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N.J.A.C. 7:1E-1.8; 7:4-8.8; 7:7A-2.1 and 5.19; 7:8-1.2, 1.6, and 3.10; 7:22-10.2; 7:26-2.9 and 2A.6; 7:36-3.2; and 7:38-5.2 and 5.3

Notice of Administrative Corrections

Take notice that the Department of Environmental Protection (Department) is making administrative corrections to its Discharges of Petroleum and Other Hazardous Substances rules, N.J.A.C. 7:1E, New Jersey Register of Historic Places Rules, N.J.A.C. 7:4, Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, Stormwater Management rules, N.J.A.C. 7:8, Financial

Assistance Programs for Environmental Infrastructure Facilities rules, N.J.A.C. 7:22, Solid Waste rules, N.J.A.C. 7:26, Green Acres Program rules, N.J.A.C. 7:36, and Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38, to correct cross-references. In 2015, the Department adopted amendments, repeals, and new rules that consolidated the Coastal Permit Program Rules, formerly codified at N.J.A.C. 7:7, and the Coastal Zone Management rules, formerly codified at N.J.A.C. 7:7E, into one chapter, the Coastal Zone Management Rules, codified at N.J.A.C. 7:7 (see 46 N.J.R. 1051(a), 47 N.J.R. 1392(a)). Through this notice, the Department is correcting references to the previous Coastal Permit Program Rules and Coastal Zone Management Rules in the rules identified above to reflect the codification of the referenced provisions in the consolidated Coastal Zone Management Rules and additionally correcting an error in the chapter name and citation for the Freshwater Wetlands Protection Act Rules in the New Jersey Register of Historic Places Rules. Finally, the Department is updating references to the “Wetlands and Coastal Resource and Development Policies” in the Financial Assistance Programs for Environmental Infrastructure Facilities rules to reflect the current title of what used to be known as the Coastal Resource and Development Policies rules; the Coastal Zone Management Rules.

Full text of the changed rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 1E

DISCHARGES OF PETROLEUM AND OTHER HAZARDOUS SUBSTANCES

SUBCHAPTER 1. GENERAL PROVISIONS

7:1E-1.8 Environmentally sensitive areas

(a) For the purposes of designing and implementing a DPCC and a DCR plan, pursuant to N.J.A.C. 7:1E-4, the following shall be considered environmentally sensitive areas:

1. Surface waters, including, without limitation, the following: large rivers, medium rivers, streams, creeks, ponds, lakes, and reservoirs as defined in N.J.A.C. [7:7E-4.1(b)] **7:7-12.1(b)**; canals as defined in N.J.A.C. [7:7E-3.8(a)] **7:7-9.8(a)**; estuaries, as defined in 33 U.S.C. § 1330(k); and bays, including without limitation open bays, semi-enclosed bays, and back bays, as defined in N.J.A.C. [7:7E-4.1(b)] **7:7-12.1(b)**;
2. (No change.)
3. Bay islands, as defined at N.J.A.C. [7:7E-3.21(a)] **7:7-9.21(a)**, and barrier island corridors, as defined at N.J.A.C. [7:7E-3.20(a)] **7:7-9.20(a)**;
4. Beaches, as defined in N.J.A.C. [7:7E-3.22(a)] **7:7-9.22(a)**;
5. Dunes, as defined in N.J.A.C. [7:7E-3.16(a)] **7:7-9.16(a)**;
6. Wetlands and wetland transition areas, including, without limitation, the following: freshwater wetlands and transition areas, as defined at N.J.A.C. 7:7A-1.4; wetlands, as defined in N.J.A.C. [7:7E-3.27(a)] **7:7-9.27(a)**; and wetland buffers and transition areas, as defined in N.J.A.C. [7:7E-3.28(a)] **7:7-9.28(a)**;
7. Critical wildlife habitat, as defined in N.J.A.C. [7:7E-3.39] **7:7-9.37(a)**;
8. Prime fishing areas, as defined in N.J.A.C. [7:7E-3.4(a)] **7:7-9.4(a)**;
9. Finfish migratory pathways, as defined in N.J.A.C. [7:7E-3.5(a)] **7:7-9.5(a)**;
10. Submerged vegetation habitat, as defined in N.J.A.C. [7:7E-3.6(a)] **7:7-9.6(a)**;
11. – 12. (No change.)
13. Habitat for Federal and State endangered or threatened plant and animal species, as defined in N.J.A.C. [7:7E-3.38(a)] **7:7-9.36(a)**;

14. (No change.)

15. Wild and scenic river corridors, as defined in N.J.A.C. [7:7E-3.46(a)] **7:7-9.44(a)**.

CHAPTER 4

THE NEW JERSEY REGISTER OF HISTORIC PLACES RULES

SUBCHAPTER 8. CONSULTATION WITH OTHER DEPARTMENT PROGRAMS AND OTHER NON-FEDERAL GOVERNMENT AGENCIES

7:4-8.8 Standards for an alternatives analysis for buildings meeting National Register of Historic Places criteria

(a) Where a proposed undertaking will have an adverse impact to a building(s), an alternatives analysis will be requested by the Department pursuant to the Coastal Zone Management Rules, N.J.A.C. [7:7A] **7:7**, Freshwater Wetlands Protection **Act** Rules, N.J.A.C. [7:7E] **7:7A**, The New Jersey Register of Historic Places Rules, at N.J.A.C. 7:4-7.2, or the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38, to analyze whether an alternative to the proposed undertaking is available, which would result in lesser impacts to buildings. Alternatives analyses submitted to the Department shall be sufficient to enable the identification and evaluation of all alternatives to a proposed project that will avoid or minimize the encroachment to the subject building(s) in the area of undertaking's potential impact. The standard for analyses sufficiency will be met when the analysis addresses the items listed below.

1. – 7. (No change.)

CHAPTER 7A

FRESHWATER WETLANDS PROTECTION ACT RULES

SUBCHAPTER 2. APPLICABILITY

7:7A-2.1 Jurisdiction; permit or waiver requirement

(a) – (c) (No change.)

(d) A permit issued under this chapter shall constitute the water quality certificate required under the Federal Act at 33 U.S.C. § 1341 for any activity covered by this chapter. If a discharge of dredged or fill material into waters of the United States, as defined at N.J.A.C. 7:7A-1.4, does not require a permit under this chapter but does require a water quality certificate, the Department shall use the standards and procedures in this chapter to determine whether to issue the water quality certificate, except in the New Jersey Coastal zone, as described at N.J.A.C. [7:7E]7:7-1.2(b). For a discharge of dredged or fill material in the Coastal zone, the Department shall use the standards and procedures in the [Coastal Permit Program rules and the] Coastal Zone Management rules, N.J.A.C. 7:7 [and 7:7E, respectively], to determine whether to issue a water quality certificate.

(e) – (g) (No change.)

SUBCHAPTER 5. ADOPTED GENERAL PERMITS

7:7A-5.19 General permit 19--Docks and piers

(a) – (b) (No change.)

(c) A dock or pier shall be elevated on pilings, so that it does not affect the hydrology of the surrounding wetland. In tidal wetlands that are subject to this chapter but not subject to the Department's coastal permitting program under N.J.A.C. 7:7 [or 7:7E], a dock or pier shall be elevated at least four feet above the ground surface.

(d) – (i) (No change.)

CHAPTER 8

STORMWATER MANAGEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

7:8-1.2 Definitions

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

"CAFRA Planning Map" means the geographic depiction of the boundaries for Coastal Planning Areas, CAFRA Centers, CAFRA Cores, and CAFRA Nodes pursuant to N.J.A.C.

[7:7E-5B.3] **7:7-13.16.**

"CAFRA Centers, Cores, or Nodes" means those areas within boundaries accepted by the Department pursuant to N.J.A.C. [7:8E-5B] **7:7-13.**

...

7:8-1.6 Applicability to major development

(a) – (e) (No change.)

(f) In case of conflict with the Coastal [Permit Program rules] **Zone Management Rules** at N.J.A.C. 7:7-[4.4(a)4]**26.1(e)**, the requirements of this chapter shall supersede.

SUBCHAPTER 3. REGIONAL STORMWATER MANAGEMENT PLANNING

7:8-3.10 Implementation of adopted regional stormwater management plan

(a) Once the regional stormwater management plan has been adopted pursuant to N.J.A.C. 7:8-3.9, implementation responsibilities are as follows:

1. The Department will use the adopted regional stormwater management plan as the basis for reviewing the stormwater management aspects of projects or activities regulated pursuant to **the** Coastal [Permit Program rules] **Zone Management Rules**, N.J.A.C. 7:7; the Freshwater Wetland Protection Act [rules] **Rules**, N.J.A.C. 7:7A; [the Coastal Zone Management rules, N.J.A.C. 7:7E;] the Flood Hazard Area Control Act [rules] **Rules**, N.J.A.C. 7:13; the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A; and the Dam Safety Standards, N.J.A.C. 7:20. The requirements of this chapter are considered to be the minimum stormwater standards. Additional requirements may be imposed as necessary under the respective programs.

2. – 4. (No change.)

CHAPTER 22

FINANCIAL ASSISTANCE PROGRAMS FOR ENVIRONMENTAL INFRASTRUCTURE
FACILITIES

SUBCHAPTER 10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR STATE
ASSISTED ENVIRONMENTAL INFRASTRUCTURE FACILITIES

7:22-10.2 Additional definitions

In addition to the words and terms defined at N.J.A.C. 7:22-3, 4, and 6 and [N.J.A.C.] 7:22A-1, the following words and terms are defined for the purposes of this subchapter:

...

"Wetlands" means those areas defined as wetlands under any of the following statutes and implementing rules as applicable:

1. – 2. (No change.)
3. Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., at N.J.S.A. 13:19-4, (Coastal Area boundaries); N.J.A.C. [7:7E-3.25] **7:7-9.27** (Wetlands); and
4. (No change.)

CHAPTER 26

SOLID WASTE

SUBCHAPTER 2. DISPOSAL

7:26-2.9 Environmental and Health Impact Statement requirements

- (a) – (b) (No change.)
- (c) The EHIS for all solid waste facilities other than solid waste facilities for which specific requirements are set forth in (d) below, shall contain the following:

- 1.-4. (No change.)

5. A discussion of the relationship of the proposed action to Federal, State, county, and local land-use plans, policies, and controls and environmental regulations. The discussion shall include the following:

i. (No change.)

ii. A description of how the project will conform or conflict with the objectives of any applicable Federal, State, or local land use and environmental requirements including, but not limited to, those affecting the following:

(1) – (3) (No change.)

(4) Wetlands, tidelands, and coastal zone areas as identified by the Department pursuant to the [Wetlands and Coastal Resource and Development Policies] **Coastal Zone Management Rules**, N.J.A.C. [7:7E] **7:7** and as identified on the U.S. Fish and Wildlife Services National Wetlands Inventory Maps;

(5) – (17) (No change.)

iii. (No change.)

6. – 13. (No change.)

(d) – (g) (No change.)

SUBCHAPTER 2A. ADDITIONAL, SPECIFIC DISPOSAL REGULATIONS FOR
SANITARY LANDFILLS

7:26-2A.6 Sanitary landfill environmental performance standards

(a) – (f) (No change.)

(g) All sanitary landfills regulated pursuant to N.J.A.C. 7:26-2A.1(c) shall be designed and constructed, in accordance with (h) below, to protect environmentally sensitive areas including, but not limited to, the following:

1. (No change.)

2. Wetland buffer areas as identified by the Department pursuant to the [Wetlands Coastal Resource and Development Policies] **Coastal Zone Management Rules, N.J.A.C. [7:7E] 7:7;**

3. – 12. (No change.)

(h) – (i) (No change.)

CHAPTER 36

GREEN ACRES PROGRAM RULES

SUBCHAPTER 3. LOCAL GOVERNMENT UNIT ACQUISITION PROJECTS: PROJECT ELIGIBILITY, CONDITIONS, AND LIMITATIONS

7:36-3.2 Ineligible applicants

(a) The following are ineligible to apply for Green Acres funding:

1. - 3. (No change.)

4. Any local government unit that does not currently provide, or have active plans to provide, public access to the waterfront and to [tidally-flowed] **tidally flowed** and dry sand areas subject to the Public Trust Doctrine, consistent with the requirements of the Coastal Zone Management Rules at N.J.A.C. [7.7E-8.11] **7:7-16.9** and governing law.

CHAPTER 38

HIGHLANDS WATER PROTECTION AND PLANNING ACT RULES

SUBCHAPTER 5. RARE, THREATENED, AND ENDANGERED SPECIES HABITAT EVALUATIONS

7:38-5.2 Rare, or Threatened or Endangered Animal Species Habitat Evaluation

(a) (No change.)

(b) The Department shall consider as suitable habitat any area that, based on the best available scientific information, provides all of the components necessary to sustain any rare, or threatened or endangered animal species, including, but not limited to, nesting or breeding areas, foraging or feeding areas, resting or roosting areas, hibernacula, or denning areas; or any area that is a part of a larger habitat area that provides all of the components necessary to sustain the rare, or threatened or endangered animal species in question based upon evaluation of the following:

1. (No change.)

2. The results of any animal species surveys done in consultation with the Department and in accordance with the survey procedures at N.J.A.C. [7:7E-3C.4(a)] **7:7-11.3(a)** and (b) (Coastal Zone Management);

3. – 4. (No change)

7:38-5.3 Rare or Endangered Plant Species Habitat Evaluation

(a) (No change.)

(b) The Department shall consider as habitat any area identified in the Natural Heritage Database as habitat for any rare or endangered plant species that provides all of the components necessary to sustain the plant species in question, based upon evaluation of the following:

1. (No change.)

2. The results of any plant species surveys conducted in consultation with the Department following the survey procedures at N.J.A.C. [7:7E-3C.4(a)] **7:7-11.3(a)** and (b) (Coastal Zone Management);

3.-4. (No change.)