

***NJDEP Regulations that impact or
soon will impact agricultural
operations.***

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Horses 2007***

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New Jersey Department of Environmental Protection (NJDEP) Regulations

- **Freshwater Wetlands Rules [NJAC 7:7A]**

- Regulate activities in and around freshwater wetlands:
 - Placement of fill
 - Construction of structures
 - Disturbance of soils, vegetation, or drainage.

- **Flood Hazard Control Act Rules [NJAC 7:13]**

- “Stream Encroachment Rules”
- Regulate activities in flood plains and in and around streams
- New, more stringent rules proposed Oct. 2, 2006
 - Will go into effect this summer

Freshwater Wetlands in New Jersey

- Defined legally using 1989 Federal Manual:
 - Hydrophytic “water loving” vegetation
 - Hydric (poorly drained) soils
 - Wetlands hydrology (water table within foot of surface for a week during growing season)
- Includes:
 - Emergent marshes
 - Freshwater
 - Tidal
 - Coastal
 - Palustrine wetland forests/swamps
 - Bogs/peatlands
 - Wet meadows
 - Riparian wetlands



Classification by “Resource Value”

- **Exceptional**

- Drain trout production waters
- Threatened and endangered species habitat
- **150 ft transition area or “buffer”**

- **Ordinary**

- Smaller than 5000 sq ft, isolated, 50% developed
- Drainage ditches and swales
- Man-made detention basins in uplands
- **No transition area**

- **Intermediate**

- All others
- **50 ft transition area**



What can you do without a permit?

(NJAC 7:7A-2.2 - 2.8)

- **Wetlands-**

- Surveys, temporary structures <32 sq ft
- Hand trimming of vegetation
- Guy wire anchor or piling

- **Transition areas**

- Normal property maintenance (no herbicides)
- Pruning trees, shrubs, selective tree cutting
- Replacement of non-native plants with natives
- Planting of native species
- Maintenance of existing gardens (new ¼ ac)
- Maintenance of existing structures (prior 1989)
- Temporary structures <150 sq ft

- **Agriculture, Ranching, and Silviculture Exemptions**

Exemptions for “established, ongoing farming, ranching or silviculture”

- Continuous since June 30, 1988
 - Can lie fallow up to 5 years
- “Normal farming, silviculture, ranching activities”
 - Plowing, seeding, cultivating, minor drainage, harvesting
- Minor drainage defined
 - Maintenance of existing drainage tiles or ditches
 - Removal of blockages but can't increase cross-section
 - Can drain moisture from uplands into wetlands
 - Does not include construction of new canal, ditch, dike
 - Cannot use “minor drainage” or plowing to convert wetlands to uplands

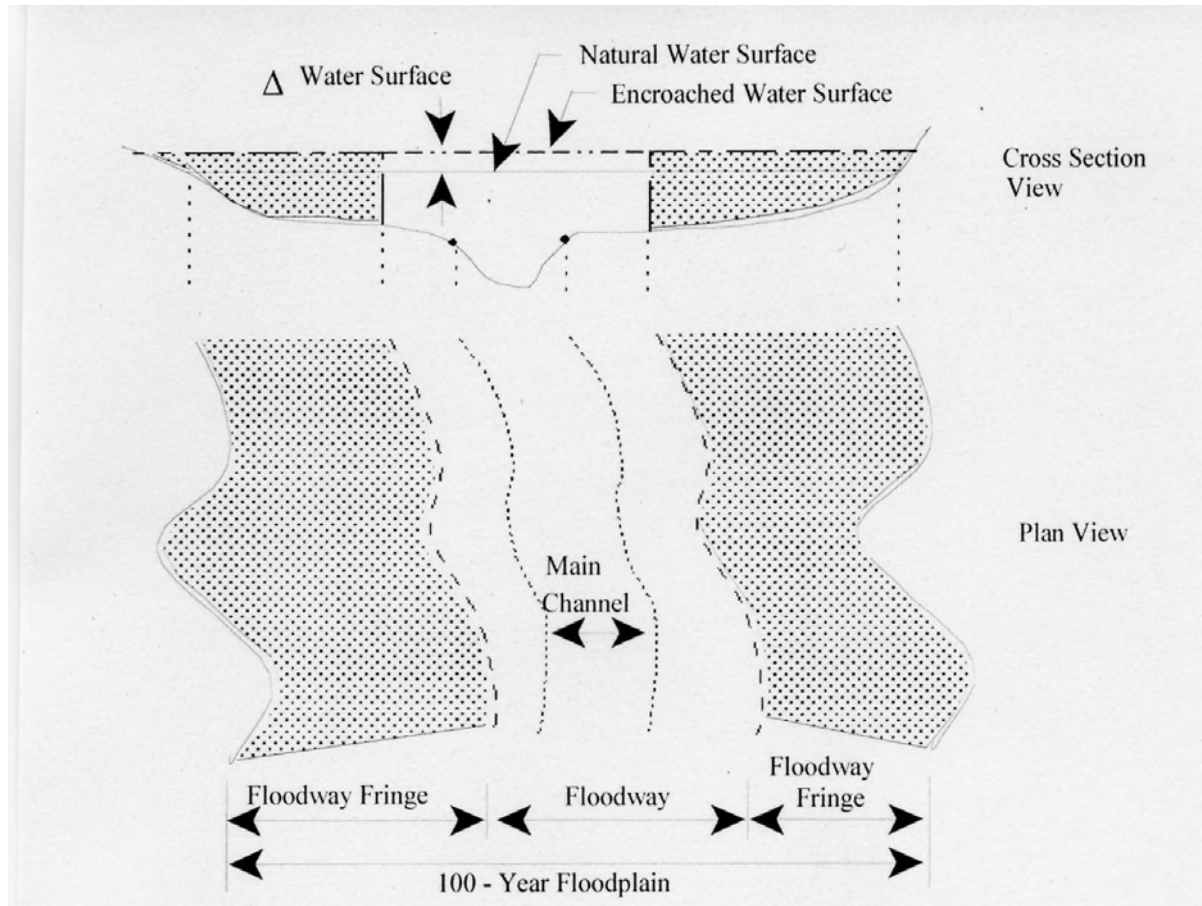
Additional exemptions

- Construction or maintenance of farm or stock ponds or irrigation ditches
 - No change in use, must be used for farming
- Construction or maintenance of farm roads
 - Must use Best Management Practices (BMPs)
 - Cannot impair flow or circulation patterns



Flood Hazard Control Act Rules [NJAC 7:13]

- Regulate development, structures, fill, disturbance of floodway and flood fringe



Currently non-regulated in floodway

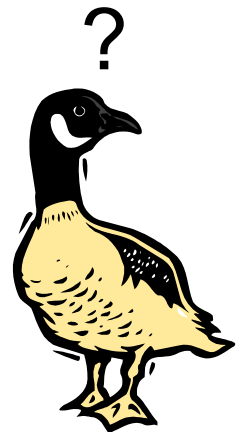
- Minor repair, maintenance, in-kind replacement of existing roads, bridges, culverts, retaining walls that don't change footprint or cross-section
- Agricultural uses such as cultivation, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, forestry, sod farming, wild crop harvesting, on-going farming operations
- Terracing, diversions, tile drains, grassed waterways, dug ponds **when approved by NRCS**
- Irrigation head gates **when approved by County Agricultural Agent**

Currently non-regulated in flood fringe

- Agricultural uses such as cultivation, pasture, grazing, fences, irrigation, outdoor plant nurseries, horticulture, viticulture, forestry, sod farming, wild crop harvesting, on-going farming operations, registered farming operations excluding structures
- Terracing, diversions, tile drains, grassed waterways, dug ponds **when approved by NRCS**
- Plastic covered greenhouses and other buildings without permanent foundation and fences associated with agriculture

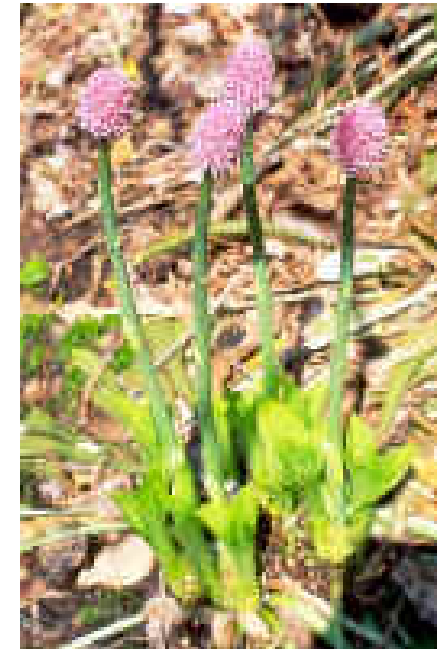
Proposed New Flood Hazard Rules

- Published October 2, 2006, currently in comment review.
- Expected to be effective late summer
- Greater protection in Riparian Zone
- Introduces “permits-by-rule” for 46 regulated activities
 - Activities are allowed but must meet conditions
- New agricultural General Permits



Riparian Zone [NJAC 7:13-4.1 and 10.2]

- **300 ft Category One waters and upstream tributaries in same HUC-14 watershed**
- **150 ft Upstream tributaries (1 mi) to trout waters, certain T+E species, acid producing soils.**
- **50 ft All other waters.**



Permits by Rule [NJAC 7:13-7.2(f)]

1. Continuation of existing, ongoing agricultural activities (includes grazing).
 1. Must be established as of October 2, 2006
 2. No construction of structures or displacement of flood storage
2. New agricultural activities
 1. No construction of structures or displacement of flood storage
 2. No vegetation cleared or removed in riparian zone except prior disturbed areas
3. Soil conservation practices in flood fringe (ponds)
 1. Actively farmed as of October 2, 2006
 2. Written approval of NRCS
 3. No disturbance within 25 ft of bank
 4. No vegetation cleared or removed in riparian zone except prior disturbed areas
 5. Replant with indigenous, non-invasive species

Permits by Rule [NJAC 7:13-7.2(f)] (cont.)

4. Construction of a building with no foundation in flood fringe on actively farmed land
 - Footprint less than 1000 sq ft
 - Agricultural use only, e.g., plastic covered greenhouse, farm stand, tool shed
 - No disturbance within 25 ft of top of bank
 - No vegetation cleared or removed in riparian zone except prior disturbed areas (e.g., lawns, gardens, parking areas)
 - All vegetated areas temporarily disturbed must be replanted with indigenous, non-invasive species



New General Permits for Agriculture [NJAC 7:13-8.4]

- Must be on land that is actively farmed
- Must be solely intended for agriculture
- **Must be approved and performed under the supervision of the USDA NRCS.**
- No public notice but requires application to NJDEP
 - Certification from NJ-licensed Engineer (P.E.)
 - \$500 application fee
 - 45 day review time at NJDEP

Agricultural General Permits

- 2A:** Soil erosion control, bank stabilization, restoration
Bioengineering, vegetation wherever possible
Chapter 16 of NRCS Field Manual
No significant alteration of stream cross-section
- 2B:** Removal of accumulated sediment and debris
Can't deepen natural bed or realign channel
Minimize disturbance to riparian zone Work
from one bank, not in channel Preserve
trees on south and west
- 2C:** Construction of farm road crossing
No unset cement in water
Headwalls, footers 3 ft deep
No more than 25 ft width disturbed in riparian zone

Agricultural General Permits (cont.)

2D: Freshwater wetlands restoration

- Regulated water originates onsite

- Can't adversely affect drainage on adjacent properties **2E:**

Creation of a ford for livestock

- Livestock currently cross regulated water

- Ford will reduce damage to stream channel and banks

- No trees removed in riparian zone

- At or below channel depth so flow not obstructed Path of disturbance no more than 20 ft

2F: Construction of a fence along or across water to limit livestock access to channel

- No trees removed in riparian zone

- Fence parallel to channel wherever possible

- Fence in floodway can't obstruct or catch debris

- Can't impede bank-full flow

Agricultural General Permits (cont.)

- 2G:** Construction of a pump and/or water intake to provide water for livestock outside the channel
No trees removed in riparian zone
Fill within flood hazard zone minimized
Can't impede bank-full flow



Questions??

- NJDEP Land Use Regulation **(609) 633-6754**
- NJDEP Stream Encroachment **(609) 984-0162**





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