and copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location accessible to physically disabled persons.

(b) A request for an adjudicatory hearing under this subchapter shall be submitted as follows:

1. Submit the original request to:

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Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street, 4th Floor
P.O. Box 402
Trenton, New Jersey 08625-0402

2. Submit a copy of the request to:
Bureau of Coastal and Land Use Compliance and Enforcement
Department of Environmental Protection
401 East State Street, 4th Floor
P.O. Box 422
Trenton, New Jersey 08625-0422

(c) If the Department does not receive the hearing request within 35 days after the violator receives the notice of civil administrative penalty assessment and/or the administrative order which is being contested, the Department shall deny the hearing request.

(d) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(e) Any adjudicatory hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1

7:7A-16.8 Civil administrative penalty amount for failure to obtain a permit prior to conducting regulated activities

(a) When the Department assesses a civil administrative penalty for the failure to obtain a permit prior to conducting regulated activities, the Department shall use the procedures in this section to determine the amount of the penalty if the violation pertains to freshwater wetlands and/or freshwater wetland transition areas, except if the violation type is listed at N.J.A.C. 7:7A-16.9, 16.10, 16.11, or 16.12, in which case the penalty amount shall be determined under whichever of those sections applies. For the purposes of this section, permit shall have the meaning set forth at N.J.A.C. 7:7A-1.4.

(b) If a violation of this chapter pertains to State open waters, the Department shall not determine the amount of the civil administrative penalty under this subchapter, but shall determine the penalty under the Department's rules implementing the enforcement provisions of the Water Pollution Control Act at N.J.A.C. 7:14-8.

(c) The Department shall use the two factors described at (c)1 and 2 below, conduct and seriousness, to determine the amount of the base daily civil administrative penalty under this section. Using the standards below, the Department assigns each violation a point value for each

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factor. The total number of points is used in Table D at (d) below to determine the base penalty amount per day for each violation. The factors, and the point values assigned to them, are as follows:

1. The conduct factor of the violation shall be classified as major, moderate or minor and assigned points as follows:

i. Major conduct shall include an intentional, deliberate, purposeful, knowing or willful act or omission by the violator and is assigned five points;

ii. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator and is assigned two points; and

iii. Minor conduct shall include any conduct not identified in (c)1i or ii above and is assigned one point.

2. The seriousness factor of the violation is assigned points as provided in (c)2i and ii below based on the acreage of wetlands and/or transition areas impacted and the resource value of the freshwater wetlands.

i. The acreage of wetlands and/or transition areas impacted shall be assigned points in accordance with (c)2i(1) through (7) below:

(1) A violation impacting greater than seven acres of wetlands and/or transition areas is assigned seven points;

(2) A violation impacting greater than four acres up to and including seven acres of wetlands and/or transition areas is assigned six points;

(3) A violation impacting greater than two acres up to and including four acres of wetlands and/or transition areas is assigned five points;

(4) A violation impacting greater than one acre up to and including two acres of wetlands and/or transition areas is assigned four points;

(5) A violation impacting greater than 0.5 acre up to and including one acre of wetlands and/or transition areas is assigned three points;

(6) A violation impacting greater than 0.25 acre up to and including 0.5 acre of wetlands and/or transition areas is assigned two points; and

(7) A violation impacting up to and including 0.25 acre of wetlands and/or transition areas is assigned one point; and

ii. The resource value classification shall be assigned points in accordance with (c)2ii(1) through (5) below. If the site of a violation contains regulated areas of more than one resource value classification, the points assigned to a violation for the highest resource classification on the site shall apply for the entire site:

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- (1) A violation impacting exceptional resource classification wetlands is assigned five points;
- (2) A violation impacting intermediate resource classification wetlands is assigned four points;
- (3) A violation impacting ordinary resource classification wetlands is assigned three points;
- (4) A violation impacting only exceptional resource classification transition areas is assigned two points; and
- (5) A violation impacting only intermediate resource classification transition areas is assigned one point.

(d) The Department shall sum the total points assigned according to the two factors in (c) above, and shall determine the base penalty amount per day using the following table:

Table D
Base penalty points table

Total Points	Base Penalty Amount Per Day
17	\$25,000
16	23,000
15	21,000
14	19,000
13	17,000
12	15,000
11	13,000
10	11,000
9	10,000
8	9,000
7	8,000
6	6,000
5	5,000
4	4,000
3	3,000

(e) The Department shall subtract from the daily base penalty determined pursuant to (d) above a penalty mitigation amount calculated by multiplying the daily base penalty times the penalty mitigating factor multiplier pursuant to (e)1 or 2 below, if applicable.

1. Where the nature, timing and effectiveness of any measures taken by the violator to correct the violation and restore the site to its pre-disturbance condition results in compliance

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within 30 days of receipt of the notice of violation from the Department, the mitigating factor multiplier is 0.50; or

2. Where a complete application for a general permit or an individual permit is submitted within 60 days of receipt of the notice of violation from the Department and an authorization under a general permit or an individual permit is subsequently obtained for the unauthorized regulated activity cited in the notice of violation without the need for any changes to the regulated activity for which the notice of violation was issued, the mitigating factor multiplier is 0.25.

(f) The total civil administrative penalty shall be the daily civil administrative penalty determined as provided under (c) through (e) above, multiplied by the number of days during which each violation continued.

N.J.A.C. 7:7A-16.9 Civil administrative penalty amount for any violation other than failure to obtain a permit prior to conducting regulated activities, submittal of inaccurate or false information, failure to allow entry, or failure to pay a civil administrative penalty

(a) When the Department assesses a civil administrative penalty for a violation other than the failure to obtain a permit prior to conducting regulated activities, the Department shall use the procedures in this section to determine the amount of the penalty, except if the violation type is listed at N.J.A.C. 7:7A-16.10, 16.11, or 16.12, in which case the penalty amount shall be determined under whichever of those sections applies.

(b) The Department shall use the two factors described at (c) and (d) below, seriousness and conduct, to determine the amount of the base daily civil administrative penalty under this section. The applicable daily penalty amount is determined using the base daily penalty matrix in Table E below, based on the seriousness of the violation determined pursuant to (c) below and the conduct of the violator determined pursuant to (d) below.

Table E

Base daily penalty matrix

		SERIOUSNESS		
		MAJOR	MODERATE	MINOR
CONDUCT	MAJOR	\$25,000	\$15,000	\$10,000
	MODERATE	\$15,000	\$ 7,500	\$ 5,000
	MINOR	\$10,000	\$ 5,000	\$ 1,000

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(c) The seriousness of the violation shall be classified as major, moderate, or minor as follows:

1. "Major" seriousness shall apply to any violation which has caused or has the potential to cause serious harm to human health, safety, the Freshwater Wetlands Protection Act regulatory program, or the environment, or seriously deviates from any applicable law and/or condition. "Serious" deviations include, but are not limited to, those violations which are in complete contravention of the applicable law and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the applicable law and/or condition. Violations of "major" seriousness include, but are not limited to:
 - i. Any activity that negatively affects water quality;
 - ii. Clearing, grading, or filling of freshwater wetlands;
 - iii. Clearing, grading, or filling of transition areas when done in conjunction with such activities in freshwater wetlands;
 - iv. Clearing, grading, filling, or disturbance of freshwater wetlands and/or transition areas in excess of that authorized by a permit or plan;
 - v. Failure to timely record a conservation restriction or easement, and the property has been sold or transferred;
 - vi. Failure to report the presence of a historic resource during construction and/or the destruction of a historic resource without Department approval;
 - vii. Failure to comply with a historic resource or mitigation requirement; and
 - viii. Failure of an applicant or permittee to provide information upon request to determine compliance with any applicable law and/or condition;
2. "Moderate" seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health, safety, the Freshwater Wetlands Protection Act regulatory program or the environment, or substantially deviates from the applicable law and/or condition. "Substantial deviations" shall include, but not be limited to, violations which are in substantial contravention of the applicable law and/or condition, and/or which substantially impair or undermine the protection, operation, or intent of the applicable law and/or condition. The Department shall consider a violation that is limited solely to the transition area but is not associated with a permit to be of moderate seriousness. Violations of "moderate" seriousness also include, but are not limited to:
 - i. Failure to notify the Department of commencement of construction;
 - ii. Failure to transfer a permit in accordance with this chapter; and
 - iii. Failure to timely record a conservation restriction or easement, and the property has not been sold or transferred.
3. "Minor" seriousness shall apply to any violation not included in (c)1 or 2 above.

(d) The conduct of the violator shall be determined as major, moderate, or minor as follows:

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1. "Major" conduct shall include any intentional, deliberate, purposeful, knowing, or willful act or omission by the violator. The Department presumes a violation of any provision of a permit, transition area waiver, letter of interpretation, agreement, order, settlement, exemption letter, or mitigation proposal, as well as any violation by a person who has previously applied for or received any such instrument pursuant to the Freshwater Wetlands Protection Act and/or this chapter, to be a knowing violation;
2. "Moderate" conduct shall include any unintentional but foreseeable act or omission by the violator; and
3. "Minor" conduct shall include any other conduct not included in (d)1 or 2 above.

(e) The Department shall subtract from the daily base penalty determined using Table E at (b) above a penalty mitigation amount calculated by multiplying the daily base penalty times the penalty mitigating factor multiplier pursuant to (e)1 or 2 below, if applicable.

1. Where the nature, timing and effectiveness of any measures taken by the violator to correct the violation and restore any site disturbance to its pre-disturbance condition results in compliance within 30 days of receipt of the notice of violation from the Department, the mitigating factor multiplier is 0.50; or
2. Where a complete application for a modification of authorization under a general permit, transition area waiver or an individual permit is submitted within 60 days of receipt of the notice of violation from the Department and a modification of the subject authorization(s) is subsequently obtained for the activity that was cited in the notice of violation without the need for any changes to the regulated activity or the site for which the notice of violation was issued, the mitigating factor multiplier is 0.25.

(f) The total civil administrative penalty shall be the daily civil administrative penalty determined as provided under (b) through (e) above, multiplied by the number of days during which each violation continued.

N.J.A.C. 7:7A-16.10 Civil administrative penalty amount for submitting inaccurate or false information

(a) When the Department assesses a civil administrative penalty for submittal of inaccurate information or submittal of a false statement, representation, or certification in an application, record, or other document required to be submitted or maintained under the Freshwater Wetlands Protection Act or under a permit, transition area waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto, the Department shall use the procedures in this section to determine the amount of the civil administrative penalty. This section applies with regard to information including, but not limited to, the presence of a historic resource and/or the presence of regulated areas such as freshwater wetlands and freshwater wetlands transition areas on a site.

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(b) If a violation described in this section pertains to State open waters, the Department shall not determine the amount of the civil administrative penalty under this section, but shall determine the penalty under the Department's rules implementing the enforcement provisions of the Water Pollution Control Act at N.J.A.C. 7:14-8.

(c) Each day, from the day that a violator submits inaccurate or false information to the Department, to the day the Department receives a written correction from the violator, shall be an additional, separate, and distinct violation.

(d) The daily civil administrative penalty for each intentional, deliberate, purposeful, knowing, or willful act or omission under this section shall be assessed at the midpoint between \$ 10,000 and \$ 8,000 unless adjusted under (f) below.

(e) The daily civil administrative penalty for each violation under this section that is not listed in (d) above shall be assessed at the midpoint between \$ 1,000 and \$ 0 unless adjusted under (f) below.

(f) For a violation under this section, the Department may adjust the civil administrative penalty amount from the midpoint within the range listed in (d) or (e) above, based on the following factors:

1. The violator's compliance history;
2. The nature, timing and effectiveness of measures the violator takes to mitigate the effects of the violation;
3. The nature, timing and effectiveness of measures the violator takes to prevent future similar violations;
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
5. Other specific circumstances of the violator or violation.

(g) A violation under this section is non-minor and, therefore, not subject to a grace period.

N.J.A.C 7:7A-16.11 Civil administrative penalty amount for failure to allow entry and inspection

(a) 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 any applicable law and/or condition.

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(b) When the Department assesses a civil administrative penalty under the FWPA against a person who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative, the Department shall use the procedures in this section to determine the amount of the civil administrative penalty. The amount of a civil administrative penalty for refusal of entry and inspection under the WPCA shall be determined under N.J.A.C. 7:14-8.7.

(c) Each day that a person refuses, inhibits or prohibits immediate lawful entry and inspection shall be an additional, separate, and distinct violation.

(d) The daily civil administrative penalty for a violation under this section shall be assessed at the midpoint of the following ranges, except as adjusted under (e) below:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which the Department has issued an administrative order, freshwater wetlands permit, transition area waiver, approved mitigation proposal or general permit authorization, the civil administrative penalty shall be no more than \$10,000 nor less than \$ 7,000; and
2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be no more than \$ 7,000 nor less than \$ 1,500.

(e) The Department may adjust the daily civil administrative penalty amount, within the applicable range at (d) above, based on the following factors:

1. The violator's compliance history;
2. The nature, timing and effectiveness of measures the violator takes to remedy the effects of the violation;
3. The nature, timing and effectiveness of measures the violator takes to prevent future similar violations;
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
5. Other specific circumstances of the violator or violation.

(f) A violation under this section is non-minor and, therefore, not subject to a grace period.

N.J.A.C 7:7A-16.12 Civil administrative penalty for failure to pay a civil administrative penalty

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- (a) The Department may assess a civil administrative penalty under this section against each violator who fails to pay a civil administrative penalty when due under this chapter.
- (b) The daily civil administrative penalty amount assessed under this section shall be equal to the unpaid civil administrative penalty, but shall not exceed the maximum allowed at N.J.A.C. 7:7A-16.5(a) and (b).
- (c) Each day that a civil administrative penalty assessed under this subchapter is not paid after it is due shall constitute an additional, separate and distinct violation.

N.J.A.C 7:7A-16.13 Economic benefit factor

- (a) Notwithstanding the maximum civil administrative penalty of \$25,000 pursuant to N.J.A.C. 7:7A-16.5(a), the Department may add to a civil administrative penalty assessed under this subchapter the amount of economic benefit in dollars that the violator has realized as the result of not complying, or by delaying compliance with, an applicable law and/or condition.
- (b) If the total economic benefit was derived from more than one violation, the Department may apportion the total economic benefit amount among the violations from which it was derived.

N.J.A.C 7:7A-16.14 Civil penalty

- (a) Each person who does any of the following shall be subject, upon the order of a court, to a civil penalty not to exceed \$25,000 per day of the violation, not including any amount assessed for economic benefit as determined under N.J.A.C. 7:7A-16.13:
 - 1. Violates the Freshwater Wetlands Protection Act, the Water Pollution Control Act, or this chapter;
 - 2. Violates an administrative order or a court order issued pursuant to the Freshwater Wetlands Protection Act, the Water Pollution Control Act, or this chapter;
 - 3. Fails to pay in full a civil administrative penalty assessed under this chapter, or fails to make a payment pursuant to a penalty payment schedule entered into with the Department; or
 - 4. Knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the Department.
- (b) A civil penalty imposed under this section may be collected, with costs, in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the penalty enforcement law in conjunction with the Freshwater Wetlands Protection Act, the Water Pollution Control Act, and this chapter.

N.J.A.C 7:7A-16.15 Criminal action

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(a) The Department, upon petition to the Attorney General, may bring a criminal action in court for certain violations of the Freshwater Wetlands Protection Act, or of a permit, waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto.

(b) If a violation described in this section pertains to State open waters, the criminal penalty shall not be governed by this section, but shall be governed by the Water Pollution Control Act at N.J.S.A. 58:10A-10(f).

(c) A person who knowingly, purposely, or recklessly violates the Freshwater Wetlands Protection Act, or any permit, approval, transition area waiver, order, exemption, or rule promulgated or approved pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall be subject to a fine of no less than \$5,000 nor more than \$50,000 per day of violation, or imprisonment, or both.

(d) A person shall be guilty, upon conviction, of a crime of the third degree and shall be subject to a fine of not more than \$50,000 per day of violation, or imprisonment, or both, if the person:

1. Knowingly, purposely, or recklessly makes a false statement, representation, or certification in any application, record or other document filed or required to be maintained under the Freshwater Wetlands Protection Act, or under a permit, transition area waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto; or
2. Falsifies, tampers with or purposely, recklessly or knowingly renders inaccurate, any monitoring device or method required to be maintained under the Freshwater Wetlands Protection Act, or a permit, transition area waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto.

N.J.A.C 7:7A-16.16 Forfeiture of conveyances

All conveyances used or intended for use in the purposeful or knowing discharge into State open waters of any pollutant or toxic pollutant, in violation of the Water Pollution Control Act, are subject to forfeiture to the State under N.J.S.A. 58:10A-10(g) and N.J.S.A. 13:1K-1 et seq. A hearing shall be held prior to any forfeiture under this section. For the purposes of this section, the term "conveyance" means an aircraft, vessel, vehicle, or other equipment or container.

N.J.A.C 7:7A-16.17 Notice of violation recorded on deed to property

(a) On order of the Commissioner:

1. The clerk or register of deeds and mortgages of the county containing the property upon which the violation occurred shall record a notice of violation of the Freshwater Wetlands Protection Act on the deed of the property; and/or

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2. The clerk of the Superior Court shall record a notice of violation of the Freshwater Wetlands Protection Act.

(b) The notice of violation shall remain attached to the property deed and shall remain recorded at the Superior Court until the violation has been remedied and the Commissioner has ordered the clerk to remove the notice of violation. The Commissioner shall immediately order the notice removed once the violation is remedied, or upon other conditions set forth by the Commissioner.

N.J.A.C 7:7A-16.18 "After the fact" permit

(a) The Department may issue an "after the fact" permit for a regulated or prohibited activity that has already occurred and that does not meet the standards for approval in this chapter only if all of the following are true:

1. The Department has determined that the restoration of the site to its pre-violation condition would increase the harm to a freshwater wetland, transition area, and/or State open water, or its ecology;
2. The Department has assessed and collected the costs or damages enumerated in N.J.A.C. 7:7A-16.4 from the violator;
3. The Department has required the violator to create or restore freshwater wetlands or State open waters at another location;
4. An opportunity has been afforded for public hearing and comment; and
5. The reasons for the issuance of the "after the fact" permit are published in the DEP Bulletin and in a newspaper of general circulation in the geographic area of the violation.

(b) The issuance of an "after the fact" permit or waiver under this section shall not limit the Department's ability to pursue any other enforcement action for the violation that is the subject of the "after the fact" permit or waiver.

(c) Any person violating an "after the fact" permit issued under this section shall be subject to enforcement under this chapter.

N.J.A.C 7:7A-16.19 Public participation

(a) To provide for public participation in the Department's enforcement process, the Department shall:

1. Investigate and provide responses to all citizen complaints submitted under Department procedures;

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2. Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and
3. Publish notice of any proposed settlement of a Department enforcement action in the DEP Bulletin and provide at least 30 days for public comment on the settlement.

N.J.A.C. 7:7A-16.20 Grace period applicability; procedures

(a) Each violation identified in Table F at (f) below by an "M" in the Type of Violation column, for which the conditions of (d)1 through 6 below are satisfied, and each violation determined under (c) below as minor for which the conditions of (d)1 through 9 below are satisfied, is a minor violation and is subject to a 30-day grace period as described at (e) below.

(b) Each violation identified in Table F at (f) below by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) If a violation is not listed in Table F at (f) below, the designation of the violation as minor or non-minor is determined as follows:

1. If the violation is not listed in Table F at (f) below but is comparable to a violation designated as "M" in Table F and the violation meets all of the criteria of (d)1 through 6 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 days as described at (e) below.
2. If the violation is not listed in Table F at (f) below and is not comparable to a violation listed in Table F but the violation meets all of the criteria of (d)1 through 9 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 days as described at (e) below.
3. If the violation is not listed in Table F at (f) below but is comparable to a violation designated as "NM" in Table F, then the violation is a non-minor violation and is not subject to a grace period.
4. If the violation is not listed in Table F at (f) below and is not comparable to a violation listed in Table F, and the violation does not meet all of the criteria at (d)1 through 9 below, the violation is non-minor and is not subject to the grace period.
5. Comparability of a violation to a violation in Table F at (f) below is based on the nature of the violation (for example, recordkeeping, accuracy of information provided to the Department, amount and type of impacts to the protected resources). A violation shall not be considered comparable to any violation designated as "M" in Table F unless the violation also meets the criteria at (d)7 through 9 below.

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(d) The Department shall provide a grace period of 30 days for any violation identified as minor provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;
2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency;
3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;
4. In the case of a violation that does not involve a permit or waiver, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period;
5. In the case of a violation of the Freshwater Wetlands Protection Act, *N.J.S.A. 13:9B-1* et seq., or any rule or regulation promulgated thereunder, or permit or waiver issued pursuant thereto, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local government agency as responsible for the same or a substantially similar violation at the same site or any other site within the preceding 12-month period;
6. In the case of any violation, the person responsible for the violation has not been identified by the Department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible;
7. The violation poses minimal risk to the public health, safety and natural resources;
8. The violation does not materially and substantially undermine or impair the goals of the regulatory program; and
9. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

(e) For a violation determined to be minor under (a) or (c) above, the following provisions apply:

1. The Department shall issue a notice of violation to the person responsible for the minor violation that:

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- i. Identifies the condition or activity that constitutes the violation and the specific regulatory provision or other requirement violated; and
 - ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period of 30 days.
2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (e)3 below, that compliance has been achieved within the specified grace period, the Department shall not impose a penalty for the violation.
3. In response to a notice of violation, the person responsible for the minor violation shall submit to the Department, before the end of the specified grace period, written information, signed and certified to be true by the responsible person or his or her designee, detailing the corrective action taken or how compliance was achieved.
4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period in writing no later than one week before the expiration of the specified grace period. The request shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The request shall be signed and certified to be true by the responsible party or their designee. The Department may, in its discretion, approve in writing an extension which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:
 - i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;
 - ii. Whether the delay has been caused by circumstances beyond the control of the violator;
 - iii. Whether the delay will pose a risk to the public health, safety and natural resources; and
 - iv. Whether the delay will materially and substantially undermine or impair the goals of the regulatory program.
5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period, or within any approved extension, the Department may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date on which the notice of violation under (e)1 above was issued.

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6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

(f) The designations of violations of the Freshwater Wetlands Protection Act Rules as minor (M) or non-minor (NM) are set forth in Table F below. The violation descriptions are provided for informational purposes only. In the event that there is a conflict between a violation description in Table F and the rule to which the violation description corresponds, the rule shall govern.

Table F

<i>Rule Citation</i>	<i>Violation Description</i>	<i>Type of Violation</i>
N.J.A.C. 7:7A-2.1(a), 2.2(a) and (b), 2.5(f), 2.6(a)	Conducting regulated or prohibited activities in a freshwater wetland, transition area and/or State open water without prior Department approval.	NM
N.J.A.C. 7:7A-4.3	Failure to comply with conditions of a Department permit or authorization not related to submission of documentation to the Department.	NM
N.J.A.C. 7:7A-4.3	Failure to submit to the Department documentation as required by a permit condition.	M
N.J.A.C. 7:7A-6.1(h)	Failure to execute and record the required conservation restriction prior to the beginning of activities authorized under a transition area waiver, or transfer of the site.	NM
N.J.A.C. 7:7A-10.1(f)	Failure to provide in the application all information required in this chapter of which the applicant, its consultants, engineers, surveyors, or agents is or should be aware	NM
N.J.A.C. 7:7A-10.9	Failure to provide appropriate public notice during the permit application process	NM
N.J.A.C. 7:7A-13.1	Failure to comply with conditions of a Department permit or authorization not related to submission of documentation to the Department.	NM
N.J.A.C. 7:7A-13.1	Failure to submit to the Department documentation as required by a permit condition.	M

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Table F

<i>Rule Citation</i>	<i>Violation Description</i>	<i>Type of Violation</i>
N.J.A.C. 7:7A-14.4(a)	Failure to comply with a permit suspension order	NM
N.J.A.C. 7:7A-14.5(b)	Failure to comply with a permit termination order.	NM
N.J.A.C. 7:7A-15.2(b)	Failure to conduct mitigation as required by a Department approval or administrative order	NM
N.J.A.C. 7:7A-15.3(a)	Failure to conduct mitigation as required by a Department approval or administrative order	NM
N.J.A.C. 7:7A-15.11(a)	Failure to submit a mitigation proposal to the Department as required by a Department approval or order	NM
N.J.A.C. 7:7A-15.16(a)	Failure to execute and record the conservation restriction that meets the requirements of N.J.A.C. 7:7A-15.14 prior to the start of mitigation activities	NM
N.J.A.C. 7:7A-15.16(b)	Failure to submit a construction completion report within the required timeframe of completion of construction and planting of a restoration, creation or enhancement project	M
N.J.A.C. 7:7A-15.16(c)	Failure to submit an annual post-planting report at the required intervals following the completion of the construction and planting associated with mitigation	M
N.J.A.C. 7:7A-15.16(d)	Failure to demonstrate to the Department at the end of the post-planting monitoring period that the mitigation project is successful	M
N.J.A.C. 7:7A-15.17(c)1	Failure to transfer the mitigation area in fee simple to a government agency or charitable conservancy within 60 days after the Department declares mitigation through upland preservation successful	NM
N.J.A.C. 7:7A-15.17(c)2	Failure to provide the government agency or	NM

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Table F

<i>Rule Citation</i>	<i>Violation Description</i>	<i>Type of Violation</i>
	charitable conservancy with a maintenance fund for the mitigation area transferred to the government agency or charitable conservancy	
N.J.A.C. 7:7A-15.18(a)	Failure to apply to the Wetlands Mitigation Council for approval of the amount of monetary contribution following the Department's determination that monetary contribution is an appropriate mitigation alternative	NM
N.J.A.C. 7:7A-15.19(a)	Failure to apply to the Wetlands Mitigation Council for approval of the particular parcel of land to be donated following the Department's determination that land donation is appropriate mitigation alternative	NM