

THE FRESHWATER WETLANDS PROTECTION ACT—Environment—1987 N.J. Sess. Law Serv. 156 (West).

On July 1, 1987, Governor Thomas H. Kean signed legislation to make New Jersey one of the first states in the nation to assume the federal permitting process for the statewide regulation of freshwater wetlands.¹ The “Freshwater Wetlands Protection Act”² (the Wetlands Act) will affect approximately 300,000 acres within the state,³ or 6.2% of the acreage of the nation’s most densely populated state.⁴ The legislation was the result of a four and one-half year struggle by environmentalists and legislators, and was only passed after reaching a compromise with builders and pro-development groups.

The legislative findings⁵ at the outset of the Act declare that the purposes of the freshwater wetlands are to purify ground and surface water, to protect adjoining lands from flood waters, and to serve as a crucial habitat area for endangered species and other wildlife.⁶ This section further declares that the state policy behind preserving the freshwater wetlands from unnecessary disturbance is that the public benefits from properly functioning wetlands outweigh the private values affected. The legislature determined that it was in the public interest to provide a program to regulate the use and development of the wetlands.⁷

The Department of Environmental Protection (DEP or Department) must consolidate the permit approval process as cur-

¹ While Michigan was the first state, currently Oregon is in the process of implementing a wetlands law. The New Jersey Department of Environmental Protection (DEP) was to have published the proposed regulations on December 21, 1987, with the comment period until February 20, 1988. Telephone interview with Lorraine Williams, State Program Coordinator, Office of Wetlands Protection, Environmental Protection Agency, Washington, D.C. (Dec. 11, 1987).

² Freshwater Wetlands Protection Act, Pub. L. No. 1987, ch. 156, 1987 N.J. Sess. Law Serv. 2 (West). This Act amends sections 5 and 6 of the Water Pollution Control Act by applying the federal permits standards to the state requirements. See *infra* text at note 12.

³ *Kean Signs Wetlands Bill, Lifts Building Moratorium*, The Star-Ledger (Newark, N.J.), July 2, 1987, at 1, col. 1.

⁴ New Jersey has 1,006 people per square mile, the highest of any state. U.S. Dep’t of Commerce, Bureau of the Census, Statistical Abstract of the United States 1986 (106th ed.) at 937.

⁵ N.J. STAT. ANN. § 13:9B-2 (West Supp. 1987).

⁶ *Id.*

⁷ *Id.*

rently regulated by the "Water Pollution Control Act,"⁸ the "Coastal Area Facility Review Act,"⁹ the "Water Quality Planning Act,"¹⁰ the "Flood Hazard Area Control Act,"¹¹ and make it consistent with the Federal Act.¹² This process is defined in the Act as the system of permit approval regulated by the U.S. Army Corps of Engineers. The DEP must act within one hundred eighty days after a complete application has been submitted. The DEP may require additional conditions of the applicant before approval is granted.¹³ Any of the fees received during the permit approval process must be used to further the purposes of this Act.

Freshwater wetlands are broadly defined by the Act as areas frequently saturated by water, supporting a prevalence of hydrophytic¹⁴ saturation. However, the definition narrows by requiring the DEP to designate a wetland by using a three parameter approach as set forth in the *Wetland Identification and Delineation Manual*¹⁵ developed by the United States Environmental Protection Agency (EPA). Such freshwater wetlands are to be classified into three types by the DEP: ordinary, intermediate, and exceptional resource value. Ordinary value wetlands are swales, isolated wetlands, detention facilities, or man-made drainage ditches. Intermediate value wetlands are those which are neither ordinary nor exceptional. Exceptional resource value wetlands are either freshwater wetlands discharging into FW-1 or FW-2 trout production waters¹⁶ and tributaries, or those present or

⁸ N.J. STAT. ANN. §§ 58:10A-1 to -37 (West 1982 & Supp. 1987).

⁹ N.J. STAT. ANN. §§ 13:19-1 to -21 (West 1979).

¹⁰ N.J. STAT. ANN. §§ 58:11A-1 to -11 (West 1982).

¹¹ N.J. STAT. ANN. §§ 58:16A-50 to -101 (West 1982 & Supp. 1987).

¹² Specifically, it is defined as "Section 404 of the 'Federal Water Pollution Control Act Amendments of 1972' as amended by the 'Clean Water Act of 1977' 33 U.S.C. § 1344 (1982) and the regulations adopted pursuant thereto." N.J. STAT. ANN. § 13:9B-3 (West Supp. 1987).

¹³ N.J. STAT. ANN. § 13:9B-5(c) (West Supp. 1987). These conditions might include requests to comply with the Water Pollution Control Act, N.J. STAT. ANN. §§ 58:10A-1 to -37 (West 1982 & Supp. 1987).

¹⁴ "Hydrophyte" is defined as "plant life adapted to growth and reproduction under periodically saturated root zone conditions during at least a portion of the growing season." *Id.*

¹⁵ The April 1, 1977 interim-final draft of the manual.

¹⁶ Described in the Water Quality Planning Act, N.J. STAT. ANN. §§ 58:11A-1 to -11 (West 1982); or the Water Pollution Control Act, N.J. STAT. ANN. §§ 58:10A-1 to -37 (West 1982 & Supp. 1987).

documented habitats occupied by endangered or threatened species.

A habitat is documented if the DEP finds that the habitat remains suitable for feeding, resting, or breeding by certain endangered and threatened species as identified in "The Endangered and Nongame Species Conservation Act,"¹⁷ or which appear on the federal endangered species list. The applicant may request that the wetland area not be classified as exceptional value if he can show that one or more requirements of the endangered or threatened species is not present. Notwithstanding the three area classification system, the DEP may additionally require restoration or creation of freshwater wetlands.¹⁸

A person who wishes to build in a freshwater wetlands area must apply for a freshwater wetlands permit, following the procedures set forth in the "Administrative Procedure Act."¹⁹ To obtain a permit, in addition to the names of the parties involved and the purpose of the project, the application must include a map and a preliminary site plan for the project. The applicant must also include verification that notice has been sent to the clerk, the environmental commission, and the planning board of the municipality in which the proposed activity would occur. In addition, the applicant must notify the landowners within two hundred feet of the site and the county planning board. Additional notices to persons who requested notification may be filed concurrently with the required notices of the "Municipal Land Use Law."²⁰ The applicant must also verify that the local newspaper has been notified, and submit a statement to the DEP detailing any possible adverse effects of the regulated activity.²¹

The DEP, after receiving the complete application and comments from the notified agencies and the general public, will issue a permit only if the regulated activity²² conforms to nine

¹⁷ N.J. STAT. ANN. §§ 23:2A-1 to -13 (West Supp. 1987).

¹⁸ N.J. STAT. ANN. § 13:9B-13 (West Supp. 1987) outlines this procedure.

¹⁹ N.J. STAT. ANN. §§ 52:14B-1 to -21 (West 1986 & Supp. 1987).

²⁰ N.J. STAT. ANN. §§ 40:55D-1 to -112 (West 1986).

²¹ The Act specifies six functions which may not be performed in freshwater wetlands: removing or disturbing the soil, disturbing the water table, dumping or filling with materials, pile driving, altering the character of the area by destroying plant life (i.e. cutting trees), and installing obstructions. N.J. STAT. ANN. § 13:9B-2 (West Supp. 1987).

²² *Id.*

factors. The first two factors require that there be no practicable alternative and that the area is either water-dependent and complies with the remaining factors or is not water-dependent and does not comply with the remaining factors. The remaining factors require that the development will result in minimal alteration of the aquatic ecosystem; will neither jeopardize the continued existence of any species as provided in "The Endangered and Nongame Species Conservation Act",²³ nor adversely modify a critical habitat as determined in the "Endangered Species Act of 1973";²⁴ will not contribute to any violation of an applicable state water quality standard; will not violate the standards and requirements of the "Water Pollution Control Act"²⁵ and the "Marine Protection, Research and Sanctuaries Act of 1972";²⁶ and will not contribute to a significant degradation of surface or ground waters. Most importantly, the final factor requires that the project is in the public interest as determined by this Act.²⁷

In addition to these nine factors, there is a rebuttable presumption that there is a possible alternative to any regulated activity which is not water-dependent and does not involve the freshwater wetlands area. The factors to consider in determining if an alternative exists are: existing technology, costs, logistics, and the possibility that the applicant could have obtained an alternate area.

The applicant can rebut this presumption by demonstrating several requirements. These include that the basic purpose of the project could not be accomplished by utilizing a different site; that alternative designs would not result in a less harmful impact on the aquatic ecosystem; and that the applicant has reasonably attempted to remove constraints to project alternatives. In addition, the applicant must demonstrate a compelling public need for the project which outweighs the need to protect the wetlands area, or that permit denial would inflict an extraordinary hardship on the applicant brought on by the peculiar nature of the property.

²³ N.J. STAT. ANN. §§ 23:2A-1 to -13 (West Supp. 1987).

²⁴ 16 U.S.C. §§ 1531 to 1543 (1982).

²⁵ N.J. STAT. ANN. §§ 58:10A-1 to -37 (West 1982 & Supp. 1987).

²⁶ 33 U.S.C. §§ 1401 to 1445 (1982).

²⁷ N.J. STAT. ANN. § 13:9B-11 (West Supp. 1987).

Factors for the DEP to consider in determining whether the proposed project is in the public interest include: the interest of the property owners in economic development and the value of that development to the area; the interest of the public in preserving natural resources, wildlife, and public health; the extent of the private and public need for the project; the practicability of alternative methods such as mitigation to accomplish the project; the permanence of the detrimental effects of the project on the other uses for the property; and the amount and quality of the wetlands to be disturbed. Once all these factors have been considered, the DEP decides whether or not to issue the permit. If a permit is issued, the DEP shall modify or waive requirements of a transition area²⁸ to provide access to the project site.

The DEP requires that certain conditions and appropriate measures are carried out to minimize the disturbance of the wetlands. If necessary, the Department may require restoration or creation of freshwater wetlands on or offsite.²⁹ The proposal of a restoration or creation should be conducted in consultation with the EPA.

If the DEP determines that restoration or creation onsite is not feasible, after consulting with the EPA, the DEP may consider creating new wetlands offsite with restrictions on future development, or permitting the applicant to make a monetary deposit at the Wetlands Mitigation Bank. The deposit shall be equivalent to the lesser of the cost of purchasing and restoring degraded wetlands, resulting in an equal ecological value to those lost; and the cost of purchasing property and creating new freshwater wetlands of equal ecological value to those lost.³⁰ The DEP shall permit the applicant to donate land as part of the deposit to the Mitigation Bank only if there are no other feasible alternatives.

²⁸ A transition area is defined by the Act as an area adjacent to the freshwater wetland which serves as a buffer area. This area is a vital part of the wetlands ecosystem because it helps to lessen the impact on the wetland. N.J. STAT. ANN. § 13:9B-3 (West Supp. 1987).

²⁹ The EPA has stated a "strong concern over the scientific uncertainties of artificially-created wetlands . . . [because] we simply do not have the scientific ability to certify what techniques will assume the success of such man-made creations." Summary of Final Determination of Attleboro Mall pursuant to Section 404(c) (May 13, 1986) (as reported by Jennifer Joy Wilson, EPA Assistant Administrator for External Affairs).

³⁰ *Id.*

The Wetlands Mitigation Bank will be established in the executive branch, but it will be independent and governed by the Wetlands Mitigation Council (Council). The Council is composed of seven members appointed by the governor with the advice and consent of the senate who represent the DEP, the environmentalists, the academics, and the developers. Each member may be re-appointed or removed for cause by the governor. The members serve without pay, and may adopt any rules or regulations necessary to fulfill their duties.

The Council is responsible for the outlay of funds from the Mitigation Bank to support the mitigation projects. The Council may purchase land to preserve freshwater wetlands or restore degraded freshwater wetlands on privately held land. The Council may contract with appropriate agencies or nonprofit organizations to aggregate mitigation actions. Such contracts may be reviewed by the EPA. The Council may also transfer any restricted lands or funds to provide for the mitigation sites for restoration of freshwater wetlands, freshwater wetlands preserves, or mitigation research.

In addition to the possibility of making a deposit at the Mitigation Bank, any project sites near freshwater wetlands of intermediate or exceptional resource value shall have transition areas. The purposes of the transition areas³¹ are to serve as buffer zones in times of flooding, and to serve as a habitat for animals who depend on freshwater wetlands. The requirement of establishing transition areas will not take effect until July 1, 1989.

The width of these transition areas varies depending upon the type of wetland.³² Exceptional resource value wetlands will have a boundary of seventy-five to one hundred-fifty feet, and intermediate value wetlands will have a boundary of twenty-five to fifty feet. The minimum footage requirement of these boundaries must be reduced to the minimum distances if the waiver would be required for the applicant to prevent substantial hardship due to the peculiar characteristics of the property or there would be no substantial impact on the freshwater wetland.

Additionally, the DEP may eliminate any portion or all of the transition area to allow a storm water or linear development pro-

³¹ N.J. STAT. ANN. § 13:9B-16(a) (West Supp. 1987).

³² *Id.* § 13:9B-16(b).

ject,³³ provided there are no other alternatives. If the waiver of the transition area is permitted, transition area averaging will not be required to compensate for the reduction of the transition area.³⁴ If the waiver is not permitted, the average transition area will be based on the maximum footage requirements as set forth in the Act.³⁵

Any applicant planning to build in a wetlands area which requires a transition area may request a letter of interpretation from the DEP. The DEP must issue the letter within thirty days after receiving the request, unless additional information is required. This additional information may consist of an onsite inspection subject to the approval of the DEP. If such information is required, the DEP has forty-five days after receiving the request to issue the letter of interpretation. If the applicant does not receive a response from the DEP within these deadlines, he may not assume that his proposed activity site is not in a freshwater wetland. The EPA may review any letter of interpretation which determines that the area is not within a freshwater wetland.

Waiver of the transition area requirement may only be approved if the reduction would not adversely affect the wetlands or if denial of the waiver to the applicant would result in extraordinary hardship because of the peculiar circumstances of the property.³⁶ The waiver would be approved only if the average transition area of the averaging plan is not less than one hundred feet. The department must act upon an application for a waiver within ninety days after a complete application has been submit-

³³ "Linear development" refers to any utility uses of the land, including pipelines, transmission lines, and their rights-of-way. Roads and railroads are also included with any lines which function to connect two points. Office, commercial, or residential buildings are not included. There are seven factors to consider to determine whether or not the proposed project is in the public interest. N.J. STAT. ANN. § 13:9B-11 (West Supp. 1987).

³⁴ Transition area averaging is a plan to substitute the loss on a square footage basis of one portion of the transition area for gain in another part of the transition area. If the transition area averaging plan submitted by the applicant meets all the purpose requirements of a transition area (e.g., acting as a buffer in flooding), then the applicant has the right to determine which transition areas may be reduced or partially eliminated. However, the transition areas around freshwater wetlands of exceptional value may not be reduced below seventy-five feet except to provide access to the proposed project site. N.J. STAT. ANN. § 13:9B-12 (West Supp. 1987).

³⁵ *Id.* § 13:9B-16(b).

³⁶ *Id.* § 13:9B-18.

ted. This ninety day requirement may be modified by the time periods previously mentioned³⁷ if the application also involves a regulated activity in a wetland.

Normal construction activity is permitted on lands adjacent to the transition area. However, unless a transition area waiver meets the above criteria,³⁸ the following activities are prohibited in the transition area: any disturbance, removal or excavation of the soil; filling with or dumping of any materials; building of structures, except for those one hundred-fifty square feet or less; installing of pavement; and destroying plant life which would change the current vegetation pattern.

To pursue one of these prohibited activities within one hundred-fifty feet of an exceptional resource value freshwater wetland, or within fifty feet of an intermediate value wetland, a waiver for a transition area must be requested from the DEP. The waiver application must include a subdivision map or a preliminary site plan of the area of proposed activity, with a written description of the activity. Notice must be sent to the environmental commission,³⁹ planning board and clerk of the municipality, and to the county planning board where the activity will occur. Verification that notice has been sent must also be included, along with a statement outlining any possible detrimental effects of the proposed activity on the freshwater wetlands and any necessary steps to lessen those effects. If a transition area averaging plan is required, it too must be included.

If the application for a freshwater wetlands permit is denied by the DEP, the owner of the affected property may request that the denial be considered when the property is assessed for property tax purposes. The applicant may also request an administrative hearing on a decision made by the DEP to deny or issue a permit. The hearing will be conducted by an administrative law judge as set forth in the "Administrative Procedure Act." The Commissioner of the DEP (Commissioner) will reject, modify or affirm the decision within forty-five days, and this action will be considered the final agency action. The action by the Commis-

³⁷ *Id.* § 13:9B-5.

³⁸ *Id.* § 13:9B-18.

³⁹ The environmental commission is defined as "a municipal advisory board created pursuant to Pub. L. No. 1968 Ch. 245 [N.J. STAT. ANN. § 40:56A-1 -12 (West Supp. 1987)]." N.J. STAT. ANN. § 13:9B-3 (West Supp. 1987).

sioner will be subject to judicial review as established by the court rules.⁴⁰

When the Commissioner finds that someone is in violation of any regulation or provision of the Act, he may require compliance with the Act by issuing an order;⁴¹ initiate a civil action;⁴² levy a civil administrative penalty;⁴³ or ask the Attorney General to initiate a criminal action.⁴⁴ Any of these remedies may be used in combination with another. When the Commissioner issues an order requiring compliance with the Wetlands Act, the order must state the provisions or regulations violated, the act committed, a requirement of compliance with the violated provisions, a requirement restoration of the transition area or the freshwater wetland which is violated, and notification to the violator of his right to a hearing.⁴⁵

The Commissioner may institute a civil action for relief from violation of any provisions of the Wetlands Act.⁴⁶ The action shall be initiated in the New Jersey Superior Court, and the relief requested may include: a permanent or temporary injunction, various assessments on the violator, or an order requiring the restoration of the site to the maximum extent possible. The assessments would be for costs incurred in the survey or investigation to establish the violation, reasonable costs for bringing the action, costs incurred in correcting the violation, and compensatory damages based on the destruction of aquatic wildlife or actual damages caused by the violation. These assessments shall be paid to the Treasurer of New Jersey, unless the court orders specific compensatory damages be paid to the injured party. The DEP has authority to enter any premises or property to conduct inspections and determine compliance with the Act.

The Commissioner may assess a maximum of \$10,000 per violation as a civil administrative penalty with each day of the violation considered an additional offense.⁴⁷ The amount assessed

⁴⁰ See N.J. CT. R. 2:5-1.

⁴¹ N.J. STAT. ANN. § 13:9B-21(b) to -21(e) (West Supp. 1987).

⁴² *Id.* § 13:9B-21(c).

⁴³ *Id.* § 13:9B-21(d).

⁴⁴ *Id.* § 13:9B-21(f).

⁴⁵ *Id.* § 13:9B-21(b).

⁴⁶ *Id.* § 13:9B-21(c).

⁴⁷ *Id.* § 13:9B-21(d).

must fall within a regulated range as established by the Commissioner, and no amount may be assessed until the violator has been notified by personal service or certified mail.⁴⁸ Within twenty days after the receipt of the notice, the party must deliver a written request for a hearing to the Commissioner. After the hearing, during which there must be a finding of a violation and assessment of a fine, a final order may be sent by the Commissioner. If no hearing was requested, the notice becomes a final order after the twenty days have elapsed. The fine must be paid once the notice becomes a final order or the final order is issued. The Commissioner may compromise the civil administrative penalty once the violator posts a performance bond, or if the Commissioner establishes subsequent regulations.

A person who violates any provision of the Act, including court or administrative orders issued pursuant to it, or fails to pay any penalty assessed in accordance with it, shall be subject to a civil penalty not to exceed \$10,000.00 per day of violation.⁴⁹ This penalty may be collected in a summary proceeding brought in New Jersey Superior Court in accordance with the penalty enforcement law.⁵⁰

A negligent or willful violation of the Wetlands Act will constitute a crime of the fourth degree. Upon conviction, the violator shall be subject to a penalty of not more than \$25,000 nor less than \$2,500 per day of violation.⁵¹ Anyone convicted of making a false statement or representation, or who tampers with a required monitoring device shall be subject to a penalty which cannot exceed \$10,000. A notice of violation of the Act shall also be recorded on the property deed and with the Clerk of the Superior Court. This notice shall remain until the Commissioner orders the notice removed.

If the Commissioner determines that restoration of the site would cause further harm, the DEP may issue an "after the fact" permit for regulated activity which already occurred. This type of permit may only be issued if a number of conditions are met. First, an assessment for damages must be made. The restoration or creation of freshwater wetlands elsewhere is also required. In

⁴⁸ *Id.*

⁴⁹ *Id.* § 13:9B-21(e).

⁵⁰ N.J. STAT. ANN. § 2A:58-1-9 (West 1987).

⁵¹ N.J. STA. ANN. § 13:9B-21(f) (West Supp. 1987).

addition, an opportunity for public hearing must be made available, and the reasons for the granting of the permit have been published in a general circulation newspaper for the region and the New Jersey Register.

A person who has a recorded interest in the affected land may file an action to determine whether the denial or the issuance of the permit is a taking of property without proper compensation. If the court determines that the denial or issuance of the permit is a taking, the court gives the DEP the option to compensate the owner of the property for the full amount by condemning the property in accordance with the "Eminent Domain Act of 1971,"⁵² or to modify its action affecting the property so as to lessen the detrimental effects on the property.

The DEP shall consider all national permits approved by the Army Corps under the Federal Act⁵³ as of November 13, 1986 for adoption as general permits. Any general permit shall be issued for freshwater wetlands activity provided it meets three requirements: the activity cannot result in the substantial modification or loss of more than one acre; the wetland cannot be part of a surface water tributary system which would discharge into a pond, river, stream, or inland lake; and the activity also cannot take place in an EPA designated "priority" wetland.

Additional general permits may be issued by the DEP for certain categories of activities if it determines that the activities will have only minor effects on the wetlands, will conform to the Act's purposes, and will not violate the Federal Act.⁵⁴ These determinations may only be found after an opportunity for public hearing has been given, and public notice has been provided. The categories for additional general permits include, or any reconstruction or maintenance of public utilities; roads, or the maintenance of any lawfully existing drainage or irrigation ditches; any improvements to residential dwellings, provided that it is a cumulative surface area of less than seven hundred-fifty square feet of fill; any mosquito management activities; activities with little significant adverse environmental impact; and the maintenance of storm water management facilities and structures

⁵² N.J. STAT. ANN. §§ 20:3-1 to -50 (West Supp. 1987).

⁵³ See *supra* note 12.

⁵⁴ *Id.*

or buildings. In addition, general permits shall be issued for regulated activities approved by the Army Corps which already received a grant waiver according to the "National Environmental Policy Act of 1969."⁵⁵ Any requests for renewal of the permits are made to the DEP and state or federally funded roads developed in accordance with the "National Environmental Policy Act of 1969"⁵⁶ and the Federal Act,⁵⁷ provided the DEP does not mandate transition areas as a requirement for renewal of the permit. There is a general requirement for all activities for which permits are issued that there be no disturbance of additional freshwater wetlands.

The DEP may also attach special conditions to a general permit, in order to secure compliance with the Federal Act.⁵⁸ It shall review these general permits every five years. If the permits are not reissued or modified within five years after their publication in the New Jersey Register, they will expire. The review process shall include an opportunity for a public hearing. Any person who wishes to engage in activity governed by the general permit must give the DEP written notice at least thirty working days before work commences. Thirty days after the DEP is notified, it must notify the person as to whether or not an individual permit is also required.

The DEP may issue an emergency temporary freshwater wetlands permit if there would be a severe loss of property or threat to life before a permit could be issued by normal procedures. The emergency permit must follow the standards set forth in the Act as closely as possible, and also be limited to a time period no greater than ninety days. The freshwater wetlands should be restored within ninety days, but if restoration cannot be accomplished, the time limit may be extended. The emergency permit may be issued orally, provided that a written permit is forthcoming within five days. Notice must also be sent within ten days of issuance of the emergency permit. This emergency permit may be withdrawn at any time without a hearing if the DEP determines that it is necessary to do so to protect the environment or human health.

⁵⁵ 42 U.S.C. §§ 4321 to 4370(a) (1982).

⁵⁶ *Id.*

⁵⁷ *See supra* note 12.

⁵⁸ *Id.*

The Act establishes a series of deadlines for the DEP in order to implement its provisions. By May 1, 1988, and after a comment period of sixty days, the DEP shall adopt any regulations necessary to implement this Act, including the general permits.⁵⁹ By July 1, 1988, the DEP must adopt the list of hydrophytes⁶⁰ consistent with the regions of New Jersey. The DEP must also develop current freshwater wetlands maps and shall make these maps and inventories available to the municipal and county clerks. By January 1, 1988, the DEP should have already distributed to the clerks of the municipalities the National Wildlife inventory maps which were prepared by the U.S. Fish and Wildlife Service.⁶¹ These clerks shall put a notice into a newspaper of local circulation that the maps are available for inspection.

The DEP should work to secure the assumption of the jurisdiction of the permits from the Army Corps, and attempt to do so by July 1, 1988. Once the DEP does secure jurisdiction, it should attempt to use similar forms as are currently used by the Army Corps.

There are several projects which are exempt from the provisions of this Act. These include any project which received preliminary site plan or subdivision approval prior to July 1, 1988, all applications for subdivision or preliminary site plans made prior to June 8, 1987,⁶² and all projects having permit applications approved by the Army Corps of Engineers before July 1, 1988.⁶³ In addition, the Act provides an exemption for all activities involving normal farming and ranching, approved harvesting of forest products, and any coastal wetlands.⁶⁴ Activities within the jurisdiction of the Hackensack Meadowlands Development

⁵⁹ N.J. STAT. ANN. § 13:9B-23 (West Supp. 1987).

⁶⁰ See *supra* note 14.

⁶¹ According to the proposed regulations, the United States Fish and Wildlife Service National Wetlands inventory maps should only be used to determine the approximate location of freshwater wetlands because these maps have been deemed "unreliable" for the purpose of determining the actual wetlands boundary (as proposed in 19 N.J. Reg. 2336 if approved, to be codified in N.J. ADMIN. CODE tit. 7, § 7A-2.4(c), b, ii.

⁶² This is the date of the governor's building moratorium. *Governor Orders 'Freeze' in Wetlands*, The Star-Ledger (Newark, N.J.), June 9, 1987, at 1, col. 1.

⁶³ N.J. STAT. ANN. § 13:9B-4 (West Supp. 1987).

⁶⁴ These coastal wetlands are already protected by "The Wetlands Act of 1970," N.J. STAT. ANN. §§ 13:9A-1 to -10 (West 1979 & Supp. 1987).

Commission⁶⁵ and the Pinelands Commission⁶⁶ require a permit for the discharge of fill materials as mandated by the Federal Act.⁶⁷ The Pinelands Commission retains the power to regulate any activity within its jurisdiction more stringently.

By July 1, 1988, the DEP shall prepare a report to send to the governor and the legislature. It shall describe the success or failure of the mitigation measures, and recommend as how to ensure long term protection of the wetlands. The legislature intends that the Wetlands Act shall be the statewide freshwater wetlands protection law. No county or municipality may regulate freshwater wetlands.

This Act favors the conservation of the freshwater wetlands, protecting and preserving them from undesirable or unnecessary alteration. Whether this goal is achieved will ultimately rely on the resolve, or lack of it, of the DEP and the legislature.

Henry M. Ogden

⁶⁵ This body was established by the "Hackensack Meadowlands Reclamation and Development Act," N.J. STAT. ANN. §§ 13:17-1 to -86 (West 1979 & Supp. 1987).

⁶⁶ The commission was created by the "Pinelands Protection Act," N.J. STAT. ANN. §§ 13:18A-1 to -49 (West Supp. 1987).

⁶⁷ See *supra* note 12.