

Draft Freshwater Wetlands Act

1. Title

This act shall be known and may be cited as the "Freshwater Wetlands Protection Act."

2. Legislative findings

Whereas, freshwater wetlands protect and preserve drinking water supplies by serving to purify surface water and groundwater resources; that freshwater wetlands provide a natural means of flood and storm damage protection, and thereby prevent the loss of life and property through the absorption and storage of water during high runoff periods and the reduction of flood crests; that freshwater wetlands serve as a transition zone between dry land and water courses, thereby retarding soil erosion; that freshwater wetlands provide essential breeding, spawning, nesting, and wintering habitats for a major portion of the State's fish and wildlife, including migrating birds, endangered species, and commercially and recreationally important wildlife; and that freshwater wetlands maintain a critical baseflow to surface waters through the gradual release of stored flood waters and groundwater, particularly during drought periods.

Whereas, that while the State has acted to protect tidal wetlands, it has not, except indirectly, taken equally vigorous action to protect the State's freshwater wetlands; that in order to advance the public interest in a just manner the rights of persons who own or possess real property affected by this act must be fairly recognized and balanced with environmental interests; and that the public benefits arising from the natural functions of freshwater wetlands, and the public harm from freshwater wetland losses, are distinct from and may exceed the private value of wetland areas.

Whereas, in this State, where pressures for commercial and residential development define the pace and pattern of land use, it is in the public interest to establish a program for the systematic review of activities in and around freshwater wetland areas designed to provide predictability in the protection of freshwater wetlands; that it shall be the policy of the State to preserve the purity and integrity of freshwater wetlands from random, unnecessary or undesirable alteration or disturbance; and that to achieve these goals it is important that the State expeditiously assume the freshwater wetlands permit jurisdiction currently exercised by the United States Army Corps of Engineers pursuant to the Federal Act and implementing regulations.

3. Definitions

As used in this act:

"Secretary" means the Secretary of the Department of Natural Resources and Environmental Control;

"Department" means the Department of Natural Resources and Environmental Control;

"Federal Act" means 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) and the regulations adopted pursuant thereto;

"Freshwater wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; provided, however, that the department, in designating a wetland, shall use the 3-parameter approach (i.e. hydrology, soils and vegetation) enumerated in the "Wetland Identification And Delineation Manual" developed by the United States Environmental Protection Agency, and any subsequent amendments thereto;

"Freshwater wetlands permit" means a permit to engage in a regulated activity issued pursuant to this act;

"Hydrophyte" means plant life adapted to growth and reproduction under periodically saturated root zone conditions during at least a portion of the growing season;

"Linear development" means land uses such as roads, drives, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, the basic function of which is to connect two points. Linear development shall not mean residential, commercial, office, or industrial buildings;

"Person" means an individual, corporation, partnership, association, the State, municipality, commission or political subdivision of the State or any interstate body;

"Regulated activity" means any of the following activities in a freshwater wetland:

(1) The removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind;

(2) The drainage or disturbance of the water level or water table;

(3) The dumping, discharging or filling with any materials;

(4) The driving of pilings;

(5) The placing of obstructions;

(6) The destruction of plant life which would alter the character of a freshwater wetland, including the cutting of trees;

"Transition area" means an area of land adjacent to a freshwater wetland which minimizes adverse impacts on the wetland or serves as an integral component of the wetlands ecosystem.

4. Activities exempt from permit requirements

The following are exempt from the requirement of a freshwater wetlands permit and transition area requirements unless the United States Environmental Protection Agency's regulations providing for the delegation to the state of the federal wetlands program conducted pursuant to the Federal Act require a permit for any of these activities, in which case the department shall require a permit for those activities so identified by that agency:

a. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food and fiber, or upland soil and water conservation practices; construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches; construction or maintenance of farm roads or forest roads constructed and maintained in accordance with best management practices to assure that flow and circulation patterns and chemical and biological characteristics of freshwater wetlands are not impaired and that any adverse effect on the aquatic environment will be minimized;

b. Normal harvesting of forest products in accordance with a forest management plan approved by the State Forester;

c. Areas regulated as a coastal wetland pursuant to

5. Consolidation of other regulatory programs

a. The department shall consolidate the processing of wetlands related aspects of other regulatory programs which affect activities in freshwater wetlands so as to provide a timely and coordinated permit process consistent with the Federal Act.

b. Within 60 days after the department receives comment on a complete application for a permit from the United States Environmental Protection Agency, or upon receipt of notice from the United States Environmental Protection Agency that no comment will be forthcoming, the department may hold a public hearing on the application for a permit. If such a hearing is held, it shall be in the county wherein the freshwater wetland is located whenever practicable. The department may issue or deny a permit without a public hearing, unless there is a significant degree of public interest in the application as manifested by written requests for a hearing within 20 days after the publication of notice of the permit application in the Bulletin of the department.

c. The department shall issue or deny a permit within 90 days of receipt of comments, or notice that comments will not be forthcoming, from the United States Environmental Protection Agency, or within 180 days of submittal of a complete application, whichever is later. Until the State assumes the implementation of the Federal Act, the department shall issue or deny a permit within 180 days of submittal of a complete application, except as may otherwise be provided by the Federal Act. The department shall review an application for a permit for completeness, and make any necessary requests for further information, within 30 days of receipt of the application for a permit; provided, however, that this deadline shall not apply to requests for further information

made by the department on the basis of comments received from the United States Environmental Protection Agency. If the department issues the permit, the department shall send notice thereof to the applicant. If the department denies, or requests a modification of, the complete permit application, the department shall send notice thereof to the applicant.

6. Freshwater wetlands classification system

The department shall develop a system for the classification of freshwater wetlands based upon criteria which distinguish among wetlands of exceptional resource value, intermediate resource value, and ordinary resource value.

7. Letter of interpretation to establish location of proposed activity and boundaries

a. A person proposing to engage in a regulated activity in a freshwater wetland or request from the department a letter of interpretation to establish that the site of the proposed activity is located in a freshwater wetland.

b. Within 20 days after receipt of a request for a letter of interpretation, the department may require the submission of any additional information necessary to issue the letter of interpretation.

c. If no additional information is required, the department shall issue a letter of interpretation within 30 days after receiving the request.

d. If additional information is required the department shall issue a letter of interpretation within 45 days after receipt of the information.

e. The department may require an applicant for a letter of interpretation to perform and submit to the department an onsite inspection to determine or verify the general location of the freshwater wetland boundary and the applicable transition area. This inspection shall be subject to approval and verification by the department. If the department determines that onsite inspection by the department is necessary, the department shall make the inspection. If an on-site inspection is required by the department the time specified in this section for issuance of the letter of interpretation shall be extended by 45 days.

f. If a person requesting the letter has not made a reasonable good faith effort to provide the department with information sufficient to make a determination, the department shall issue a letter of interpretation requiring the application for a freshwater wetlands permit or transition area waiver.

g. A person applying for a letter of interpretation may also submit a report of an onsite freshwater wetlands delineation and receive within the time specified in this section a letter of interpretation verifying the actual freshwater wetlands and transition area boundaries.

h. The department may charge a fee not to exceed the costs for reviewing the information submitted, conducting on-site inspections pursuant to subsection e. of this section, and for issuing a letter of interpretation.

i. Any person who requests a letter of interpretation pursuant to the provisions of this act and does not receive a response from the department within the deadlines imposed in this section shall not be entitled to assume that the site of the proposed activity which was the subject of the request for a letter of interpretation is not in a freshwater wetland. A person who receives a letter of interpretation pursuant to this section shall be entitled to rely on the determination of the department, except as provided in subsection j. of this section.

j. The department shall transmit to the United States Environmental Protection Agency a copy of any letter of interpretation determining that the site of a proposed regulated activity is not in a freshwater wetland. Any letter of interpretation which determines that the site of a proposed regulated activity is not in a freshwater wetlands shall be subject to review, modification, or revocation by the United States Environmental Protection Agency.

k. The department shall publish in the bulletin of the department a list indicating the status of each application for a permit submitted to the department pursuant to the provisions of this act.

8. Application for permit; fee; procedure; contents; findings

a. A person proposing to engage in a regulated activity shall apply to the department for a freshwater wetlands permit, for a fee not to exceed the cost of reviewing and processing the application, and on forms and in the manner prescribed by the Secretary. The application shall include the name and address of the applicant, the purpose of the project, the names and addresses of all owners of property adjacent to the proposed project, and at least the following:

(1) A preliminary site plan or subdivision map of the proposed development activities, or another map of the site if no preliminary site plan or subdivision map exists, and a written description of the proposed regulated activity, the total area to be modified, and the total area of the freshwater wetland potentially affected;

(2) Verification that a notice has been forwarded to the clerk of the municipality in which the proposed regulated activity will occur, the planning board of the county in which the proposed regulated activity will occur, landowners within 200 feet of the site of the proposed regulated activity, and to all persons who requested to be notified of proposed regulated activities. (3) Verification that notice of the proposed activity has been published in a newspaper of local circulation.

(4) A statement detailing any potential adverse environmental effects of the regulated activity and any measures necessary to mitigate those effects, and any information necessary for the department to make a finding pursuant to subsection b. of this section.

b. The department, after considering the comments of the county and municipality wherein the regulated activity is to take place, federal and State agencies of competent jurisdiction, other affected municipalities and counties, and the general public, shall issue a freshwater wetlands permit only if it finds that the regulated activity:

(1) Is water-dependent or requires access to the freshwater wetlands as a central element of its basic function, and has no practicable alternative which would not involve a freshwater wetland or which would have a less adverse impact on the aquatic ecosystem, and which would not have other significant adverse environmental consequences, and also complies with the provisions of paragraphs 3-9 of this subsection; or

(2) Is nonwater-dependent and has no practicable alternative as demonstrated pursuant to section 10 of this act, which would not involve a freshwater wetland or which would have a less adverse impact on the aquatic ecosystem, and which would not have other significant adverse environmental consequences; and

(3) Will result in minimum feasible alteration or impairment of the aquatic ecosystem including existing contour, vegetation, fish and wildlife resources, and aquatic circulation of the freshwater wetland; and

(4) Will not jeopardize the continued existence of species listed pursuant to the State Endangered Species list or which appear on the federal endangered species list, and will not result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the United States Department of the Interior or the Secretary of the United States Department of Commerce as appropriate to be a critical habitat under the Endangered Species Act of 1973, 16 U.S.C. '1531 et al.; and

(5) Will not cause or contribute to a violation of any applicable State water quality standard; and

(6) Will not cause or contribute to a violation of any applicable toxic effluent standard or prohibition imposed pursuant to the Water Pollution Control Act, P.L. 1977, c. 74 (C.58:10A-1 et seq.); and

(7) Will not violate any requirement imposed by the United States government to protect any marine sanctuary designated pursuant to the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. '1401 et al.); and

(8) Will not cause or contribute to a significant designation of ground or surface waters; and

(9) Is in the public interest as determined pursuant to section 11 of this act, is necessary to realize the benefits derived from the activity, and is otherwise lawful.

9. Factors used to determine if activity is in public interest

In determining whether a proposed regulated activity in any freshwater wetland is in the public interest, the department shall consider the following:

- a. the public interest in preservation of natural resources and the interest of the property owners in reasonable economic development;
- b. the relative extent of the public and private need for the proposed regulated activity;
- c. where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods, including mitigation, to accomplish the purpose of the proposed regulated activity;
- d. the extent and permanence of the beneficial or detrimental effects which the proposed regulated activity may have on the public and private uses for which the property is suited;
- e. the quality of the wetland which may be affected and the amount of freshwater wetlands to be disturbed;
- f. the economic value, both public and private of the proposed regulated activity to the general area; and
- g. the ecological value of the freshwater wetlands and probable impact on public health and fish and wildlife.

10. Departmental waiver

If a freshwater wetlands permit is approved and issued pursuant to the provisions of this act the department shall waive or modify the requirement for a transition area to the extent required to provide access to the site of the approved regulated activity.

11. Permit; conditions; creation or restoration of wetlands, or contribution to wetlands mitigation bank

- a. The department shall require as a condition of a freshwater wetlands permit that all appropriate measures have been carried out to mitigate adverse environmental impacts, restore vegetation, habitats, and land and water features, prevent sedimentation and erosion, minimize the area of freshwater wetland disturbance and insure compliance with the Federal Act and implementing regulations.
- b. The department may require the creation, enhancement or restoration of an area of freshwater wetlands of equal ecological value to those which will be lost, and shall determine whether the creation, enhancement or restoration of freshwater wetlands is conducted onsite or offsite. The department shall accept and evaluate a proposal to create, enhance or restore an area of freshwater wetlands only after the department has evaluated the permit application for which the

proposal is made, and shall evaluate the proposal to create, enhance or restore an area of freshwater wetlands independently of the permit application. The department's evaluation of a proposal to create, enhance or restore an area of freshwater wetlands shall be conducted in consultation with the United States Environmental Protection Agency.

c. If the department determines that the creation, enhancement or restoration of freshwater wetlands onsite is not feasible, the department, in consultation with the United States Environmental Protection Agency, may consider the option of permitting the creation of freshwater wetlands or the enhancement or restoration of degraded freshwater wetlands offsite on private property with the restriction on these freshwater wetlands of any future development; the protection of transition areas or upland areas offsite, on private property, that are deemed by the department to be valuable for the protection of a freshwater wetlands ecosystem, with the restriction on these areas of any future development; or the making of a contribution to the Wetlands Mitigation Bank. The contribution shall be equivalent to the lesser of the following costs: (1) purchasing and enhancing or restoring existing degraded freshwater wetlands, resulting in preservation of freshwater wetlands of equal ecological value to those which are being lost; or (2) purchase of property and the cost of creation of freshwater wetlands of equal ecological value to those which are being lost. The applicant may also donate land as part of the contribution if the Wetlands Mitigation Council determines that the donated land has potential to be a valuable component of the freshwater wetlands ecosystem. The department shall permit the donation of land as a part of the contribution to the Wetlands Mitigation Bank only after determining that all alternatives to the donation are not practicable or feasible.

12. Transition areas; purposes; width

a. There shall be transition areas adjacent only to freshwater wetlands of exceptional resource value and of intermediate resource value. A transition area shall serve as:

(1) An ecological transition zone from uplands to freshwater wetlands which is an integral portion of the freshwater wetlands ecosystem, providing temporary refuge for freshwater wetlands fauna during high water episodes, critical habitat for animals dependent upon but not resident in freshwater wetlands, and slight variations of freshwater wetland boundaries over time due to hydrologic or climatologic effects; and

(2) A sediment and storm water control zone to reduce the impacts of development upon freshwater wetlands and freshwater wetlands species.

b. The width of the transition area shall be determined by the department as follows:

(1) No greater than 150 feet nor less than 75 feet for a freshwater wetland of exceptional resource value;

(2) No greater than 50 feet nor less than 25 feet for a freshwater wetland of intermediate resource value.

c. The minimum width of a transition area established pursuant to this section may be further reduced consistent with a transition area averaging plan approved under section 18 of this set.

13. Prohibited activities in transition area; waiver, application; fee; contents; averaging plan

a. The following activities, except for normal property maintenance or minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area, are prohibited in the transition area, except in accordance with a transition area waiver approved by the department pursuant to section 18 of this act:

- (1) Removal, excavation, or disturbance of the soil;
- (2) Dumping or filling with any materials;
- (3) Erection of structures, except for temporary structures of 150 square feet or less;
- (4) Placement of pavements;
- (5) Destruction of plant life which would alter the existing pattern of vegetation.

b. A person proposing to engage in an activity prohibited pursuant to subsection a. of this section within 150 feet of a freshwater wetland of exceptional resource value, or within 50 feet of a freshwater wetland of intermediate resource value, shall apply to the department for a transition area waiver, for a fee not to exceed the cost of reviewing and processing the waiver application, and on forms and in the manner prescribed by the commissioner pursuant to the Administrative Procedure Act, P.L. 1968, c. 410 (C.52:14B-1 et seq.). An agency of the State proposing to engage in such an activity in a transition area shall also apply to the department for a transition area waiver on forms and in a manner prescribed by the commissioner but shall not be required to pay a fee therefor. The waiver application shall include at least the following:

- (1) A preliminary site plan or subdivision map of the site, or another map of the site if no preliminary site plan or subdivision map exists, containing proposed activities and a written description of the proposed activity, the total areas to be modified, and the total area of the transition area potentially affected; and
- (2) Verification that a notice has been forwarded to the clerk, environmental commission, and planning board of the municipality, and the planning board of the county wherein the activity is to occur, which notice shall describe the activity and advise these instrumentalities of local government of their opportunity to submit comments thereon to the department; and
- (3) A statement detailing any potential adverse environmental effects of the activity on the freshwater wetlands and any measures that may be necessary to mitigate those effects; and

(4) A transition area averaging plan, if an averaging plan is required in connection with a transition area waiver requested pursuant to section 18 of this act.

c. At the applicant's option, the maximum transition area distances established in subsection b. of section 16 of this act, or a lesser transition area distance established pursuant to a waiver approved pursuant to section 18 of this act, shall be further reduced, or the transition area adjacent to a portion of a wetlands shall be eliminated, pursuant to a transition area averaging plan submitted by the applicant, provided that the plan is consistent with the provisions of subsection a. of section 16 of this act.

14. General permits; adoption of nationwide permits

a. The department shall consider for adoption as general permits, to the extent practicable and feasible, and to the extent that this adoption is consistent to the maximum extent practicable and feasible with the provisions of P.L.1987, c. 156 (C. 13:9B-1 et seq.), all applicable Nationwide Permits which were approved under the Federal Act as of November 13, 1986 by the U.S. Army Corps of Engineers.

b. The department shall issue a general permit for an activity in a freshwater wetland which is not a surface water tributary system discharging into an inland lake or pond, or a river or stream, and which would not result in the loss or substantial modification of more than one acre of freshwater wetland, provided that this activity will not take place in a freshwater wetland of exceptional resource value. The department shall issue a general permit for a regulated activity in a freshwater wetland located in an area considered a headwater pursuant to the Federal Act if the regulated activity would not result in the loss or substantial modification of more than one acre of a swale or a man-made drainage ditch. The provisions of this subsection shall not apply to any wetlands designated as priority wetlands by the United States Environmental Protection Agency.

c. The department shall issue additional general permits on a Statewide or regional basis for the following categories of activities, if the department determines, after conducting an environmental analysis and providing public notice and opportunity for a public hearing, that the activities will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, will cause only minor impacts on freshwater wetlands, will be in conformance with the purposes of P.L.1987, c. 156 (C. 13:9B-1 et seq.), and will not violate any provision of the Federal Act:

(1) Maintenance, reconstruction, or repair of roads or public utilities lawfully existing prior to the effective date of P.L.1987, c. 156 (C. 13:9B-1 et seq.) or permitted under P.L.1987, c. 156 (C. 13:9B-1 et seq.), provided that such activities do not result in disturbance of additional wetlands upon completion of the activity;

(2) Maintenance or repair of active irrigation or drainage ditches lawfully existing prior to the effective date of P.L.1987, c. 156 (C. 13:9B-1 et seq.) or permitted under P.L.1987, c. 156 (C.

13:9B-1 et seq.), provided that such activities do not result in disturbance of additional freshwater wetlands upon completion of the activity;

(3) Appurtenant improvements or additions to residential dwellings lawfully existing prior to the effective date of P.L.1987, c. 156 (C. 13:9B-1 et seq.), provided that the improvements or additions require less than a cumulative surface area of 750 square feet of fill and will not result in new alterations to a freshwater wetland outside of the fill area;

(4) Mosquito management activities determined to be consistent with best mosquito control and freshwater wetlands management practices and for which all appropriate actions to minimize adverse environmental effects have been or shall be taken. Notwithstanding any law, rule, or regulation to the contrary, if the department requires public notice to be given prior to the undertaking of mosquito management activities pursuant to a general permit, a permittee that is a county or municipality or county or municipal entity shall be given the option of complying with that requirement by publication of a display advertisement of at least four column inches in size in at least one newspaper of local circulation and one of regional circulation within the county or municipality;

(5) Activities, as determined by the department, which will have no significant adverse environmental impact on freshwater wetlands, provided that the issuance of a general permit for any such activities is consistent with the provisions of the Federal Act and has been approved by the United States Environmental Protection Agency;

(6) Regulated activities which have received individual or general permit approval or a finding of no jurisdiction by the U.S. Army Corps of Engineers pursuant to the Federal Act, and which have received a grant waiver pursuant to the "National Environmental Policy Act of 1969" (42 U.S.C. '4321 et seq.); provided, that upon the expiration of a permit any application for a renewal or modification thereof shall be made to the department;

(7) State or federally funded roads planned and developed in accordance with the "National Environmental Policy Act of 1969" and the Federal Act, and with Executive Order Number 53, approved October 5, 1973 and for which application has been made prior to the effective date of P.L.1987, c. 156 (C. 13:9B-1 et seq.) to the United States Army Corps of Engineers for an individual or general permit under the Federal Act; provided that upon expiration of a permit any application for a renewal or modification thereof shall be made to the department, and, provided, further, that the department shall not require transition areas as a condition of the renewal or modification of the permit;

(8) Maintenance and repair of stormwater management facilities lawfully constructed prior to the effective date of P.L.1987, c. 156 (C. 13:9B-1 et seq.) or permitted under P.L.1987, c. 156 (C. 13:9B-1 et seq.), provided that these activities do not result in disturbance of additional freshwater wetlands upon completion of the activity;

(9) Maintenance, reconstruction, or repair of buildings or structures lawfully existing prior to the effective date of P.L.1987, c. 156 (C. 13:9B-1 et seq.) or permitted under P.L.1987, c. 156 (C. 13:9B-1 et seq.), provided that these activities do not result in disturbance of additional freshwater wetlands upon completion of the activity.

d. The department may, on the basis of findings with respect to a specific application, modify a general permit issued pursuant to this section by adding special conditions. The department may rescind a general permit and require an application for an individual permit if the commissioner finds that additional permit conditions would not be sufficient and that special circumstances make this action necessary to insure compliance with P.L.1987, c. 156 (C. 13:9B-1 et seq.) or the Federal Act.

e. The department shall review general permits adopted or authorized pursuant to subsection c. every five years, which review shall include public notice and opportunity for public hearing. Upon this review the department shall either modify, reissue or revoke a general permit. If a general permit is not modified or reissued within five years of publication in the New Jersey Register, it shall automatically expire.

f. The date of publication of the general permits authorized by subsections a. and b. of this section shall be the effective date of P.L.1987, c. 156 (C. 13:9B-1 et seq.).

g. A person proposing to engage in an activity covered by a general permit shall provide written notice to the department containing a description of the proposed activity at least 30 working days prior to commencement of work. The department, within 30 days of receipt of this notification, shall notify the person proposing to engage in the activity covered by a general permit as to whether an individual permit is required for the activity.

15. Temporary emergency freshwater wetlands permit

a. Notwithstanding the provisions of this or any other act to the contrary, the department may issue a temporary emergency freshwater wetlands permit for a regulated activity if:

(1) An unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and

(2) The anticipated threat or loss may occur before a permit can be issued or modified under the procedures otherwise required by this act and other applicable State law.

b. The emergency permit shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for non-emergency regulated activities under this act and shall:

(1) Be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days;

(2) Require the restoration of the freshwater wetland within this 90 day period, except that if more than the 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration.

c. The emergency permit may be issued orally or in writing, except that if it is issued orally, a written emergency permit shall be issued within five days thereof.

d. Notice of the issuance of the emergency permit shall be published and public comments received, in accordance with the provisions of the Federal Act, and applicable State law, provided that this notification shall be sent no later than 10 days after issuance of the emergency permit.

e. The emergency permit may be terminated at any time without process upon a determination by the department that this action is appropriate to protect human health or the environment.

16. Rules and regulations; list of vegetative species; map and inventory

a. Within 12 months of the enactment of this act, and after a 60 day comment period, the department shall adopt, pursuant to the provisions of the Administrative Procedure Act, any rules and regulations necessary to implement the provisions of this act. These rules and regulations shall include the general permits which the department will issue pursuant to section 23 of this act.

b. Within one year of the enactment of this act, the department shall adopt, in consultation with the United States Environmental Protection Agency; a list of vegetative species classified as hydrophytes, as defined in section 3 of this act, indicative of freshwater wetlands and consistent with the geographical regions of the State.

c. The department shall develop a functional, complete, and up to date composite freshwater wetlands map and inventory using the most recent available data, which shall include, but need not be limited to, aerial photographs and soils inventories at a scale suitable for freshwater wetlands regulatory purposes, and shall make appropriate sections of this map and inventory available on a periodic basis to the county clerk or register of deeds and mortgages in each county, as appropriate, and to the clerk of each municipality.

17. Assumption of permit jurisdiction under Army corps of engineers

a. The department and the Attorney General shall take all appropriate action to secure the assumption of the permit jurisdiction exercised by the United States Army Corps of Engineers pursuant to the Federal Act. The department shall make an initial application to the United States Environmental Protection Agency for this assumption within one year of enactment of this act, and shall provide the Governor and the Legislature with a schedule therefor and a copy of the application and supporting material forwarded to the federal government.

b. The department shall utilize, to the maximum extent practicable and feasible, forms and procedures for permit applications which are identical to those used by the United States Army Corps of Engineers in issuing permits under the Federal Act.

c. The department shall seek to conduct the review of an application for a freshwater wetlands permit in conjunction with federal personnel responsible for reviewing an application of a permit under the Federal Act.

d. It is the intention of the Legislature that the permit process imposed in this act be conducted by the department concurrently with the review conducted by the federal government until such time as the department secures assumption of the permit jurisdiction exercised by the United States Army Corps of Engineers.

18. Public education program

The department shall, within one year of the effective date of this act, conduct a public education program on the provisions of this act and the rules and regulations adopted pursuant hereto.

19. Report by department

The department shall, within two years of the effective date of this act, prepare and submit a report to the Governor, the Senate and the General Assembly describing the progress in protecting freshwater wetlands.