

7500 Wetlands and Subaqueous Lands

7502 Wetlands Regulations

1.0 Authority

The Secretary of the Department of Natural Resources and Environmental Control of Delaware establishes and adopts the following regulations, pursuant to the authority granted by Section 6607 of the Wetlands Act of 1973 (7 **Del.C.** Ch. 66).

2.0 Policy

It is declared that much of the wetlands of the State have been lost or despoiled by unregulated dredging, dumping, filling and like activities and that the remaining wetlands of the State are in jeopardy of being lost or despoiled by these and other activities; that much loss or despoliation will adversely affect, if not entirely eliminate, the value of such wetlands as sources of nutrients to finfish, crustacea and shellfish of significant economic value; that such loss or despoliation will destroy such wetlands as habitats for plants and animals of significant economic and ecological value and will eliminate or substantially reduce marine commerce, recreation and aesthetic enjoyment; and that such loss or despoliation will, in most cases, disturb the natural ability of wetlands to reduce flood damage and adversely affect the public health and welfare; that such loss or despoliation will substantially reduce the capacity of such wetlands to absorb silt and will thus result in the increased silting of channels and harbor areas to the detriment of free navigation. It is hereby determined that the coastal areas of Delaware are the most critical areas for the present and future quality of life in the State and that the preservation of the coastal wetlands is crucial to the protection of the natural environment of these coastal areas. Therefore, it is declared to be in the public policy of this State to preserve and protect the productive public and private wetlands and to prevent their despoliation and destruction consistent with the historic right of private ownership of lands.

3.0 Findings

Proposed Wetlands Regulations were issued February 10, 1975 by the Department of Natural Resources and Environmental Control. These proposed regulations were drafted based on consultation with individuals knowledgeable in the field of wetlands, both singly and in workshops. A public hearing was held March 4, 1975 for the purpose of receiving comments and suggestions for the regulations. Public Notices were published in the Morning News and Evening Journal on February 3, 1975, *Sussex Countian* on February 6, 1975 and in the *Delaware State News* on February 9, 1975. Revised proposed regulations were issued January 19, 1976. A public hearing was held March 4, 1976. Public notices were published on February 5, 1976 in the *Sussex Countian*, *Delaware State News*, the *Delaware Coastal Press* and the *Wilmington Morning News*. The Department of Natural Resources and Environmental Control has carefully considered all submitted comments and materials, as well as basic materials available regarding wetlands in general and Delaware wetlands in particular. Data drawn from these sources is summarized in these Findings. Major changes from the proposed regulations and comments on other suggestions made are discussed below:

The historic right of private ownership land includes public regulation of land to prevent harm to the public. These regulations follow those historic principles.

Additional exemptions could not be added to the regulations because of the wording of 7 **Del.C.** 6604. This section requires a permit for all activities in all wetlands except those exempt in the Act.

Consideration of the effect of proposed wetlands activities on neighboring land is mandated by the Wetlands Act so that land use regulation will no longer be segmented.

Time limitations on final decisions of the Department which were suggested could cause a crippling effect on the program where complexities of the application or personal limitations require more time.

The definition of mean high water mark will provide guidance to the Department in those few instances where the designation as wetlands is not obvious from the vegetation and topographical features. There are standard methods of short-term observations at a specific site which are correlated with the long-term data from the National Ocean Survey, to provide a boundary for the Department to use.

Educational value of the wetlands was eliminated from the considerations of the Secretary for permit applications.

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The suggestion of relatively rigid categories of wetlands was examined with interest, but not adopted. Administrative experience with wetland regulation will determine whether such categories should be adopted in the future.

4.0 Wetlands Data

- 4.1 Compared to agricultural plants, marsh plants capture a high percentage of the sun's energy reaching the surface of the marsh. During the summer months, when *Spartina* is active, this figure is about six percent compared to about two percent for a cornfield at the height of its growth and three percent for a coral reef.
- 4.2 Expressed in tons of organic production per acre per year, the salt marsh, on the average, produces over 9 tons; a wheat field produces one and one-half tons (including stems and leaves); the best hay lands in this country produce about four tons; coastal continental shelf waters produce one and one-half tons. The marsh production is achieved without the cost of added fertilizer.
- 4.3 Tidal marshes serve as spawning or nursery areas for over 60 species of fish in the Delaware River Estuary and as the vehicle for the net transport of nutrients into the bay and coastal waters. The extent of nutrient release has a strong influence on biological productivity in the Delaware Bay.
- 4.4 While organisms are more abundant in the spring and summer, there are year-round species furnishing food for the higher organisms. For example, the phytoplankton and the detritus (dead organic particles) is eaten by the zooplankton which is eaten by small fish of the shore zone. These small forage fish provide food for larger species such as the weakfish and the striped bass. A decline in the quantity of food present in the lower levels of the food chain will harm the production of the larger species. In general, to produce one pound of striped bass or weakfish requires 10 pounds of forage fish which requires 100 pounds of zooplankton which in turn requires 1,000 pounds of phytoplankton. Menhaden are another important resource to Delaware that depend on the wetland areas.
- 4.5 The importance of the wetlands is well documented. The marshes and streams through the wetlands are home to muskrats and nutria and provide feeding, nesting and resting areas for waterfowl, shore and wading birds. Deer, rabbits and raccoons share in the abundant food production of the wetlands.
- 4.6 Economic and recreational returns from this area can be estimated from the following data:
 - 4.6.1 In 1973-74 13,066 duck stamps were issued in Delaware by the U. S. Department of Interior.
 - 4.6.2 27,235 hunting licenses were issued in 1973-74 by the Department.
 - 4.6.3 A hunter's survey conducted by the Department shows an estimated 163,988 waterfowl hunter days during 1973-74. Much of this hunting would not be possible without the wetlands.
- 4.7 A substantial function is performed by the wetlands as an absorber of flood waters and siltation. There are other quantifiable values in the aesthetic and recreational uses of wetlands for an increasingly urban society.

5.0 Definitions

"Activity" means any dredging, draining, filling, bulkheading, construction of any kind, including but not limited to, construction of a pier, jetty, breakwater, boat ramp, or mining, drilling, or excavation.

"Board" means the Wetlands Appeal Board.

"Commercial Projects" means those activities undertaken that benefit more than one family or for which a fee will be charged.

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

"Division" means the Division of Water Resources of the Department of Natural Resources and Environmental Control.

"Dock" shall mean a structure used to secure a boat or to provide access to a boat from upland areas.

"Economic Effect" means the net results of both direct and secondary effects, comparing expenditures and revenues generated by the proposed activity.

"Emergencies" means those events which could not reasonably have been foreseen and which would have serious consequences if not promptly corrected.

"Foot Bridge" means a structure, no wider than three (3) feet that does not project into open water and is not a dock.

"Maintenance Dredging" means restoration of a channel to a depth no greater than allowed by a previous project or permit.

“**Mean High Water Mark**” means the average height of the high waters over a 19 year period as determined by the Department, using standard methods and collected data of the National Ocean Survey (formerly U. S. Coast and Geodetic Survey).

“**Neighboring Land Uses**” means uses on land within 1000 feet of the project as measured in a straight line from the edge of the project activity upon which the proposed activity may be expected to have an impact.

“**Private Projects**” means those activities which benefit only one owner and for which no fee is charged.

“**Productive Wetlands**” means those wetlands which are functioning to produce one or more of the following wetlands values:

- (a) sources, indirect or direct, of nutrients to finfish, crustacea, and shellfish of significant economic and ecological value;
- (b) habitats for animals of significant economic and ecological value;
- (c) marine commerce, recreation, and aesthetic enjoyment;
- (d) flood control;
- (e) erosion control;
- (f) traps for suspended sediments, including silts and clays;
- (g) biological purification of river, bay, and estuary waters.

“**Secretary**” means the Secretary of the Department of Natural Resources and Environmental Control.

“**Structure**” means any pier, jetty, breakwater, boat ramp or other piece of work built by humans.

“**Wetlands**” means those lands above the mean low water elevation including any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of Delaware along the Delaware Bay and Delaware River, Indian River Bay, Rehoboth Bay, Little and Big Assawoman Bays, the coastal inland waterways, or along any inlet, estuary or tributary waterway or any portion thereof, including those areas which are now or in this century have been connected to tidal waters, whose surface is at or below an elevation of two feet above local mean high water, and upon which may grow or is capable of growing any but not necessarily all of the following plants:

Eelgrass (*Zostera marina*), Widgeon Grass (*Ruppia maritima*), Sago Pondweed (*Potamogeton pectinatus*), Saltmarsh Cordgrass (*Spartina alterniflora*), Saltmarsh Grass (*Spartina cynosuroides*), Saltmarsh Hay (*Spartina patens*), Spike Grass (*Distichlis spicata*), Black Grass (*Juncus gerardii*), Switch Grass (*Panicum virgatum*), Three Square Rush (*Scirpus americanus*), Sea Lavender (*Limonium carolinianum*), Seaside Goldenrod (*Solidago sempervirens*), Seablite (*Suaeda maritima*), Seablite (*Suaeda linearis*), Perennial Glasswort (*Salicornia virginica*), Dwarf Glasswort (*Salicornia Bigelovii*), Samphire (*Salicornia europaea*), Marsh Aster (*Aster tenuifolius*), Saltmarsh Fleabane (*Pluchea purpurascens var. succulenta*), Mock Bishop's Weed (*Ptilimnium capillaceum*), Seaside Plantain (*Plantago oliganthus*), Orach (*Atriplex patula var. hastata*), Marsh Elder (*Iva frutescens var. oraria*), Groundsel Bush (*Baccharis halimifolia*), Bladderwrack (*Fucus vesiculosus*), Swamp Rose Mallow, Seaside Hollyhock or Marsh Mallow (*Hibiscus palustris*), Torrey Rush (*Scirpus torreyi*), Narrow-leaved Cattail (*Typha angustifolia*), and Broad-leaved Cattail (*T. latifolia*) and those lands not used for agricultural purposes in 1973, containing four hundred (400) acres or more of contiguous non-tidal swamp, bog, muck, or marsh exclusive of narrow stream valleys and tax ditches where fresh water stands most, if not all of the time due to high water table, which contribute significantly to ground water recharge, and which would require intensive artificial drainage using equipment such as pumping stations, drain fields or ditches for the production of agricultural crops.

6.0 Administrative Principles

6.1 Permit Required

- 6.1.1 Except for those activities that are listed as exempt in Section 6.4, no activity may take place in the wetlands without a permit.
- 6.1.2 No person may commence or conduct work for which a permit is required until the proper permit has been issued.
- 6.1.3 These regulations shall not apply to any segment of a project for which prior to the effective date of the Wetlands Act (July 17, 1973), on-site construction was begun and has not been voluntarily discontinued, as determined by: any aerial photos, the limits of the project as described on any applicable permits, and other evidence.

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- 6.1.4 The following activities are exempt from these regulations: Mosquito control activities authorized by the Department, construction of directional aids to navigation, duck blinds, foot bridges, the placing of boundary stakes, wildlife nesting structures, grazing of domestic animals, haying, hunting, fishing, and trapping.
- 6.1.5 A permit obtained under these regulations does not exempt the applicant from obtaining any other required permits.
- 6.1.6 If any part of these regulations or their application is held invalid or unconstitutional, the application of the part to other persons or circumstances and the remainder of these regulations shall not be affected.

7.0 Condition for Permits

- 7.1 No permit will be issued to:
 - 7.1.1 Dredge any channel through the wetlands deeper than the existing depth or the controlled channel depth specified by the Corps of Engineers at the point of connection to the adjacent navigable waterway to which the dredge channel is directly connected. A lesser depth may be specified by the Secretary in furtherance of the purposes of the Act.
 - 7.1.2 Dredge any channel through the wetlands that has only one outlet to navigable water through which the normal tide ebbs and flows unless the channel is equipped, by aerators or other means, to maintain the Water Quality Standards for Streams that are issued from time to time by the Department.
 - 7.1.3 Dredge channels through the wetlands with sides more nearly vertical than a slope that rises one foot vertically for each three feet of horizontal distance except where conditions of soil composition prevent slope stabilization, so that bulkheading must be used.
 - 7.1.4 Utilize wetlands for any activity unless it:
 - 7.1.4.1 Requires water access or water for the central purpose of the activity; and
 - 7.1.4.2 Has no alternative on adjoining non-wetland property of the owner.
 - 7.1.5 Building bulkheads on wetlands higher in elevation than the surface of the natural land. Navigational aids that do not prevent the ebb and flow of the tide may be higher.

8.0 Procedures for Applications

- 8.1 An application for a permit shall be filed with the Division of Environmental Control.
- 8.2 Type I Permits (Abbreviated Procedure) are required for:
 - 8.2.1 Projects for which a total of one (1) acre or less of wetlands is involved, and no building of structures is included.
 - 8.2.2 The maintenance or repair of bridges, roads, highways, or the facilities of any municipality or public utility including the construction and maintenance of lines for the transmission of electrical energy that do not require the construction of permanent access roads or other fixed works related thereto, and which will permit the unobstructed flow of the tide and preserve the natural contour of the wetlands.
 - 8.2.2.1 This provision shall not apply in emergencies; in which cases, written notification shall be made to the Division within seven (7) days after initiation.
 - 8.2.3 Maintenance dredging that does not result in deposit of spoils on wetlands.
 - 8.2.4 Maintenance work on existing wildlife management impoundments.
- 8.3 Application Procedure: To obtain a Type 1 Permit, a person shall apply in writing to the Division on forms provided for that purpose. The application shall contain the following:
 - 8.3.1 The names and address of the applicant.
 - 8.3.2 A written explanation of the proposed activity and the reasons for undertaking it, including a plan of the entire project of which the proposed activity is a part.
 - 8.3.3 Evidence of local zoning approval.
 - 8.3.4 Two (2) copies of a detailed plan of the proposed activity which shall include:
 - 8.3.4.1 A map showing the location and boundaries of the proposed activity in relation to adjoining property and to the nearest existing street or road intersection and the specific location of all proposed activity, particularly filling, dumping and excavation.
 - 8.3.4.2 A detailed description of all proposed activity, particularly filling, dumping and excavation.

- 8.3.4.3 A detailed description of measures to be taken during and after the completion of the proposed activity to reduce detrimental effects.
- 8.3.4.4 Evidence of applicant's ownership of the lands or permission from the owner for the project.
- 8.3.4.5 A list of the names and addresses of the owners, as listed with the County Board of Assessment, of neighboring lands within 1,000 feet of the project and any claimants of such ownership rights that are known to the applicant, with their last known address.
- 8.4 Type II Permits (Full Procedure) are required for:
 - 8.4.1 Projects involving more than one (1) acre of wetlands.
 - 8.4.2 Projects involving the building of structures.
 - 8.4.3 The construction and maintenance of lines for the transmission of electrical energy that require artificially solidified bases, and/or the construction of permanent access roads or other fixed works related thereto, which alter the flow of the tide or the natural contour of the wetlands.
 - 8.4.4 The construction and maintenance of water, gas or petroleum lines.
- 8.5 Application Procedure: To obtain a Type II Permit, a person shall apply in writing to the Division on forms provided for that purpose. The application shall be submitted in duplicate and shall contain the following:
 - 8.5.1 The name and address of the applicant.
 - 8.5.2 A written explanation of the proposed activity and its need, including a plan of the entire project of which the proposed activity is a part.
 - 8.5.3 A list of the name and addresses of the owners, as listed with the County Board of Assessment, of neighboring lands within 1,000 feet of the project and any claimants of such ownership rights that are known to the applicant, with their last known addresses.
 - 8.5.4 Evidence of local zoning approval.
 - 8.5.5 A map showing the location and boundaries of the area of the proposed activity and the specific location of all proposed structures, filling, dumping and excavation.
 - 8.5.6 A detailed plan of the proposed activity, drawn to an appropriate and uniform scale, indicating the procedures to be used and the area(s) of existing and proposed fill and excavation, of any; existing and proposed finished elevations; all existing and proposed structures, sewage collection and treatment facilities, utility installations, roadways, parking areas, and other related facilities, and the type of equipment to be used, and the means of equipment access to the activity site.
 - 8.5.7 Evidence of ownership of the property on which the proposed activity will be conducted, and, if the applicant is not the owner, written permission from the owner to conduct the activity.
 - 8.5.8 An Environmental Summary which includes an evaluation of the project in relation to the factors listed in Section 12.0 subheadings and:
 - 8.5.8.1 The reasons that structures cannot feasibly be located on adjacent property of the owner other than wetlands.
 - 8.5.8.2 Temporary and permanent changes which would be caused by the proposed project and the impact of these changes on the project area and adjacent areas.
 - 8.5.8.3 Alternatives to the proposed action which would reduce or avoid environmental damage.
 - 8.5.8.4 All measures to be taken during and after the completion of the proposed project to reduce detrimental effects.
 - 8.5.8.5 Adverse environmental impact which cannot be avoided.
 - 8.5.8.6 The Secretary may require more detailed evaluations in proposed activities that have a major impact on wetlands.
- 8.6 Application Review: Within thirty (30) days following receipt of an application, the Division shall notify the applicant in writing regarding its completeness. The Division may declare the application to be complete for filing or may notify the applicant of specific deficiencies. The Division, within fifteen (15) days following the receipt of additional information to correct deficiencies, shall notify the applicant of the completeness of the amended application. The application shall not be considered to be filed in proper form until it has been declared complete by the Division.

9.0 Fees

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- 9.1 Each application except those from a government agency shall be accompanied by a non-returnable application fee as established by 7 Del.C. 4701(a).

10.0 Bonding

- 10.1 The Secretary may require a secured bond that will be sufficient to hire an independent contractor to complete any conditions imposed or effect any limitations or to restore the project area to its original condition in the event of a failure by the applicant to comply with the conditions or limitations of the Permit. Bonding shall be required on projects over \$10,000.00 in cost. Such conditions or limitations may include, but are not limited to:
- 10.1.1 Grading of area.
 - 10.1.2 Planting of marsh vegetation.
 - 10.1.3 Interconnections among lagoons.
 - 10.1.4 Proper slopes of channels.
 - 10.1.5 Installation of aerators in channels.
 - 10.1.6 Refilling channels to required depths.

11.0 Procedure for Processing Applications

- 11.1 Within 20 days after receipt of a permit application in proper form, the Department shall advertise in a daily newspaper of statewide circulation and in a newspaper of general circulation in the County in which the activity is proposed (1) the fact that the application has been received and (2) a brief description of the nature of the application. The Secretary shall notify by mail neighboring landowners as listed in the application and those persons who have listed their names and addresses with the Secretary to be notified.
- 11.2 The Secretary may hold a public hearing with respect to any application if he deems it to be in the best public interest. The Secretary shall hold a public hearing if he receives a written objection within twenty (20) days of advertisement that exhibits a familiarity with the application and a reasoned statement of the proposed project's probable impact.
- 11.3 Review: A fact sheet shall be prepared by the Department describing the project and its location. The fact sheet shall be distributed for review and comments to:
- 11.3.1 All Divisions of the Department
 - 11.3.2 Delaware Geological Survey
 - 11.3.3 County Planning Office
 - 11.3.4 Department of Highways and Transportation
 - 11.3.5 Department of Health and Social Services
 - 11.3.6 Governor's Council on Environmental Control
 - 11.3.7 Council on Historical and Cultural Affairs, Archaeological Office
 - 11.3.8 Adjacent property owners
 - 11.3.9 Local planning department that has jurisdiction over land involved
 - 11.3.10 Environmental Protection Agency
 - 11.3.11 Division of Fish and Wildlife of the Department of the Interior
 - 11.3.12 Corps of Engineers
 - 11.3.13 National Oceanic and Atmospheric Administration of the U. S. Department of Commerce
 - 11.3.14 Other interested parties who have requested the fact sheet for the particular project. There shall be a ten working day period for comment except that for complex projects, this period may be extended by the Secretary upon request.
- 11.4 Public Hearings: Any public hearing held by the Secretary or the Board concerning a regulation, permit application or alleged violation or appeal shall be conducted as follows:
- 11.4.1 Notification shall be served upon the applicant, alleged violator, or appellant not less than twenty (20) days before the time of said hearing. Service shall be by summons or registered or certified mail. No less than twenty (20) days notice shall also be published in a daily newspaper of general circulation throughout the State and a newspaper of general circulation in the County in which the activity is proposed.
 - 11.4.2 Such notice shall also be sent by mail simultaneously to persons who have listed their names and addresses with the Secretary is to be notified. Such notice shall also be sent by mail simultaneously to all adjoining property owners and the local, planning department. Notice shall outline the area concerned,

activity involved, and the location where the application for a permit or other pertinent material is available for inspection.

- 11.4.3 The permit applicant, alleged violator, or appellant may appear personally or by counsel at the hearing and produce any competent evidence in his behalf. The Secretary or his duly authorized designee or the Board or its duly authorized designee may administer oaths, examine witnesses and issue, in the name of the Department or Board, notices of hearing or subpoena requiring the testimony of witnesses and the production of books, records, or other documents relevant to any matter involved in such a hearing or any subpoena shall also be issued at the request of the applicant or alleged violator. In case of contumacy or refusal to obey a notice of hearing or subpoena under this section, the Superior Court in the County in which the hearing is held shall have jurisdiction, upon application of the Secretary or the Chairman of the Appeals Board, to issue an order requiring such person to appear and testify.
- 11.4.4 A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The Secretary or his duly authorized designee or the Board or its duly authorized designee shall make findings of fact based on the record. The Secretary or the Board shall then enter such order as will best further the purpose of this Chapter, and shall state reason. The Secretary or the Board shall within thirty (30) days of action give written notice to the persons affected by such order.
- 11.5 If no public hearing is held on an application, the Secretary shall enter such Order or grant such permit as will best further the purpose of this Chapter, and shall state reasons. The Secretary shall within thirty (30) days of action give written notice to the persons affected by such Order.

12.0 Standards for Permits

- 12.1 The Secretary shall consider the overall effect of the proposed activity. The Secretary may impose permit conditions designed to further the purpose of the Act. These decisions shall be based on the factors in the following subsection headings as provided in 7 Del.C. §6604(b).
- 12.2 Environmental Effect - Environmental Effect shall include consideration of the effect of site preparation and the proposed activity on the following wetlands values:
- 12.2.1 Value of tidal ebb and flow.
- 12.2.1.1 Production Value: carrying organic matter to adjacent estuaries and coastal waters which serve as breeding areas for certain animal species (especially fish and shellfish).
- 12.2.1.2 Value as a natural protective system of absorption of storm wave energy, flood waters, and heavy rainfall, thereby decreasing flood and erosion damage.
- 12.2.1.3 The prevention of silting in certain harbors and inlets thereby reducing dredging.
- 12.2.1.4 Removal and recycling of inorganic nutrients.
- 12.2.1.5 Effect on the estuarine waters.
- 12.2.2 Habitat Value
- 12.2.2.1 Habitat for resident species of wildlife including furbearers, invertebrates, finfish.
- 12.2.2.2 Habitat for migratory wildlife species including waterfowl, wading birds, shorebirds, passerines, finfish, shrimp.
- 12.2.2.3 Rearing area, nesting area, breeding grounds for various species.
- 12.2.2.4 Habitat for rare or endangered plants.
- 12.2.2.5 Presence of plants or animals known to be rare generally, or unique to the particular location.
- 12.2.2.6 Presence of plants or animals near the limits of their territorial range.
- 12.2.2.7 Presence of unique geologic or wetland features.
- 12.3 Aesthetic Effect - Consideration of the aesthetic effect may include:
- 12.3.1 Presence of plants or animals of a high visual quality,
- 12.3.2 The presence of an associated water body.
- 12.3.3 Wetland type of topographic diversity.
- 12.4 Impact of Supporting Facilities
- The supporting facilities to be considered include any public or private construction, whether or not the construction occurs in the wetlands, which would be required for the construction or operation of the proposed

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wetlands activity, such as roads, sewage disposal facilities, electric lines, water supply systems, and schools. Effects shall be separately determined for the lands neighboring such facilities.

12.5 Effects on Neighboring Land Uses

12.5.1 The effects of the proposed wetland activity on neighboring land use are to be considered whether or not the neighboring lands are wetlands

12.5.2 The environmental, aesthetic and economic effects of the proposed wetland activity on land uses neighboring the lands on which supporting facilities will be located may be considered.

12.6 Federal, State, Regional, County and Municipal Comprehensive Plans. Compliance of the proposed activities with the plans of the jurisdiction in which it is proposed to take place, and its impact on the plans or other affected jurisdictions.

12.7 Economic Impact

Economic Impact shall include a short and long-term evaluation of the following factors to the extent the effect is directly attributable to the proposed activity:

12.7.1 Jobs created or lost and the net income effect of jobs.

12.7.2 Increases in revenues to or increases in expenditures by State, County and Local governments (e.g., increased taxes from an increased tax base and increased expenditure for maintaining supporting facilities).

12.7.3 Increases or decreases in the value attributable to the wetlands as a source of nutrients to finfish, crustacea and shellfish and as habitat of such species or other flora or fauna of significant actual or potential economic value.

12.7.4 Increases or decreases in the value of the land as a recreational area.

12.7.5 Increases or decreases in the cost of flood control or expected flood damage which might be caused by the effect of the activity on the natural capacity of the wetland to reduce flood damage.

12.7.6 Increases or decreases in the costs of maintaining navigable harbors and waterways which would result from altering the capacity of the wetlands to absorb silt.

12.7.7 The net economic effect, both public and private, of any contemplated supporting facilities.

12.7.8 The net economic effect, both public and private, of the proposed activity on neighboring land uses.

12.8 Project design that eliminates or substantially lessens damage to the wetlands.

13.0 Penalties as Enacted in Title 7 Del.C. Section 6617

13.1 Any person who intentionally or knowingly violates any rule, regulation, order, permit condition, or provision of this Chapter shall be fined not less than \$500 or more than \$10,000 for each offense. Continuance of any activity prohibited by this Chapter during any part of a day shall constitute a separate offense. Any person found guilty of violating any cease and desist order of the Secretary shall be fined for each offense, starting from the date of receipt of the order. The Superior Court shall have jurisdiction of offenses under this subsection.

13.2 Any person who violates any rule, regulation, order, permit condition, or provision of this Chapter shall be fined not less than \$50 or more than \$500 for each violation. Each day of violation shall be considered as a separate violation. The Justice of the Peace Courts shall have jurisdiction of offenses under this subsection.

13.3 Any person who violates a provision of this Chapter, any condition or limitation in a permit, rule, regulation, or order shall be liable for a civil penalty of not less than \$1,000 nor more than \$10,000 for each completed violation. The Superior Court shall have jurisdiction of offenses under this subsection.

14.0 Cease and Desist Orders

14.1 The Secretary shall have the power to issue an order to any person violating any rule, regulation or order or permit condition or provision of this Chapter to cease and desist from such violation. Provided, that any cease and desist order issued pursuant to this Section shall expire (1) after thirty (30) days of its issuance, or (2) upon withdrawal of said order by the Secretary, or (3) when the order is suspended by an injunction, whichever occurs first.

15.0 Injunction

- 15.1 Action for injunctive relief may be brought by the Secretary to prevent a violation of this Act or a permit condition. The Court of Chancery may, at its discretion, require bond in the appropriate amount.

16.0 Appeals

- 16.1 Appeals from the decision of the Secretary shall be made within twenty (20) days after the Secretary has announced his decision in accordance with 7 **Del.C.**, §6611.
If a designation, made pursuant to the mapping adoption, of a parcel as wetlands is challenged during the permit application, the decision of the Secretary as to the designation may be a part of the appeal.
- 16.2 Appeals from the decision of the Board may be made within thirty (30) days of the decision to the Superior Court as provided in Title 7 **Del.C.** §6612.

17.0 Wetlands Maps

- 17.1 If an on-site evaluation by the Department establishes that an error exists in a wetlands map that has been adopted by the Department, in accordance with 7 **Del.C.** §§6607(b) and (c) the wetlands map containing the error may be corrected by the Department after the Department documents, in writing, the results of the on-site evaluation, and the Department gives public notice of any proposed correction. For purposes of this subsection, the terms 'public notice' shall consist of having notice of the proposed correction, the name of the property owner, location of the property in issue, and a description of the error, published in a daily newspaper of general circulation throughout the State and a newspaper of general circulation in the county in which the activity is proposed. Such notice shall be published at least twenty days in advance of any correction to a map by the Department. If the Department determines that it has received a meritorious objection to any proposed correction set forth in a public notice, the Department shall hold a public hearing in accordance with the procedures set forth in 7 **Del.C.** §6609. Any Department correction made to an adopted wetlands map shall be filed with the Secretary of State and made available for public inspection at the offices of the Department.