LAWS OF DELAWARE
VOLUME 85
CHAPTER 351
153rd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 9
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE PROTECTION OF WETLANDS.

WHEREAS, healthy wetlands reduce, store, and filter stormwater runoff and can help remove harmful bacteria and pollutants, thereby protecting sources of Delaware's water supply; and

WHEREAS, wetlands provide flood storage capacity thereby protecting public and private property from flooding and the resultant financial and personal impacts associated therewith; and

WHEREAS, the preservation, restoration, creation, and enhancement of wetlands plays a critical role in mitigating the adverse impacts of climate change, supporting biodiversity and ensuring water resource sustainability for our State; and

WHEREAS, wetlands are one of the most powerful natural carbon sinks on Earth, storing a disproportionately large share of terrestrial carbon; and

WHEREAS, while the State has acted to protect tidal wetlands, it has not taken action to protect the State's nontidal wetlands relying instead on federal regulations enforced by the United States Army Corps of Engineers pursuant to the Clean Water Act; and

WHEREAS, the federal government has shifted its definition of what qualifies as a wetland under its jurisdiction three times from 2015 to 2023; and

WHEREAS, in a 2022 report to the General Assembly titled "Options for a Nontidal Wetland Permitting Program," the Delaware Department of Natural Resources and Environmental Control determined that the approximate acreage of nontidal wetlands no longer protected under federal jurisdiction was roughly 30,000 acres; and

WHEREAS, the U.S. Supreme Court case of *Sackett vs. EPA* decided in 2023 further reduced federal jurisdiction over wetlands, now leaving approximately 75,000 acres unprotected in Delaware; and

WHEREAS, it is important that the State modify its existing wetlands permit program to add necessary protections for nontidal wetlands, as Delaware is the only state in the mid-Atlantic region without state-level protections, and thus is especially vulnerable to changes at the federal level; and

WHEREAS, protection of all wetlands will be consistent with the current policy of this State to preserve and protect the productive public and private wetlands to prevent their loss and impairment and consistent with the historic right of private ownership of lands.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 66, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 6601. Short title.

This chapter shall be known and may be cited as "The Wetlands Stewardship Act."

§ 6602. Purpose.

It is declared that much of the wetlands of this State have been lost or despoiled by unregulated dredging, dumping, filling and like activities and that the remaining wetlands of this State are in jeopardy of being lost or despoiled by these and other activities; that such 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; 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, and that such loss or despoliation substantially impairs our resiliency as a State to withstand the impacts of climate change. ~~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.~~ It is hereby determined that the transitional areas between terrestrial and aquatic ecosystems of Delaware, and the wetlands in or about such areas of

Delaware, are critical areas for the present and future quality of life in the State and that the preservation of tidal and nontidal wetlands is crucial to the protection of the natural environment. Therefore, it is declared to be 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, to attain, through a combination of permitting, mitigation and other strategies, a statewide goal of no net overall loss in wetland acreage and function from human-driven activity, and to strive for a net resource gain in wetlands over present conditions.

§ 6603. Definitions.

(a) "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.

(b) "Authorized activity" includes any activity allowed after receipt of a permit from the Department.

(c) "Board" means the Environmental Appeals Board.

( ) "Community Water Access Structure" means a structure constructed for the purpose of transporting pedestrians from the uplands of a multi-unit or multi-home community across wetlands to: (i) uplands; (ii) a water body, or (iii) to a permitted structure (e.g. dock, observation tower, etc.). The intent of a community access structure is to provide the community, as a whole, access to the permitted structure rather than multiple individual structures; thereby reducing the overall environmental impacts. A Community Water Access Structure is not a pier.

( ) "Delaware Wetland Screening Tool" means a screening tool to be developed as a component of the initial regulations promulgated by the Department that could be used to determine whether an area has the potential to qualify as a wetland, including tidal or non-tidal wetlands, and could indicate those areas that may require further evaluation to determine if the wetlands are of "Exceptional Value," utilizing the factors set forth in this section. The tool shall, where available, provide maps to assist in screening for wetland status, which maps shall, among other layers, include information on all known Unique wetland parcels. Such maps will only be determinative of wetland status to the extent the Department so indicates. The tool should also address wetland function, with scored criteria for establishing high function, moderate function, and low function wetland areas. The tool will also separately address high function for purposes of the exemption at § 6606(b)(3). It is intended that the tool will be updated on an ongoing basis to incorporate current knowledge of the Department. The tool should incorporate guidance to the public on exempt activities. The tool may include other elements as determined by the Department.

(d) "Department" means the Department of Natural Resources and Environmental Control.

( ) “Exceptional Value Wetlands” shall be defined by regulations, and shall include: wetlands that are: (i) Unique or high functioning; (ii) wetlands that, based upon documented and appropriate habitat criteria, support flora or fauna listed as endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq. or listed as endangered pursuant to § 601 of this title (iii) wetlands located in public water supply Source Water Protection Areas; and (iv) wetlands located within designated natural areas. With regard to the second listed criteria, the regulations shall provide guidance on how a landowner can rebut any presumption that a particular wetland supports any given species of concern. This presumption may be rebutted through a “Presence/Probable Absence Study” that will, using standardized field methods and survey efforts, determine whether any particular species of concern is detected or, if not detected, can be treated as probably absent.

( ) “Foot Bridge” means a narrow pedestrian bridge that crosses wetlands for the purpose of transporting pedestrians from one upland location to another upland location, or to a blind, or to a structure exempt from regulation. Foot Bridges crossing wetlands cannot exceed 3 feet in width and the length is restricted to the minimum distance necessary to access an upland site or exempt structure. A Foot Bridge is not a pier and cannot be constructed for the purpose of transporting pedestrians from uplands across wetlands to a water body or dock. Foot Bridges are simple structures with no appurtenances such as but not limited to handrails, utilities, or other associated structures.

( ) “Linear Utility Infrastructure Projects” means the construction, maintenance, repair, and removal of overhead or underground electric or telecommunication transmission lines, underground water or sewage or stormwater conveyance lines, and oil and natural gas pipelines and associated facilities.

( ) “Mitigation” means:

(1) An action undertaken to accomplish one or more of the following:

a. Avoid or minimize impacts by limiting the degree or magnitude of the action and its implementation.

b. Rectify the impact by repairing, rehabilitating or restoring the impacted environment.

c. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action.

(2) If the impact cannot be eliminated by following paragraphs (1)a.-c. of this subsection, compensate for the impact by replacing the environment impacted by the project or by providing substitute resources or environments of similar or greater type, size and function.

( ) "Normal residential gardening and lawn and landscape maintenance" means ongoing noncommercial residential activities conducted by or on behalf of an individual occupant, including mowing; planting; fertilizing; mulching; tilling; vegetation removal by hand or by hand tools; and placement of decorative stone, fencing, and play equipment. Other appurtenant noncommercial activities, provided that they do not result in the conversion of a wetland to upland or to a different wetland type, may also be included.

~~(e)~~ ( ) "Person" means any individual, group of individuals, contractor, supplier, installer, user, owner, partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, administrative agency, public or quasi-public corporation or body, or any other legal entity, or its legal representative, agent or assignee.

( ) "Pilings" means timber, metal, concrete or other similar structures driven, dropped, poured or placed to support a vertical load.

~~(f)~~ ( ) "Preexisting use" means any use of land, or water, or subaqueous lands, or of a structure or any combination of these which was lawfully in existence prior to and in active use on July 17, 1973, or any temporary or seasonal use in active use for 10 consecutive weeks within the last 12 months previous to July 17, 1973.

~~(g)~~ ( ) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

~~(h) "Wetlands" shall mean 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 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 2 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), Sea Blite (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 March Mallow (Hibiscus palustris), Torrey Rush (Scirpus torreyi), Narrow-leaved Cattail (Typha angustifolia), and Broad-leaved Cattail (T. latifolia) and those lands not currently used for agricultural purposes containing 400 acres or more of contiguous nontidal swamp, bog, muck or marsh exclusive of narrow stream valleys 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.~~

( ) "Unique" wetlands are those categorized by the Department as: (i) Coastal Plain seasonal ponds; (ii) Inner-dune depression meadows; (iii) Peat-land fens; (iv) Piedmont stream valley wetlands; (v) Bald cypress swamps; (vi) Atlantic white cedar swamps; and (vii) Black ash seepage swamps.

( )(1) "(h) "Voluntary wetland habitat restoration project" means any of the following:

(1) Activities that are voluntarily undertaken to restore, reestablish, rehabilitate, or enhance altered or degraded or former aquatic habitats, and that result in a net increase in aquatic habitat functions and services,

(2) Activities to maintain or manage aquatic sites where activities described in paragraph (1) of this subsection have taken place,

(3) A voluntary wetland habitat restoration project may only include construction activities related solely to the habitat restoration action.

(4) A voluntary wetland habitat restoration project does not include an activity undertaken to fulfill, currently or in the future, a federal, state, or local aquatic habitat permit mitigation requirement.

(5) Aquatic Habitat Functions and Services means any of the following:

a. aquatic habitat hydrology that approximates the pre-disturbance condition or that emulates the natural condition of the aquatic habitat,

b. fish and wildlife habitat quality or quantity,

c. plant community quality, characterized by native vegetation types and diversity,

d. water- and soil-related functions of the aquatic habitat, such as nutrient removal, sediment reduction, flood control or groundwater recharge,

e. recreational use of the aquatic habitat, including, but not limited to, hunting, fishing, trapping and birdwatching, and providing recreational access consistent with the restoration project.

( ) “Wetland Walkway” means a walkway constructed for the purpose of transporting pedestrians from uplands across wetlands, to: (i) uplands; (ii) a water body or; (iii) to a permitted structure (e.g. dock, observation tower, etc.). The width and height of a Wetland Walkway shall be constrained to the dimension needed to enable one-stop permitting of both State and federal permits by means of State Programmatic General Permits. A Wetland Walkway is not a pier.

( ) "Wetlands" means all tidal and nontidal wetlands in the State. The terms "wetlands," "nontidal wetlands," and "tidal wetlands" shall be defined in regulations adopted by the Department, which regulations must be based upon generally accepted criteria and methodologies, including (i) the U.S. Army Corps of Engineers Wetlands Delineation Manual dated January 1987, and (ii) any regional supplemental guidance pertaining to local conditions.

§ 6604. Permit Required.

(a) Any activity in the wetlands requires a permit from the Department except the activity or activities exempted by this chapter. ~~and no permit may be granted unless the county or municipality having jurisdiction has first approved the activity in question by zoning procedures provided by law.~~

(b) The Secretary shall consider the following factors prior to issuance of any permit:

(1) Environmental impact, including but not limited to, likely destruction of wetlands and flora and fauna; impact of the site preparation on tidal ebb and flow and the otherwise normal drainage of the area in question, especially as it relates to flood control; impact of the site preparation and proposed activity on land erosion; effect of site preparation and the proposed activity on the quality and quantity of tidal and nontidal waters, surface, ground and subsurface water resources, the related watershed, and other ~~resources;~~ resources.

(2) Aesthetic effect, such as the impact on scenic beauty of the surrounding ~~area;~~area.

(3) The number and type of public and private supporting facilities required and the impact of such facilities on all factors listed in this ~~subsection;~~ subsection.

~~(~~4) Effect on neighboring land uses, including but not limited to, any increased water retention or flood risk, public access to tidal and nontidal waters, recreational areas and effect on adjacent residential and agricultural areas;

(5) State, county and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction; and

(6) Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of the jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to the state, county and local governments.

(c) The applicant for a wetlands permit shall have the burden of proving whether the proposed activity is, or is not, within tidal or nontidal wetlands,

(~~e~~d) The Secretary may require a bond in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations, if any, set forth in the permit. The particular amount and the particular conditions of the bond required shall be consistent with and in furtherance of the purposes of this chapter. The Secretary shall state for the record, the basis for the bonding requirements imposed with each permit granted. In the event of a breach of any condition of any such bond, the Attorney General may institute an action in Superior Court upon such bond and prosecute the same to judgment and execution.

§ 6605. Preexisting use.

Unless otherwise exempt through regulation, ~~Any~~ any expansion or extension of a preexisting use of wetlands requires a permit. ~~and no permit may be granted under this chapter unless the county or municipality having jurisdiction has first approved the use in question by zoning procedures provided by law.~~

§6606. Exemptions.

(a) Any of the following activities are exempt from any permit requirements or any other regulation under this chapter: ~~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.~~

(1) Farming on any lands upon which, in the prior 10 years on a rolling basis, normal activities have been conducted either (i) for the farming and production of agricultural crops, or (ii) manifesting an intent to farm the land for the production of agricultural crops, including but not limited to, activities such as plowing, seeding, clearing, irrigation installation, haying, grazing of domestic animals and free ranging livestock or poultry, cultivating, and harvesting, provided that such activity is part of an established and ongoing operation for the farming and production of agricultural crops.

(2) Silvicultural activities permitted by the Delaware Department of Agriculture, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation;

(3) Conservation practices on lands that are engaged in programs through the United States Department of Agriculture, United States Department of the Interior, Delaware Department of Agriculture, a Delaware Conservation District, or similar natural resource conservation programs approved by the Department, for taking land(s) out of production and implementing conservation practices during the contract term;

(4) Hunting, fishing, trapping, and duck blinds;

(5) Wildlife nesting structures;

(6) Mosquito control activities authorized by the Department;

(7) Construction of drainage ditches, tax ditches, swales and other drainage features created from uplands to assist with drainage or stormwater management. Maintenance of constructed drainage ditches, tax ditches, swales and other drainage features created from uplands to assist with drainage or stormwater management in upland areas are also exempted;

(8) Artificial ponds and borrow pits, including stormwater management ponds unless they are constructed in line with an intermittent or perennial stream or a jurisdictional wetland;

(9) Construction of directional aids to navigation;

(10) The placing of boundary stakes;

(11) Foot Bridges.

(12) Normal residential gardening and lawn and landscape maintenance.

(b) Any of the following activities are conditionally exempt as set forth below:

(1) In nontidal wetlands that do not qualify as Exceptional Value Wetlands, any activity that would be allowed under a Nationwide Permit issued by the Army Corps of Engineers and in effect in Delaware, provided that a Water Quality Certification has been received from the Department where necessary.

(2) Any activity in tidal wetlands, undertaken by the Department or a federal agency, or a non-profit acting on behalf of the Department or a federal agency, for a voluntary wetland habitat restoration project, that would be allowed under a Nationwide Permit issued by the Army Corps of Engineers and in effect in Delaware.

(3) Nontidal wetlands equal to or less than a contiguous 0.50 acres in extent, on one parcel or multiple parcels, shall be exempted out of any further regulation under this chapter after submission to the Department of a certification, from a professional certified by the Department, that the wetlands do not qualify as Unique wetlands as defined in § 6603 of this title, or as high function wetlands as defined in regulations. For purposes of this exemption, any measurement of high function shall be made independently of whether the parcel supports, or could support, any flora or fauna listed as endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq. or listed as endangered pursuant to § 601 of this title. The process for professional certification, and the protocol to identify a high function wetland for the specific purposes of this exemption, shall be established by the Department through regulations.

(4) Work performed by any state, county, municipal government or conservation district, or their designated contractor, when that work occurs in nontidal wetlands in the Delaware Atlantic Coastal Plain Province with a contributing drainage area of less than 800 acres.

(5) Maintenance, reconstruction or retrofitting work performed by or with the assistance of any state, county, municipal government or conservation district when that work occurs in any nontidal wetlands. Such maintenance, reconstruction or retrofitting work shall comply with the standards and specifications associated with best management practices in the Delaware Erosion and Sediment Control Handbook, 1989 or as revised (68 Del. Laws, c. 268, § 2).

(6) Any work in agricultural drainage ditches created from uplands that are designed according to reasonable drainage standards, when performed by or with the assistance of any state, county, municipal government or conservation district.

(7) Creation or maintenance of ponds constructed in uplands when those ponds are constructed or maintained by or with the assistance of any state, county, municipal government or conservation district.

(8) Wetland Walkways are exempt where: (i) Federal authorization is not needed, and the length is less than or equal to three hundred (300) feet in non-tidal wetlands that do not qualify as Exception Value Wetlands; or (ii) Federal authorization is not needed, and the length is less than or equal to one hundred and fifty (150) feet in tidal wetlands that do not qualify as Exception Value Wetlands.

§ 6607. Procedures; regulations; application fees.

(a) The Secretary shall administer this chapter.

(b) The initial regulations promulgated under this chapter shall establish the Delaware Wetland Screening Tool referenced in § 6603 of this title. The Delaware Wetland Screening Tool may include: (i) screening methodologies to determine the likely or predicted existence of a wetland; (ii) methodologies for confirming and/or refining that assessment based on field conditions using published criteria such as Cowardin et al. 1979; (iii) criteria for the evaluation and rating of wetland function, including high, moderate and low function; (iv) screening criteria to distinguish between tidal and nontidal wetlands; (iv) criteria for screening for the identification of Exceptional Value Wetlands; and (v) certification and oversight criteria for the use of the Delaware Wetlands Screening Tool by Department-certified professionals on behalf of the public. It is intended that, to the maximum extent possible, and excepting any "Presence/Probable Absence Study," any onsite screening required could be performed in under one day and with a minimum of equipment.

~~(b) The Secretary shall inventory, as promptly as he or she is able, all wetlands within the State and prepare suitable maps. Such maps shall be filed with the Secretary of State and made available for public inspection at the offices of the Department. On completion of a wetlands boundary map for an area, the Secretary shall propose that wetlands within the area be designated as such in accordance with the map. Wetlands designation on the maps shall be conclusive for the purpose of this chapter upon adoption by the Secretary, subject to the outcome of any appeals taken under this section, and subsection (e) of this section. After such designation, the 2-foot elevation above local mean high water specified in § 6603 of this title shall not apply to any land outside the designated area.~~

(c) The Secretary shall adopt a wetlands designation or any other regulation only after holding a public hearing in accordance with § 6609 of this title.

(d) The Secretary shall, in furtherance of the purpose of this chapter, adopt regulations:

(1) Setting forth procedures, including provision for fees, which shall govern the processing of permit applications and the conduct of hearings;

(2) Elaborating standards consistent with §6604 of this title by which each permit application will be reviewed and acted upon;

(3) Controlling or prohibiting activities on lands designated or proposed for designation as wetlands, which regulations may vary from area to area according to the ecological value of the subject wetlands and the threat to the health and welfare of the people of this State which their alteration would pose.

(4) Affording additional protections to Exceptional Value Wetlands, including restrictions on allowed activities and development of best management practices for any allowed activity in such areas.

(5) Reducing duplication with the permitting requirements of the Army Corps of Engineers. Where possible, the regulations should enable joint applications or one-stop permitting in areas of jurisdictional overlap.

(6) Improving the State's ability to account accurately for cumulative and individual impacts from wetlands permitting actions.

(7) Promulgating mitigation strategies designed to facilitate no net overall loss in wetland acreage and function throughout the State, and to protect Delaware's resiliency to the impacts of climate change. Strategies to be considered include a wetland mitigation bank, aquatic restoration fund, in-lieu fee program, or other vehicle that provides incentives for the creation, restoration, enhancement, or protection of wetlands. Incentives shall be structured to create a framework that provides a strong incentive for the preservation of Exceptional Value Wetlands.

(8) Establishing General Permits to improve the efficiency of permitting for common and/or environmentally beneficial activities with minimal environmental impact. All such General Permits shall state whether they apply in nontidal wetlands, tidal wetlands, or both. General Permits to be considered include:

a. A General Permit that authorizes Voluntary Wetland Habitat Restoration Projects through an expedited process.

b. A General Permit that authorizes Linear Utility Infrastructure Projects.

c. A General Permit that authorizes the use of pilings in nontidal wetlands in appropriate circumstances. The regulations shall consider imposing restrictions where: (i) the pilings are so closely spaced that sedimentation rates would be increased; (ii) the pilings themselves effectively would replace the bottom of a water body; (iii) the placement of pilings or related structures would result in the adverse alteration or elimination of aquatic or biologic functions; and (iv) the pilings are intended to be used for structural support of a building such as a commercial or residential structure.

d. A General Permit that authorizes the placement of educational signage and/or the construction of infrastructure for public use (e.g. viewing towers, nature trails), as determined by the Department.

e. A General Permit that authorizes a Wetland Walkway for individual properties for water access under designated conditions to enable one-stop State and federal permitting by means of State Programmatic General Permits.

f. A General Permit that authorizes one community access structure per community for multi-unit or multi-home communities for water access under designated conditions;

g. A General Permit, to be known as the "Default General Permit," applicable to activities that disturb a cumulative area of nontidal wetlands equal to or less than 0.50 acres in extent that do not qualify as Exceptional Value Wetlands. This "Default General Permit" shall require mitigation measures and shall only issue in the circumstances set forth in subsection (h) of this section.

~~(4)~~ (e) Any fees collected under this chapter are hereby appropriated to the Department to carry out the purposes of this chapter. The Secretary shall report through the annual budget process the receipt, proposed use and disbursement of these funds.

(f) The Secretary will consult with the soil conservation districts, the Department of Agriculture, and, as the Secretary deems appropriate, any other relevant state, local, or federal agency in the development of best management practices to protect wetlands in compliance with the regulations to be adopted by the Department under this chapter.

(g) The Department must notify the applicant within 30 days as to whether their application as submitted is administratively complete and request any information required to complete the application. The applicant has 30 days to respond with the requested information. Except as set forth in subsection (h) of this section, the Department has 120 days after receipt of a complete application to either issue or deny the permit, or state that an extension of time is required. Any such extension shall provide an anticipated timeline for a final determination on the permit, and shall provide specific reasons why an extension of time is required. Any permit denial must include specific reasons for denial including citations to the lack of compliance with this chapter. The foregoing timelines do not apply to applications involving the resolution of identified violations or applications which require the approval of a mitigation plan. The foregoing timelines do not apply to applications involving a permit hearing.

(h) Where a permit application is submitted for activities that disturb a cumulative area of nontidal wetlands equal to or less than 0.50 acres in extent that do not qualify as Exceptional Value Wetlands, and where the Department has not issued or denied a permit within 120 days from receipt of a complete application for such activities, the Default General Permit set forth in paragraph (d)(8)g. of this section shall be automatically issued in connection with the application. The foregoing timeline does not apply to applications involving the resolution of identified violations or applications involving a permit hearing.

(i) The Department shall develop a tracking system to record and make public its response times for all permit applications received.

~~(e)~~ (j) If an on-site evaluation ~~by the Department~~ establishes that an error exists in a wetlands map that has been adopted by the Department, 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 the public notice of any proposed correction. For purposes of this subsection, the term “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 20 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 §6609 of this title. 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.

~~(f)~~(k) The Secretary may waive any provision of the regulations adopted pursuant to this chapter when warranted under the following circumstances:

(1) Life-threatening emergencies.

(2) Actions required for public safety for which sufficient time is not available to follow the regulations.

(3) When imminent or catastrophic damage or loss of major infrastructure is likely if all provisions of the regulations are adhered to.

(4) Where the authority of the Department under this chapter overlaps with another statute, including but not limited to shellfish grounds (Chapter 19 of this title), beach preservation (Chapter 68 of this title) or subaqueous lands (Chapter 72 of this title) provided that the following criteria are met:

a. If, in the opinion of the Secretary, equal environmental impact review and regulation of the activity would be provided by either statute; and

b. Waiver of these regulations would not be contrary to the purposes of this chapter.

~~(g)~~(l) The Secretary may issue an after-the-fact permit, letter of authorization or waiver in those cases where an activity has occurred without first obtaining the required permit, letter of authorization or waiver. The determination of whether or not to issue an after-the-fact permit, letter of authorization or waiver shall be consistent with the purposes and provisions of this chapter. The applicant receiving the after-the-fact permit, letter of authorization, or waiver will be responsible for paying any associated processing fee and the Secretary may assess a penalty in accordance with § 6005 of this title.

§ 6608. Permit applications.

(a) Any person desiring to obtain a permit required by § 6604 of this title shall submit an application in such form and accompanied by such plans, specifications and other information as required by applicable regulations.

(b) Upon receipt of an application in proper form, the Secretary shall post on the Department's website and advertise in a daily newspaper of statewide circulation and in a newspaper of general circulation in the county in which the activity is proposed, a notice containing all of the following:

(1) The fact that the application has been received.

(2) A brief description of the nature of the application.

(3) An electronic address where there are instructions for reading the application online. The Department may provide instructions for nonelectronic review of application attachments that are too voluminous to post online.

(c) The Secretary may hold a public hearing with respect to any application if it is deemed to be in the best public interest. The Secretary shall hold a public hearing if the Secretary receives a written meritorious public hearing request expressing opposition to the application within 20 days of advertisement. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application, ~~and~~ a reasoned statement of the permit's probable impact~~.~~, and a demonstrated and substantial nexus between the requestor and this probable impact.

§ 6609. 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:

(1) Notification shall be served upon the applicant, alleged violator, or appellant as summonses are served by registered or certified mail not less than 20 days before the time of said hearing. Not less than 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. Such notice shall also be sent by mail simultaneously to persons who have listed their names and addresses with the Secretary to be notified. Such notice shall also be sent by mail simultaneously to all adjoining property owners. 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.

(2) The permit applicant, alleged violator, or appellant may appear personally or by counsel at the hearing and produce any competent evidence in his or her 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 the Board, notices of hearings or ~~subpoenae~~ subpoenas requiring the testimony of witnesses and the production of books, records or other documents relevant to any matter involved in such a hearing; and ~~subpoenae~~ subpoenas 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 Chairperson of the Board, to issue an order requiring such person to appear and testify or produce evidence as the case may require.

(3) 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 the Secretary's 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 reasons. The Secretary or the Board shall promptly give written notice to the persons affected by such order.

§ 6610. Appeal to Board.

Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board within 20 days after ~~the Secretary has announced the decision~~ receipt of the Secretary's decision, or publication of the decision including, without limitation, online publication on the Department's website, whichever is soonest.

§ 6612. Appeal from Board's decision.

(a) Any person or persons, jointly or severally affected by any decision or nondecision of the Board, or any taxpayer, or any officer, department, board or bureau of the State, may appeal to the Superior Court in and for the county in which the use in question is wholly or principally located by filing a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Any such appeal shall be perfected within 30 days of the decision of the Board.

(b) The Court may affirm, reverse or modify the Board's decision. The Board's findings of fact shall not be set aside unless the Court determines that the record contains no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court may remand the cause to the Board for completion of the record.

§ 6613. Taking without just compensation.

If the Superior Court finds that the action appealed from constitutes a taking without just compensation, it shall invalidate the order and grant appropriate relief, unless the Secretary at this stage, consents to the reversal or modification of his or her decision. However, the Secretary may, through negotiation or condemnation proceedings

under Chapter 61 of Title 10, acquire the fee simple or any lesser interest, including but not limited to, a perpetual negative easement or other interest which assures that the affected land shall not thereafter be altered, dredged, dumped upon, filled or otherwise altered subject to any reasonable reservations to the landowner as the Secretary may have stipulated to prior to assessment of damages. A decision of the Superior Court that the action appealed from constitutes a taking without just compensation shall not become effective for 2 years of the date of decision and shall not become effective at all if within that period the Secretary has initiated action to acquire fee simple or any lesser interest in the wetlands in question. A finding of the Superior Court that the denial of a permit or the restrictions imposed by a granted permit constitutes a taking without just compensation shall not affect any land other than that of the petitioning landowner. If the Secretary has not initiated action to acquire fee simple or any lesser interest in the wetlands in question within 2 years from the date of a final court ruling, the permit must be granted as applied.

§ 6614. Cease and desist orders.

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. Any cease and desist order issued pursuant to this section shall expire (1) after 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.

§ 6615. Injunction.

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

§ 6616. Right of entry.

The Secretary or the Secretary's duly authorized designee, in regulating any activity over which he or she has jurisdiction pursuant to this chapter, may enter, at reasonable times, upon any private or public property for the purpose of determining whether a violation exists of a statute or regulation enforceable by him or her, upon giving written notice, and after presenting official identification to the owner, occupant, custodian or agent of said property.

§ 6617. Penalties.

~~(a)~~ Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of a permit issued pursuant to § 6604 of this title, or any order of the Secretary, shall be subject to enforcement in accordance with § 6005 or § 6013, or both, of this title.

(b)-(d) [Repealed.]

§ 6618. Inconsistent laws superseded; all other laws unimpaired.

All laws or ordinances inconsistent with any provision of this chapter are hereby superseded to the extent of the inconsistency; provided, that present and future zoning powers of all counties and municipalities, to the extent that said powers are not inconsistent with this chapter, shall not hereby be impaired; and provided, that a permit granted under this chapter shall not authorize an activity in contravention of county or municipal zoning regulations. As wetlands are of great value to the State and incentivizing the preservation of wetlands is an important goal of the State, a permit granted under this chapter is intended to provide the applicant with the basis to qualify for a local or State land development incentive program.

§ 6619. Liberal construction.

This chapter, being necessary for the welfare of the State and its inhabitants, shall be liberally construed in order to preserve the wetlands of the State.

§ 6620. Federal aid; other funds.

The Department may cooperate with and receive moneys from the federal government, state or local government or any industry or other source. Such moneys received are appropriated and made available for the study and preservation of the wetlands.

§ 6621. Creation of the Wetlands Regulatory Advisory Committee.

(a) There is hereby established the Wetlands Regulatory Advisory Committee ("Committee").

(b) The Committee shall assist the Department in developing the initial regulations required under this chapter, shall review the first 3 years of implementation of the initial regulations, shall report on that review as set forth in this section, and shall provide guidance in other matters related to the work under this chapter as requested by the Secretary.

(c) The Committee shall consider nationally recognized best practices and standards, as well as actions that surrounding states have implemented concerning incentive programs, policies, and assumption of regulatory roles. The Committee shall also evaluate the permitting processes for activities regulated by state and federal agencies with the goals of reducing duplication, providing efficient 1-stop permitting, expediting voluntary wetland habitat project permits, and improving the State's ability to account accurately for cumulative and individual impacts.

(d) The Wetlands Regulatory Advisory Committee shall be composed of 25 members as follows:

(1) The County Administrator or County Executive, or the County Administrator's or County Executive's designee, from each county.

(2) Three members from the Delaware Farm Bureau, including 1 from each county. The Delaware Farm Bureau shall propose at least 2 candidates from each county to the Governor for membership on the Committee, and the members shall be appointed by the Governor.

(3) One member who represents the Conservation Districts and whose job requires expertise in stormwater management, appointed by the Governor.

(4) Eight members from the environmental advocacy community. Each of the following organizations shall propose candidates to the Governor for membership on the Committee, and the Governor shall appoint 1 member from each organization:

a. Delaware Center for Inland Bays.

b. The Delaware Chapter of the Sierra Club.

c. The Delaware Nature Society.

d. The Delaware Ornithological Society.

e. The Delaware Wild Lands.

f. Ducks Unlimited.

g. The Nature Conservancy.

h. An additional environmental advocacy organization to be identified by the Governor.

(5) One member from an environmental justice organization, to be identified and appointed by the Governor.

(6) One member from the Home Builders Association of Delaware. The Home Builders Association of Delaware shall propose candidates to the Governor for membership on the Committee, and the member shall be appointed by the Governor.

(7) One member from the Delaware Association of Realtors. The Delaware Association of Realtors shall propose candidates to the Governor for membership on the Committee, and the member shall be appointed by the Governor.

(8) One member from the American Council of Engineering Companies of Delaware. The American Council of Engineering Companies of Delaware shall propose candidates to the Governor for membership on the committee, and the member shall be appointed by the Governor.

(9) One member from the Delmarva Chicken Association. The Delmarva Chicken Association shall propose candidates to the Governor for membership on the committee, and the member shall be appointed by the Governor.

(10) One member from a general business group, to be identified and appointed by the Governor.

(11) One member who is a private wetlands consultant, certified by the Society of Wetlands Scientists, with at least 15 years of experience working in the State, appointed by the Governor.

(12) Three members from higher education institutions, including 1 faculty member with a specialization in wetlands science, 1 faculty member with a specialization in agricultural economics, and 1 faculty member from the University of Delaware Cooperative Extension with knowledge of forestry or soil conservation, appointed by the Governor.

(e) The Committee shall have two Co-Chairs, elected by the Committee at its first meeting.

(f) Each committee member appointed by the Governor shall serve for a term of 3 years and shall be eligible for re-appointment for terms of 3 years. An appointment to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term. Members shall continue to serve after the expiration of their terms until they resign, are reappointed, or are replaced. Members named by an organization can be replaced at any time at the election of the organization.

(g) Members of the Committee shall serve without compensation.

(h) The Co-Chairs of the Committee may establish such subcommittees of the Committee as the Co-Chairs determine would provide assistance to the Committee in meeting its responsibilities. Any subcommittee shall be chaired by a Committee member.

(i) A quorum of the Committee is a majority of the Committee's members. A vacant position is not counted for quorum purposes.

(j) Official action by the Committee, including making findings and recommendations, requires the approval of a majority, plus one additional member, of the Committee members at a meeting where a quorum is present.

(k) Any member missing two consecutive meetings without good cause shall be eligible for replacement, at the discretion of the Co-Chairs.

(l) The Committee may adopt rules necessary for its operation. If the Committee does not adopt rules or if the adopted rules do not govern a given situation, Robert's Rules of Order governs.

(m) The Committee may invite individuals with relevant expertise to participate in Committee discussions.

(n) The Committee shall organize and hold its first meeting by August 1, 2026. The Department shall; (i) identify the time and place of the initial meeting; (ii) provide staff to administer the Committee, and (iii) support the Committee regarding both regulatory and technical matters. The Committee must submit regulations for approval by the Secretary by August 1, 2027.

(o) Upon promulgation of the initial regulations required by this chapter, the Committee shall review the Department's implementation of those regulations and the overall operation of the wetlands program for a three-year period, and shall, within one year after this period, provide a final report making recommendations for legislative or regulatory improvements to the wetlands program. This final report shall be provided to the Governor, President Pro Tempore of the Senate, and the Speaker of the House of Representatives for distribution to the members of the General Assembly, with a copy to the Director and the Legislative Librarian of the Division of Research of Legislative Council, and the Delaware Public Archives.

§ 6622. Promulgation of Initial Regulations.

(a) The Committee, working staff provided by the Department, shall review and approve the initial regulations before they are submitted to the Secretary. If the Secretary concludes that initial regulations, or any portion of such regulations, are inconsistent with Delaware law, the Secretary shall provide a reason and remand the regulations to Department staff and the Committee for revision. However, if the Secretary concludes that the initial regulations developed by the Committee, and approved by a majority plus one of the Committee, are consistent with Delaware law, then the Secretary shall thereafter promulgate the initial regulations as proposed by the Committee under the procedures of Chapter 101 of Title 29.

(b) The Committee shall consider nationally recognized best practices and standards, as well as actions that surrounding states have implemented in the way of incentive programs, policies, and assumption of regulatory roles. The Committee shall also evaluate the permitting processes for activities regulated by state and federal agencies

with the goals of reducing duplication, providing efficient 1-stop permitting, expediting voluntary wetland habitat project permits, and improving the State's ability to account accurately for cumulative and individual impacts.

(c) The Department shall have no authority to promulgate regulations under this Chapter until the initial regulations have been approved by the Committee and thereafter approved by the Secretary and promulgated under the procedures of Chapter 101 of Title 29. If no version of the initial regulations are approved by the Committee and submitted to the Secretary before August 1, 2027, the Department shall thereafter have full authority to promulgate initial regulations under the procedures of Title 29, Chapter 101.

(d) Any subsequent regulations, including any amendments to the initial regulations, shall be promulgated under the procedures of Title 29, Chapter 101 without need of approval by the Committee, although the Secretary must solicit input in any subsequent regulations from the Committee. The Committee must provide any input it might have within a sixty-day period after solicitation from the Secretary.

Section 2. Delete Chapter 66A, Title 7 of the Delaware Code, Nontidal Wetland Standards, in its entirety.

Section 3. Amend Chapter 72, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7203. Jurisdiction.

(a) The Secretary shall have jurisdiction over any project involving ungranted subaqueous lands owned by the State, and shall have jurisdiction and authority to convey a fee simple of lesser interest or to grant an easement with respect to all projects involving these lands. All jurisdiction and authority remaining in the State as to subaqueous lands for which leases have been made or may be made is invested in the Secretary.

(b) Owners of private subaqueous lands must obtain a permit from the Department before making any use of such lands which may contribute to the pollution of public waters, infringe upon the rights of the public, infringe upon the rights of other private owners or make connection with public subaqueous lands.

(c) All activities in private nontidal subaqueous lands authorized under a Nationwide Permit issued by the United States Army Corps of Engineers and in effect in Delaware are exempt from this chapter; provided that a Water Quality Certification has been received from the Department where necessary.

Section 4. Sections 6621 and 6622 of Section 1 of this Act, and the entirety of Section 2 of this Act, take effect on enactment of this Act into law. The entirety of Section 3 of this Act takes effect 60 days after enactment of this Act into law. All remaining provisions of this Act are effective immediately and are to be implemented on the

date of publication in the Register of Regulations of a notice by the Secretary of the Department of Natural Resources and Environmental Control that final regulations to implement this Act have been adopted.

Approved July 21, 2026