



Compliance Alert

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Coastal and Land Use Enforcement #2023-19

Issued: 10/10/2023

GENERAL GUIDANCE FOR JURISDICTIONAL WETLANDS IN NEW JERSEY IN LIGHT OF THE SUPREME COURT'S SACKETT v. EPA DECISION

WHO IS AFFECTED BY THIS ALERT

This guidance applies to all landowners, developers, contractors, consultants, and any other persons seeking to disturb soil or vegetation or develop or redevelop any real property within the State of New Jersey that may contain wetlands.

BACKGROUND - WHY IS NJDEP ADDRESSING THIS ISSUE?

On May 25, 2023, the United States Supreme Court issued a ruling known as Sackett v. EPA (or *Sackett II*, to distinguish from an earlier 2012 case) which involved a dispute over federal jurisdiction over potential wetlands on a property in Idaho. The New Jersey Department of Environmental Protection (NJDEP) is issuing this compliance advisory to notify the public that in the vast majority of the State, the Sackett decision does not impact New Jersey's authority to regulate wetlands because New Jersey has assumed responsibility for administering the Clean Water Act's §404 wetlands program, which it does under the Freshwater Wetlands Protection Act N.J.S.A. 13:9B-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

Wetlands are an extremely valuable natural resource that provide essential benefits for people, animals, and the environment. The Legislature enumerated a long list of reasons as to why it was in the public's interest to protect wetlands (see Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-2 "findings, declarations").

The Department regulates all activities within coastal wetlands pursuant to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. The Act required the Department to inventory and map the boundaries of all coastal wetlands within the State from the Raritan Bay south. During the 1970s, the Department delineated and mapped those areas which met the definition of "coastal wetland" per the Act. The coastal wetland maps were promulgated and adopted by rule. To date, the Department has adopted a total of 1,007 coastal wetland maps. All wetlands mapped pursuant to the Wetlands Act of 1970 are considered coastal wetlands for permitting purposes, even if the wetland is not tidal today. Any activity located within a tidal wetland that is not mapped on the coastal wetland maps may require a freshwater wetlands permit. (See definition of "Freshwater wetland" or "wetland" at N.J.A.C. 7:7A-1.3).

The Department regulates most activities within freshwater wetlands pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., which became effective on July 1, 1988. The Department has adopted and requires the use of the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands for determining the presence and extent of freshwater wetlands. The 1989 Federal Manual uses a comprehensive three-parameter approach and requires that a wetland include hydric soils, wetland hydrology and hydrophytic vegetation. The Department also regulates activities within the transition area, or buffer zone adjacent to wetlands.

WHAT DO I NEED TO KNOW?

In the vast majority of the State, the *Sackett* decision does not impact New Jersey's authority to regulate wetlands. Thus, any unauthorized disturbance to wetlands without prior authorization by NJDEP could result in enforcement action.

In general, under both the Wetlands Act of 1970 and the Freshwater Wetlands Protection Act, regulated activities consist of actions that would result in land and/or water disturbance, destruction of vegetation and construction of structures. These activities are defined in more detail at N.J.S.A. 13:9A-4 and N.J.S.A.13:9B-3.

NJDEP also shares jurisdiction with other regulatory partners in specific geographical areas of the State who should also be consulted with prior to disturbing any wetlands. Such waters and their associated wetlands include the entire length of the Delaware River, waters of the United States ("WOTUS") under the jurisdiction of the New Jersey Sports and Exposition Authority (more commonly known as the Meadowlands District), wetlands within 1,000 feet of the mean high water line, and Greenwood Lake. Within the Pinelands National Reserve, NJDEP partners with the Pinelands Commission to regulate freshwater wetlands, which may include wetland buffer areas of up to 300 feet, pursuant to the Pinelands Comprehensive Management Plan (see N.J.A.C. 7:50-1.1. et seq., particularly N.J.A.C. 7:50-6.1 – "Wetlands").

WHAT SHOULD I DO?

1. Obtain all required NJDEP land use permit(s) prior to conducting any regulated activity within wetlands, be they coastal or freshwater wetlands, or within freshwater wetland transition areas, including the cutting and removal of vegetation, excavation, placement of fill material or the construction of any structures.
2. If you are unsure whether a permit is required, or of the applicability of the Sackett decision, reach out to the appropriate contact(s) listed below before commencing work.
3. If there are questions about the possible existence of non-delegable waters, confer with DEP, USEPA and/or USACE as to the proper jurisdiction over such waters.
4. Comply with all permit conditions - Do not begin regulated activities in wetlands or transition areas until the required permit approvals are obtained, and all pre-construction conditions of the permit have been met. Conditions may also include timing restrictions to protect threatened or endangered wildlife.
5. Complete any regulated filling, grading and construction in accordance with the approved permit plans. The work must be completed as depicted on the approved permit plans and comply with all permit conditions. No changes can be made to the approved plans without first obtaining written approval via a permit modification or new permit from the Department's DLRP.
6. Contact the DEP Communications Center_Hotline at 1-(877) WARN DEP (1-877-927-6337) or use the WARN NJDEP smartphone app to report possible violations of the State's land use laws.

WHO SHOULD I CONTACT WITH QUESTIONS?

Land Resource Protection Permit Guidance

Division of Land Resource Protection (609) 777-0454

Coastal & Land Use Compliance and Enforcement

Toms River Field Office (732) 255-0787

Atlantic, Cape May, Middlesex, Monmouth, Ocean, Union

Trenton Field Office (609) 292-1240

Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, SE Morris, Salem, Somerset

Chester Field Office (908)-879-3769

Bergen, Essex, Hudson, Morris, Passaic, Sussex, Warren

U.S. Environmental Protection Agency – Region 2

Wetlands Regulation (404): (212) 637-3836;

U.S. Army Corps of Engineers

Philadelphia District, Regulatory Branch: (215) 656-6728

New York District, Regulatory Branch:

917-790-8511 (Eastern Permit Section): *Essex, Middlesex, Passaic, Somerset, Union, and portions of Hunterdon, Mercer, Monmouth, Morris and Sussex Counties*

917-790-8411 (Western Permit Section): *Bergen and Hudson Counties*

New Jersey Sports and Exposition Authority

Land Use Management Division: (201) 460-1700; [NJSEA Website](#)

WHERE CAN I GET MORE INFORMATION?

The following websites can be accessed for additional information and to view the applicable rules:

DEP Land Resource Protection: <https://dep.nj.gov/wlm/lrp/>

DEP Coastal & Land Use Compliance & Enforcement: <https://dep.nj.gov/wlm/enforcement/>

Current land use laws and regulations: <https://dep.nj.gov/wlm/laws-regulations/>

For additional contact information at DEP/DLRP visit: <https://dep.nj.gov/wlm/contact-us/#phone>

For a list of compliance advisories visit: <https://www.nj.gov/dep/enforcement/advisories-date.html>

To comment on this compliance advisory visit: <https://www.nj.gov/dep/enforcement/survey.html>

This advisory is intended to be a summary explanation of a DEP alert. It does not include all potentially applicable requirements. If you have any questions related to compliance with this alert, please contact the Enforcement number listed above.