

CHAPTER 1B
WAIVER OF DEPARTMENT RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:1B-1.1 Purpose and applicability

(a) The purpose of this chapter is to set forth the limited circumstances in which the Department may, in its discretion, waive the strict compliance of a rule consistent with the core missions of the Department to maintain, protect, and enhance New Jersey's natural resources and to protect the public health, safety, and the environment.

(b) It is not the purpose of this chapter to allow for the routine circumvention of any Department rule.

(c) This chapter does not affect any rule concerning an exception, variance, or waiver in any other chapter in Title 7 of the New Jersey Administrative Code.

(d) Except as provided in (e) below, the Department may, in accordance with this chapter, prospectively waive the strict compliance with any of its rules only when it determines any one of the following exists:

1. A rule conflicts with another Department rule;
2. The rule would be unduly burdensome;
3. There would be a net environmental benefit from a proposed development, permit, activity, or inactivity; or
4. A public emergency.

(e) The Department shall not waive any rule concerning the following:

1. A specific requirement of, or a specific duty imposed by, a federal or state statute or federal regulation, unless that statute or regulation provides for such a waiver;
2. A federally delegated, authorized, or assumed program where either:

- i. The federal program includes specific compliance exemptions; or
 - ii. The waiver would not be consistent with New Jersey's delegation, authorization, or assumption of authority pursuant to that federal program;
3. Part of a collaborative program involving multiple states or jurisdictions where the waiver would not be consistent with New Jersey's participation in the multi-state or multi-jurisdiction program;
 4. The air emissions trading program;
 5. Numeric or narrative standards protective of human health;
 6. The designation of rare, threatened, or endangered status of any species of flora or fauna;
 7. A remediation funding source, claim or other reimbursement, grant, loan, or other financial assistance;
 8. A license, certification, or registration for a vehicle, boat, individual, or business;
 9. A license or approval for hunting, fishing, or trapping;
 10. Public participation or notice; or
 11. A fee, oversight cost, and other Department cost.
- (f) This chapter does not create in any person a right to a waiver.

7:1B-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Conflicting rules" exist when two or more Department rules, or one Department rule and the rule of another state agency, conflict so as to make compliance with both rules impossible.

"Department" means the New Jersey Department of Environmental Protection.

"Net environmental benefit" means a situation in which there is a quantitative or qualitative benefit to a natural resource or other environmental good for which the

Department has a statutory responsibility and that benefit would be greater than the benefit to the natural resource or other environmental good that would result from a proposed development, permit, activity, or inactivity that would occur without the waiver.

“Public emergency” means a situation where a federal or state official with the authority to do so declares a public emergency.

“Unduly burdensome” means actual, extraordinary hardship that a person subject to a particular rule would incur as a result of the strict compliance of the rule for a particular project or property.

“Waiver” means a decision by the Department that relaxes strict compliance with a specific Department rule, in whole or part, as applied to a specific person, at a specific time or place, on the basis of the particular circumstances of that person.

SUBCHAPTER 2. WAIVERS

7:1B-2.1 Waiver criteria

(a) The Department shall consider the following criteria when considering waiving one of its rules in accordance with N.J.A.C. 7:1B-1.1(d):

1. Whether there are circumstances that support the need for a waiver;
2. Whether the person, to whom the waiver would benefit most directly, may have caused or contributed to the circumstances that resulted in the rule being unduly burdensome;
3. Whether there is a net environmental benefit;
4. Whether the activity authorized by the waiver would be consistent with the purposes and objectives of all applicable statutory requirements;
5. Whether the waiver is prohibited pursuant to N.J.A.C. 7:1B-1.1(e); and
6. Whether the waiver would be consistent with the Department’s core mission to maintain, protect, and enhance New Jersey’s natural resources and to protect public health and safety and the environment.

(b) If the Department decides to waive the strict compliance with one of its rules, it shall:

1. Document its decision in writing to the person to whom the waiver applies,

including;

- i. The name and address of the person to whom the waiver applies;
 - ii. The specific location to which the waiver applies;
 - iii. The specific rule provision(s) that it is waiving;
 - iv. The basis for its decision;
 - v. The duration, scope, and extent of the waiver to the narrowest exception possible;
 - vi. Any waiver conditions necessary to maintain, protect, and enhance New Jersey's natural resources and to protect the public health, safety, and the environment, including, but not limited to, the:
 - (1) Monitoring and reporting of the environmental impacts of the approved activity;
 - (2) Reporting of any adverse environmental impacts from the waiver; and
 - (3) Implementation of offsets, if applicable, to ensure that issuance of the waiver would result in a net environmental benefit;
 - vii. Notice that the Department may revoke the waiver for noncompliance with any condition in the waiver, or for the submission of false or inaccurate information that undermines the Department's decision on the waiver; and
 - viii. Notice that the person to whom the waiver applies shall be subject to program-specific enforcement for noncompliance with any condition in the waiver; and
2. Post a copy of the waiver on the Department's website.
- (c) The Department's waiver of the strict compliance with one of its rules shall:
 1. Only be considered a waiver of the application of the particular rule provision that the Department identifies in its written waiver;
 2. Not constitute a waiver of the rule generally or any other provision of any other rule not specified in the waiver;
 3. Not constitute an approval of any other activity or location;

4. Only be valid to the person identified in the waiver or the particular project or property that is the subject of the waiver, except as the applicable program-specific rules provide;

5. Not be automatically renewable, except as the waiver or applicable program-specific rules provide;

6. Not provide any authority for a local delegated agency to issue a waiver; and

7. Not constitute a defense to a judicial or administrative enforcement action for a violation that predates the waiver.