User’s Guide to Waterfront Permitting


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WITH SUPPORT FROM THE ROBERT STERLING CLARK FOUNDATION
About the Metropolitan Waterfront Alliance:

The Metropolitan Waterfront Alliance is the voice of nearly 400 organizations with ties to our regional waterways. Together we are working to transform the waters of New York and New Jersey Harbor into clean and accessible places to learn, work and play, with inviting parks, dependable jobs and reliable, eco-friendly transportation for all.

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Metropolitan Waterfront Alliance
457 Madison Ave., 5th Floor
New York, NY 10022

(212) 935-5983 · www.waterfrontalliance.org
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Chapter 1: Introduction

The protection, conservation, and best use of the water resources of New York and New Jersey are matters of utmost public importance. Waterways such as streams, rivers, lakes, bays, and estuaries not only provide water for agricultural, domestic, and industrial use, but also provide habitats for aquatic life, avenues for transportation and commerce, and sites for many forms of public recreation. Wetlands provide water storage for flood protection, filtering of pollutants, and habitats for many plant, fish, and other wildlife. These aquatic resources are vital to the region’s economy and the well being of society.

We all depend on the health of our wetlands and waterways in one way or another. To provide for the best possible use of water resources, we must strike a balance between protection and human use. This is the central purpose of the regulations that govern activities in waterways, wetlands, and riparian areas in New York and New Jersey.

Navigating the municipal, state, and federal regulatory systems affecting water-related development can be a confusing and time consuming process. This Guide was created to help users understand the regulations and jurisdictions that impact water-related development and avoid unnecessary costs and delays.

1.1 How to Use This Guide:

The User’s Guide to Waterfront Permitting was created to provide a comprehensive, yet clear reference for the regulatory programs that influence the permitting of projects in wetlands and waterways on or near the New York and New Jersey Harbor Estuary. While most of the state and federal permits discussed in this guide apply to New York and New Jersey as a whole, the municipal agencies and permits discussed in the Guide apply only to those projects located in and around the Harbor area.

The information provided in the Users Guide is also found on the Waterfront Permitting Made Simple website found at: http://nynjwaterfrontpermitting.squarespace.com/

The Guide is designed to assist applicants in planning their water-related projects to avoid last-minute surprises that may result in delays or unforeseen costs. Its purpose is to provide instructive guidance only. The Guide is not a substitute for the statutes and regulations that guide waterfront permitting, nor does it describe completely the application requirements for any given permit. Additionally, your project may require permits and approvals that are not discussed in this guide. Applicants are urged to contact the agency or office that administers each permit for more detailed information and application requirements.

This guide will help applicants identify:

- time and cost saving tips for waterfront permitting;
- which permits may be required for an activity;
- relevant agencies, application requirements, and timelines for permits;
- how permit requirements might influence a project’s design; and
- the context in which their application lies in the process.
1.2 A Brief Step-By-Step Guide to the Waterfront Permitting Process

The following steps provide a general plan for approaching regulatory agencies and sequencing your application process. Begin these steps as early as possible and before incurring the costs of designing expensive architectural and engineering plans.

Although these steps are labeled “step 1, step 2, etc” some can be taken simultaneously. For example, it is helpful to contact all relevant agencies at the beginning of the process to notify them of your project and seek their input.

The goal of this process is to first acquire the necessary State and Federal permits and approvals so you can receive a building permit from the municipal building department. The building permit will be conditioned on you showing that you have all of the other permits and approvals lined up. Once you have a building permit and have complied with any other municipal regulations you can begin construction of your project.

Step 1: Contact your local municipal planning department or use the department’s online resources to identify the zoning on your site.

The zoning designation of your site will give you an indication as to whether your project is likely to conform with the current zoning requirements, or whether it will require a variance or amendment.

Be aware that there are often special zoning overlays (i.e. additional rules) for waterfront or coastal areas. The zoning designation of your site will influence the design of your project. For example, the zoning may regulate the height of a structure, the structure’s footprint, access to the water, blockage of sightlines, etc.

If your project is in New York and will require a “discretionary action” or “Type I” action from the City Planning Commission (e.g. a special variance, change to the city map, change to a zoning district) the project will likely require an environmental review. This can be a lengthy process and you should begin coordinating this review with the Department of City Planning, which operates as staff to the City Planning Commission, as early as possible.

Step 2: Contact your State environmental agency and schedule a pre-application meeting or telephone conference.
In New Jersey, contact the New Jersey Department of Environmental Protection (NJDEP). In New York, contact the New York State Department of Environmental Conservation (NYSDEC).

If your project encroaches into the water at all, or is in or near a wetland, you will likely need to obtain State and Federal permits before you can apply for municipal building permits.

In the New York-New Jersey Harbor Estuary, waterfront projects often require several State environmental permits. Both NJDEP and NYSDEC require a wetlands permit for most activities in or near a wetland. Many waterfront projects also require a Protection of Waters Permit in New York, or a Waterfront Development Permit in New Jersey.

Unlike as-of-right permits such as building permits, obtaining environmental permits is a discretionary process. In other words, permit eligibility is not simply a matter of following a set of rules and submitting the necessary forms. These agencies have “discretionary authority,” to deny your permit request even if you have submitted the proper forms. For example, if NYDEC or NJDEP feel your project may harm local species and or unnecessarily degrade the functions of a wetland, they can require dramatic alterations in your design, or can flatly deny the permit request.

The State environmental agencies have joint applications that can be used to apply for several permits and aid the agencies in State environmental reviews, coastal management plan consistency reviews and applications to use State lands.

Applications for State and Federal permits may require an environmental review and coastal zone consistency determination. See the relevant sections of this guide to learn more about these processes and ask NYSDEC or NJDEP officials to explain how they may impact your project.

**Step 3: Contact the U.S. Army Corps of Engineers to schedule a pre-application meeting.**

If your project requires State water-related development permits, it will likely require one or more permits from the U.S. Army Corps of Engineers (ACOE). Applications for ACOE permits may be incorporated into State environmental permit applications, or may be separate depending on the state and the permit. Either way, ACOE staff can help you identify the necessary Federal permits and outline the application procedures.

If your project is in New York State and requires Federal permits, you will have to fill out a Federal Consistency Assessment Form for the New York State Department of State. This form helps NYSDOS staff determine if the Federal action (i.e. ACOE permits) is consistent with the New York Coastal Management Plan. This form can be found on the NYSDOS website.

**Step 4: Once you have received the required State and Federal permits, you can apply for approval to use state lands.**
If your project extends onto or over public land (e.g. most submerged land is public), you will require a land grant, lease or easement or other approval for use of the public property (if your project does not use public land, skip this step). In New Jersey, such land grants are done within the NJDEP Tidelands Bureau and may be considered simultaneously with your permit application. In New York, this process is administered through the New York State Office of General Services (or NYSDOS during the consistency determination for smaller projects). Contact the relevant agency and ask which type of grant is appropriate for your project and how to proceed with an application.

**Step 5:** Once you have secured the necessary State and Federal permits, you can apply for a building permit from your municipal building department.

Building permits are not subject to the same type of "discretionary review" as are environmental permits. As long as you comply with the building code and the zoning text, you will receive your permit. In New York City, building permit applications are reviewed by either the New York City Department of Buildings, or the Department of Small Business Services.

Determining which of these two agencies will conduct the review can be complicated, and it is better to contact the Department of Buildings and ask them which agency has jurisdiction. In New Jersey, building permits are issued through the relevant municipality. Your architect or engineer should know how to apply for building permits. Otherwise, contact the Mayor’s Office of the municipality in which the project is located for assistance.

**1.3 Tips for Successfully Navigating the Permitting Process:**

1. **Contact Agencies Early.** The most important recommendation for avoiding delays and unforeseen costs is to contact the relevant permitting agencies in the very early stages of project planning, particularly State environmental agencies. Some agencies allow for pre-application meetings. Schedule such a meeting before incurring expensive planning and design costs. Ideally, an applicant will initially approach an agency with only an idea, a map, a site photo, and a napkin sketch. Many applicants make the mistake of approaching permitting agencies after paying for expensive designs and renderings, and making other preparations for construction. These applicants are often disappointed to learn that many of their assumptions about what would be allowed at their site were false.

2. **Schedule Personal Meetings Between the Project Owner/Principal and Agency Officials.** It can be helpful to have the project owner or principal (rather than consultants or lawyers) meet directly with agency officials whenever possible. This establishes a personal relationship that can facilitate open communications and a collaborative spirit. Anecdotal evidence suggests that disagreements and misunderstandings are resolved more easily when project owners or principals, rather than consultants, meet directly with agency staff.
3. **If You Hire a Professional Permitting Consultant or Lawyer, Make Sure That Individual Has Experience With the Relevant Agencies and Has an Incentive to Work Quickly.** Conversations with State permitting staff reveal that the quality of permitting consultants varies dramatically. They suggest hiring a consultant that has a history of successful interactions with permitting agencies and a list of happy clients. Permitting staff also suggest negotiating a consulting fee that provides an incentive for the consultant to help obtain permits quickly. If consultants are paid by the hour, they may have less of an incentive to collaborate with the permitting agency to resolve the process quickly. Under the hourly fee arrangement, the longer the process takes, the more the consultant earns. Permitting officials suggest trying to create a fee arrangement that creates a financial incentive for the consultant to negotiate a quick resolution of the permitting process.

   a. **Avoid Making Assumptions About Your Project and What Will Be Allowed.** There are many factors that affect the regulation of a waterfront project. Characteristics of the site, the presence of habitat and species, the degree of intrusion into the water, and many other factors all play a role in agency decision-making. Some of the factors that are important to officials are not obvious to the layperson. Here are some common issues that take applicants by surprise:

   b. **Do not assume your project is “water-dependant.”** Under certain permitting regulations, projects that are deemed to be “water-dependant” are given strong preference to non-water-dependant projects. While you may feel your project depends on waterfront access, agencies often use a very strict interpretation of the term that might not include your use. Typically, if your project does not literally rely on immediate access and the use of water in its operation, it is not water-dependant. In other words, a project is not water-dependant if a similar type of project or concept could exist inland from the waterfront.

4. **Do not assume your site lacks important habitat or species.** Applicants often underestimate the degree to which their site supports life. The waters around New York and New Jersey host vibrant ecosystems that are often undetected by the untrained eye. An agency may require an applicant to hire a professional to examine the site for the presence of endangered species, critical habitat, or archeological artifacts. The undertaking of these studies can significantly impact the project design and permitting cost and duration.

5. **Make Environmental Impacts an Early Priority in the Project Design, and Demonstrate Environmental Consciousness to Permitting Officials from the Outset.** Permitting officials do not like to see environmental considerations as an afterthought. Too often, they say, permit applicants approach agency officials with the mentality of “this is what I’m going to build. What is the minimum that I have to do concerning environmental impacts?” This mentality will not foster a good relationship with your permit reviewers. A better approach is to ask agency officials about their environmental priorities early in the design process so that the final design achieves your goals and those of the agency.
6. **Try to Support The Ecological Benefits of Your Design With Scientific Evidence:**

Many of the permits required for waterfront projects are designed to safeguard water resources. The agencies that administer the permits are charged with the task of ensuring that projects are beneficial to the public and the surrounding environment. If you have designed your project to diminish negative ecological impacts or to enhance the surrounding ecosystem or wetland, demonstrate the effectiveness of your designs with scientific findings. Agencies typically do not have the resources to conduct detailed studies on the ecological effects of various designs. If you believe your design has a particular benefit, work to prove it to the agency.

### 1.4 Organizations and Agencies Providing Permitting Assistance:

**New York State Governor’s Office of Regulatory Reform:**
The Governor's Office of Regulatory Reform runs the New York State Permit Assistance Database. The Database allows users to enter keywords about a business to find information and a listing of all the business permits and licenses required by local, state and federal agencies. Users can also call the Office to speak to someone about a permit or license issue. This resource is helpful for permits and licenses to operate a specific business, but less helpful for environmental and building permits.

To enter the Online Permit and Licensing website, visit:  
http://www.gorr.state.ny.us/AgencyInfo/OPAL.htm  
Phone: 1.800.342.3464

**The NY State Environmental Facilities Corporation, Small Business Assistance Program:**
The Small Business Assistance Program interprets environmental regulations, provides permitting assistance, offers advice on pollution prevention and control strategies, and conducts on-site environmental audits for businesses with 100 or fewer employees. Free consultations can also be arranged through the Empire State Development's Small Business Environmental Ombudsman program (see below).

Phone: 1.800.780.7227

**Empire State Development’s Small Business Environmental Ombudsman:**
The Small Business Ombudsman provides general information on state and federal regulations and helps with other business issues. They can make any necessary referrals.

Phone: 1.800.STATE.NY

**New Jersey Department of Environmental Protection**

*For regular mail*
Department of Environmental Protection  
Division of Land Use Regulation
1.5 An Overview of New York City Municipal Regulation of Waterfront Projects

When planning a project on or near the waters around New York City, you should first contact the New York Department City Planning (NYDCP) to determine what, if any, city or county regulations apply to your site. You will not require a permit for NYDCP. However, planning staff can provide you with important information about your site and about any restrictions on development. NYDCP has developed maps showing many of the wetlands and waterways within the community and has developed local ordinances regulating activities in or near those features. Planning employees will also be able to help you understand the zoning of your site, and whether your project will require an amendment to the zoning resolution or city map. If your project does requires this type of amendment (also called a Type I action), the City will conduct an environmental review under the City Environmental Quality Review (CEQR) law. This can be a lengthy process and it is best to begin coordinating the CEQR process with NYDCP as soon as possible.

At the municipal level, the end goal is to receive a building permit from the New York City Department of Buildings (NYCDB). However, NYCDB will only issue a building permit after you receive any required State and Federal permits and have demonstrated that your project complies with the zoning resolution and building code.

- Your project may also require coordination with the following City agencies:
- New York City Fire Department (FDNY): for coordination and compliance of project elements with fire and safety standards, particularly the presence of diesel fuel-laden locomotives within the Hudson River Tunnels and Manhattan ARC tunnels.
- New York City Landmarks Preservation Commission (NYCLPC): for approvals for significant adverse physical impacts to properties designated as a New York City Landmark.
- New York City Department of Environmental Protection (NYCDEP):
• for discharge permits and New York State Pollution Discharge Elimination System (SPDES) permit for wastewater discharges to the waters of New York State;
• for permits for hazardous waste and other waste management; and
• for compliance with applicable provisions of the New York City Noise Control Code and good engineering practices;
• New York City Department of Transportation: approval for truck staging and queuing areas and approvals of Maintenance/Protection of Traffic Plans for the diversion of pedestrian and vehicular traffic.

1.6 An Overview of New York State Regulation of Waterfront Projects

In New York State, the primary agencies regulating water-related projects are the New York State Department of Environmental Conservation (NYSDEC), the New York Department of State, and the New York Office of General Services. NYSDEC is responsible for issuing various permits for projects that are in, or have an impact on, a wetland or waterway. The New York Department of State is responsible for ensuring that projects within the “coastal zone” are consistent with the State’s Coastal Zone Management Plan. The Office of General Services is responsible for issuing land grants, leases and easements for projects that occupy public land (most submerged land is public).

Your first stop at the state level should be NYSDEC. It is advisable to schedule a pre-application meeting with the NYSDEC in the earliest planning phase of your project. NYSDEC staff will help coordinate with other State agencies and can guide you through the permitting process. In addition, NYSDEC employees can help you design your project in a way that is likely to satisfy permitting requirements and environmental reviews.

1.7 An Overview of New Jersey Municipal Regulation of Waterfront Projects

Per the New Jersey County Planning Act (N.J.S.A. 40:27-1), each County has a County Planning Board, which resides within an agency charged with County-wide planning and approvals (i.e. Department of Planning, Department of Public Works, etc.).

The relevant planning agency reviews all applications for subdivisions of land and site plans that are along County roads or affect County drainage facilities. County agency staff ensure that development proposals are integrated with any specific County and/or municipal capital improvement programs. The agency serves as the primary staff resource for the County Planning Board, working with applicants to prepare documentation in anticipation of scheduled board meetings.
1.8 An Overview of New Jersey State Regulation of Waterfront Projects

The State permitting process for water-related projects in New Jersey begins at the New Jersey Department of Environmental Protection (NJDEP). If your project is relatively complex and requires several permits, you may be referred to the NJDEP Permit Coordination and Environmental Review Program. This program was established as a way to help applicants identify relevant permits, coordinate the permitting process, and facilitate communication between applicants and agencies. It allows applicants to consult one source to identify all permits required for a development. After the applicant completes a questionnaire about the project, NJDEP assembles a permitting team and arranges a pre-application meeting to guide the applicant through the permitting process. To find out more information about the Permit Coordination and Environmental Review Program visit the program website at: http://www.state.nj.us/dep/oppc/permitcoor.htm. If your project is fairly simple, pre-application consultations will be done over the phone.

1.9 An Overview of Federal Regulation of Waterfront Projects:

Many proposed activities in or over wetlands or waterways in the New York and New Jersey Harbor area will require one or more permits from a federal agency. If the project includes the construction or alteration of a structure over, on, or in a waterway, or if the project includes any amount of dredging or filling in a waterway, or if the project changes or obstructs the flow of water in any other way, the project will likely require a permit from the U.S. Army Corps of Engineers (ACOE). The permits issued by the ACOE are often reviewed by other federal agencies such as the U.S. Coast Guard, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the U.S. National Marine Fisheries Service is a United States federal agency, a division of the National Oceanic and Atmospheric Administration (NOAA) and the Department of Commerce).

NYSDEC and NJDEP both use joint permit application forms with the U.S. Army Corps of Engineers (for certain State permits and Federal “Section 404” and “Section 10” permits) so that applicants need to fill out just one application to obtain both State and Federal permits. However, projects require separate authorizations from each agency before proceeding, and each agency may require additional information during their respective application review periods. For more information on the Federal permit program for activities in wetlands and waterways in New York and New Jersey, go to the U.S. Army Corps of Engineers, New York District Regulatory Program Website: www.nan.usace.army.mil/business/buslinks/regulat/forms.htm

1.10 Flow Charts for Navigating Waterfront Permitting in New York and New Jersey

The following two flow charts graphically show how permits move through the permitting process in both New York and New Jersey. The process begins with the municipality and ends with a building permit.
Contact NYC Department of City Planning
Contact NYC Department of City Planning to review your site zoning and any zoning overlay districts. Planning staff will help you identify if your project is a “type I” action that will trigger a City Environmental Planning Review (CEQR), or if it is a “type II” action that does not trigger CEQR. If your project triggers a CEQR review, a “lead agency” will be assigned to conduct the review. That agency will coordinate with you and other agencies and will issue findings with respect to measures that would avoid or mitigate any significant environmental impacts.

Contact NYS Department of Environmental Conservation (NYSDEC)
Schedule a telephone conference early in the planning phase to identify applicable regulations and to schedule a pre-application meeting. The pre-application meeting will help identify the relevant permits, application requirements and design restrictions. Waterfront projects may require the following state permits: Protection of Waters Permit; Tidal or Freshwater Wetlands permit; SPDES permit; and Section 401 Water Quality Certificate.

Complete the NYSDEC/ACOE “Joint Permit Application”
The joint application covers all of the aforementioned permits, grants and approvals, although each agency will require additional documentation for its review process. The application form will indicate which agencies require copies of the application materials. Submit the joint application to each relevant agency. Each agency makes permitting decisions independently and may request additional information during the review process.

NYS Office of General Services Begins Review
After you receive the necessary State and Federal permits, the Office of General Services will review your application to use State lands. NYSDGS will only issue a land grant, easement, lease or license after you have received State and Federal permits and submitted documentation showing complete Coastal Consistency and SEQRA reviews.

US Army Corps of Engineers Reviews Your Permit Application
The ACOE may review your permit simultaneously with NYSDEC or after the State review, depending on the project and permits. Although the ACOE accepts the joint State-Federal permit application, the Corps will review the application independently from the State and may require conditions or mitigation separate from those required by State agencies.

NYSDGS Issues Leases, Licenses and Grants
NYSDGS issues leases, licenses and grants for the use of State lands (i.e. most submerged lands). NYSDGS staff will help identify the necessary application requirements to apply for a lease, license or grant. While it is helpful to contact General Services early in the process, your application will not be reviewed until you receive State and Federal permits and include them with your NYSDGS application.

NYSDC Reviews Your Application
Coastal Consistency: NYSDEC will begin reviewing your application by drafting a Coastal Assessment Form, with cooperation from other agencies, to determine if your project is consistent with State and Municipal Coastal Policies. This document will also help NYSDDEC determine the project’s environmental impacts for a State Environmental Quality Review (SEQRA).

SEQRA Review: State law requires permitting agencies to assess whether issuance of a permit will have a significant impact on the environment. NYSDC will be the “lead agency” for this review. NYSDC may require you to prepare an Environmental Assessment Form to help judge such impacts. If NYSDC finds that granting the permit will have a significant impact, you and NYSDC will prepare an Environmental Impact Statement (EIS).

Permit Review: Once NYSDC has completed the Coastal Consistency and SEQRA reviews, the agency will review the application under the regulations that apply to each permit. The agency may require design changes and the creation of a “mitigation plan” to offset damage to wetlands. This review may include a period for public comment or a hearing if there is public concern. If your permit is denied, inquire about the possibility of an appeal or re-submittal.

Apply for a City Building Permit
After you obtain State and Federal permits, you can apply for a municipal building permit. This permit is “as of right” and does not include a “discretionary review” to assess the impacts of the project. Building permits will be granted if you comply with the building code and zoning.

Once you have your building permits (and any other municipal permit required for construction activities) you can begin construction of the project.
Contact NJDEP Department of Land Use Regulation
Contact NJDEP early in the project-planning phase. Submit a Coastal Jurisdictional Determination form (available on the website) and schedule a pre-application meeting. The Jurisdictional Determination and the pre-application meeting will help identify the relevant permits, application requirements and design restrictions.

Contact NJDEP Bureau of Tidelands Management
The Bureau issues licenses for the use of State lands (i.e. most submerged lands). Tidelands staff will help you apply for a lease, license or grant. While it is helpful to contact Tidelands staff early in the process, your application will not be submitted until you receive State and Federal permits.

Contact the Army Corps of Engineers
Contact the Corps early in the planning process. Corps staff will help identify any necessary federal permits and can schedule a pre-application meeting to discuss application requirements. Depending on the project, the Corps may accept a joint NJDEP/Corps application, however, the Corps decision-making process is separate from the State process.

Submit the LURP2 Application Form and Supporting Documents
The LURP2 form is used to gather basic information for many permit types. The Division of Land Use website has checklists that identify additional documentation required for each specific permit application.

Application Review and Decision
During the review process, State and Federal agencies may request additional information, and each may require design modifications or mitigation plans. If your application is accepted, the agencies will advise you about notice requirements. If your application is rejected, inquire about the possibility of an appeal or resubmittal.

Submit a Tidelands Land Use Application
Land use application packages can be found on the NJDEP Bureau of Tidelands Management web site. Your application will only be reviewed after you have received the necessary permits.

Apply for a Municipal Building Permit
After you obtain state and federal permits, you can apply for a building permit. This permit is “as of right” and does not include a “discretionary review” to assess the impacts of the project. Building permits will be granted if you comply with the building code and zoning.

Once you have your building permits (and any other municipal permit required for construction activities) you can begin construction of the project.

Follow each of the three paths below simultaneously

Flow Chart For New Jersey Waterfront Permitting
Chapter 2: New York City Municipal Regulation of Waterfront Development

Your first stop in the permitting process should be the New York City Department of Planning. However, depending on the scope, location and complexity of your project, you may be required to coordinate your activities with a number of municipal agencies. Some agencies have the discretionary authorities to approve or deny permits based on an analysis of the project’s effects, while others simply enforce rules.

2.1 New York City Department of City Planning:

New York City Department of City Planning
22 Reade St
New York, NY 10007
Phone: (212) 720-3300
Website: http://www.nyc.gov/html/dcp/

The Department of City Planning (NYCDCP) is responsible for planning the city's physical and socioeconomic landscape. The Department’s authorities include zoning, administration of the Waterfront Revitalization Plan, land use and environmental review, preparation of plans and policies, and provision of technical guidance and planning information to government agencies and officials.

Project principals should contact NYCDCP as early as possible in the project design phase. NYCDCP can help explain the zoning of a project site and the restrictions that the zoning resolution places on the site. The Department can also explain any additional requirements from zoning overlay districts that are common at waterfront sites. If your project will not meet the existing zoning requirements, the Department can explain the process of receiving a variance or amending the zoning resolution. If your project does require a variance or amendment (also called a Type I Action), the city will conduct an environmental review under the City Environmental Quality Review (CEQR) law.

If a project is within the “Coastal Zone,” NYCDCP staff will also help explain the New York City Local Waterfront Revitalization Program and the coastal zone consistency determination process. To learn more about this program see the relevant chapter below.

2.1.1 New York City Zoning:

Although the Department of City Planning establishes and maintains zoning rules, it is actually the Department of Buildings that will likely determine if your project complies with the zoning on your site. The Department of Buildings will grant an application for a building permit if your project complies with the Zoning Resolution, the Building Code and other applicable laws.

If, however, your project requires a special variance from the zoning resolution, a change to the city map, or a change to the zoning district, you will have to pursue those changes
with the City Planning Commission. In this case your project will also require a City Environmental Quality Review (CEQR).

**Basics of New York City Zoning:**
Zoning regulates the size and use of buildings, where they are located, and the general densities of the city’s neighborhoods. Zoning is a key tool for implementing the city’s planning policies. A proposed project will only be allowed if the project is in conformance with the zoning of the project site, or if the City Planning Commission approves a special variance, amendment, or conditional use.

The city is divided into three basic zoning districts: residential (R), commercial (C), and manufacturing (M). The three basic districts are further divided into a variety of lower-, medium- and higher-density residential, commercial and manufacturing districts.

Any of these districts may in turn be overlaid by special purpose zoning districts tailored to the unique characteristics of the neighborhood. Some blockfronts in residential districts may be overlaid as well by commercial districts providing for neighborhood retail stores and services. These overlay districts modify the controls of the underlying districts.

Each zoning district regulates:
- permitted uses listed in one or more of 18 use groups;
- the size of the building in relation to the size of the zoning lot, known as the floor area ratio or FAR;
- for residential uses, the number of dwelling units permitted, the amount of open space required on the zoning lot and the maximum amount of the lot that can be covered by a building (lot coverage);
- the distance between the building and the front, side and rear lot lines;
- the amount of parking required; and
- other features applicable to specific residential, commercial or manufacturing districts.

To learn more about zoning and to see zoning maps for New York City, visit the NYCDCP zoning webpage at the following link:


**Source:**

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2.1.2 New York City Local Waterfront Revitalization Program (WRP):

The New York City Waterfront Revitalization Program (WRP) is the city's primary tool for guiding the development of the coastal zone and waterfront. The program establishes ten overarching policies for development and use of the waterfront and provides a system for evaluating the consistency of all discretionary actions in the coastal zone with those policies. When a proposed project is located within the coastal zone and it requires a
local, State, or Federal discretionary action (e.g. a permit), a determination of the project's consistency with the policies of the WRP must be made before the project can proceed. However, a determination of consistency does not itself authorize or require the issuance of any permit, license, certification or other approval.

**Purpose:**
Waterfront development can be complicated because of the many agencies involved, and their varying mandates and agendas. As part of its coordination role, the WRP consistency review can help to resolve these conflicts and to ensure that the city's policies and plans are considered by all permitting agencies.

**The Coastal Zone Map:**
The Coastal Zone encompasses all land and water of direct and significant impact on coastal waters. Federal lands and facilities are excluded from the coastal zone and consistency review. To find out if your project is within the New York City Coastal Zone access the map on this web page: [http://www.nyc.gov/html/dcp/html/wrp/wrpcostalmaps.shtml](http://www.nyc.gov/html/dcp/html/wrp/wrpcostalmaps.shtml)

**Who Decides if a Project is Consistent with the WRP?**
For local actions requiring approval by the City Planning Commission, the Commission makes the consistency determination. For local actions that do not require approval by the City Planning Commission but do require approval by another city agency, the head of that agency makes the final consistency determination. For Federal and State actions within the City's coastal zone, such as dredging permits, the Department of City Planning forwards its comments to the State agency making the consistency determination.

**Waterfront Revitalization Program vs. Coastal Zone Management Programs:**
The Coastal Zone Management Act (CZMA) of 1972 established a national policy to preserve, protect, develop, and restore the Nation’s coastal zones. The Act encourages and assists states in developing, implementing, and enforcing coastal management programs to achieve wise use of the land and water resources of the coastal zones. The law provides for various grants to coastal states for development of coastal zone management plans, management of various programs once such plans are developed, and to encourage additional programs to preserve or restore certain areas, including deteriorating and underutilized urban waterfronts or ports.

If a city desires to guide its own coastal management, it can, by creating a local plan called a Local Waterfront Revitalization Program (WRP). The WRP policies set general goals for the City's waterfront as a whole, and specific goals for portions of the waterfront that have notable characteristics (see Special Designated Areas below). The New York City WRP lays out a set of ten coastal resource management policy areas. A proposed action or project may be deemed consistent with the WRP when it would not substantially hinder and, where practicable, will advance one or more of the ten WRP policies, dealing with: 1) residential and commercial redevelopment; 2) water-dependent and industrial uses; 3) commercial and recreational boating; 4) coastal ecological systems; 5) water quality; 6) flooding and erosion; 7) solid waste and hazardous
substances; 8) public access; 9) scenic resources; and 10) historical and cultural resources. **When a project is proposed within the coastal zone it is reviewed by BOTH the City (to determine consistency with the WRP policies) AND the Department of State (to determine consistency with the CZMP).**

**Special Designated Areas:**

The Significant Maritime and Industrial Areas (SMIA) are particularly well suited for maritime and industrial development. The SMIA includes: South Bronx, Newtown Creek, Brooklyn Navy Yard, Red Hook, Sunset Park, and the north shore of Staten Island. Waterfront activity that furthers the industrial or maritime character of these areas would be consistent with coastal policies for these properties. The SMIA were determined by identifying concentrations of existing water-dependent uses and areas where the physical capacity of the lands, water, and infrastructure, and zoning accommodated these uses.

The Special Waterfront Natural Areas (SWNA) have particular natural features that should be considered in connection with any waterfront activity. Within these areas, the existence of various significant natural resources, such as wetlands and forest areas, indicates that resource protection is the priority. The SWNA are: East River-Long Island Sound, Jamaica Bay, and Northwest Staten Island-Harbor Herons. In the natural coast areas, resource protection policies are of heightened importance. The zoning resolution defines acceptable uses in these areas, which are focused on parkland, trails, natural and open spaces, and lower intensity uses. Management plans prepared for these areas will highlight resource restoration and enhancement opportunities, including consideration of erosion management, as appropriate.

Activities proposed in the SMIA and SWNA that do not directly foster the goals for these areas may be allowed, but would be analyzed to ensure that the special characteristics of these areas are not substantially impeded or destroyed.

**Learn More:**

Learn more about New York City’s Waterfront Revitalization Plan, the ten policy areas, and the consistency review process here:


**Source:**


**2.1.3 City Environmental Quality Review**

City Environmental Quality Review (CEQR) is a process by which New York City Agencies review proposed discretionary actions (e.g. discretionary permitting) for the purpose of identifying the effects those actions may have on the environment. The Department of Planning is typically the co-lead agency with the City’s Department of Environmental Protection.
**How CEQR Works:**

Pursuant to State and local law, CEQR identifies any potential adverse environmental effects of proposed actions, assesses their significance, and proposes measures to eliminate or mitigate significant impacts. Only certain minor actions identified by the State, known as “Type II” actions, are exempt from environmental review.

A "lead agency", responsible for undertaking, funding, or approving an action, determines whether the action requires environmental review. If so, the lead agency is responsible for notifying and coordinating with other involved or interested agencies, distributing documents for public comment, conducting required public hearings, determining the significance of potential environmental impacts and, before making a decision on the proposed action, issuing its findings with respect to measures that would avoid or mitigate any significant impacts.

The applicants themselves, whether public or private entities, are responsible for preparing the environmental analyses, called the Environmental Assessment Statement, in accordance with methodologies set forth in the CEQR Technical Manual.

The New York City Office of Environmental Coordination provides expertise and assistance to lead agencies and is the repository of all CEQR documents.

The environmental review process involves a number of steps, which allow for public review and comment. These steps include:

1. Completing an Environmental Assessment Statement
2. The Lead-Agency’s Declaration of Significance
3. Scoping
4. Creating a Draft Environmental Impact Statement
5. Drafting a Final Environmental Impact Statement

**What Is An Environmental Assessment Statement?**

Applicants for discretionary land use actions, other than exempt Type II actions (e.g., certain ministerial authorizations and certifications), must first file an Environmental Assessment Statement (EAS) and the applicable CEQR fee with the Department of City Planning or the appropriate lead agency. For actions for which the City Planning Commission is the lead agency, the EAS form and CEQR fee are filed at the Land Use Review-Central Intake office at 22 Reade Street, Room 2-E.

The EAS form, with any supporting documentation, describes the proposed action and provides an initial analysis of its potential effects on the environment. Its purpose is to assist the lead agency in assessing whether identified adverse effects on the environment may be significant enough to warrant further analysis in an Environmental Impact Statement (EIS). For some large-scale projects with clear likelihood of significant impacts, an EAS need not be completed in detail to determine the necessity for an EIS.

**Determination of Significance:**

Based on information in the EAS, and criteria listed in the CEQR Technical Manual, the lead agency decides whether or not any identified adverse environmental impacts may be significant.
If no significant impacts are anticipated, a negative declaration is issued, signaling completion of the CEQR process. A conditional negative declaration may be issued when a private applicant agrees to mitigate impacts as part of the project.

If significant impacts are identified, a positive declaration is issued, requiring completion of a draft Environmental Impact Statement.

The lead agency sends notices of these determinations of significance to all involved or interested agencies, affected community boards and elected officials, and files copies with the Office of Environmental Coordination. Negative declarations for major actions (Type I) and all conditional negative declarations are published in the City Record and State Environmental Notice Bulletin. The public may comment on the conditions described in a conditional negative declaration for 30 days.

**Scoping:**

Within 15 days of the issuance of a positive declaration the lead agency must issue a draft scope of work which details the topics to be addressed in the EIS, the methods of analysis to be used, and possible alternatives to mitigate or eliminate potential significant impacts of the proposed action.

Technical areas that may be addressed include:

- Land use, zoning and public policy
- Socioeconomic conditions
- Community facilities and services
- Open space
- Shadows
- Historic resources
- Urban design / visual resources
- Neighborhood character
- Natural resources
- Hazardous materials
- Infrastructure
- Waterfront Revitalization Program
- Solid waste and sanitation
- Energy
- Traffic and parking
- Transit and pedestrians
- Air quality
- Noise
- Construction impacts
- Public health

A public scoping meeting must be held to solicit comments on the draft scope from all affected and interested parties. Comments at these meetings must be limited to the scope of work for the EIS and any changes needed to ensure appropriate and thorough assessment of potential impacts. The meeting must be scheduled 30 to 45 days after notice is given and the draft scope and EAS are circulated to all affected and interested
agencies, community boards, groups and officials. Written comments may be received within ten days after the public meeting.

After incorporating public comments as appropriate, the lead agency issues a final scope of work and preparation of the Draft EIS begins.

**Draft Environmental Impact Statement:**
The EIS is created to allow the public and decision-makers to understand the nature and consequences of specific environmental impacts that can be reasonably anticipated as a result of the proposed action. It is issued first as a draft to allow for public comment on its analysis and findings. Although the precise content and format of a Draft EIS depend on the type of action for which approval is sought and the magnitude of anticipated impacts, certain elements are mandated including:

- A cover page with project name, location, lead agency and date;
- An executive summary;
- Project description, including background, purpose, public need and benefits, social and economic considerations, and approvals required;
- Technical analyses of relevant subject areas (see Scoping topics and Chapter 3 of the CEQR Technical Manual) which assess and compare existing conditions, future conditions absent the proposed action (sometimes called the “no-action” or “no-build” condition), and the future if the proposed action is implemented;
- Mitigation measures to minimize or avoid any significant adverse impacts identified in the technical analyses; and
- Alternatives that would be feasible, satisfy project objectives, and eliminate or minimize identified significant impacts.

When the Draft EIS is deemed complete, the lead agency issues a Notice of Completion that describes the action and specifies the period for public review and comment. It must be distributed to Office of Environmental Coordination, NYSDEC, the applicant, all involved agencies, applicable borough presidents and community boards, and all persons who request such notice.

**Final Environmental Impact Statement:**
The Final EIS consists of the draft EIS, a summary of public comments and lead agency responses, and any revisions, including further studies, in response to comments. It must also identify the specific mitigation measures to be used, together with written agreement to their implementation from applicable agencies.

Once the Final EIS is complete, the lead agency issues a Notice of Completion describing the action and the Final EIS. The notice and a copy of the Final EIS are sent to all those who received the Notice of Completion for the Draft EIS.

Before making a decision on the proposed action, the lead agency must adopt a formal set of findings, called a Statement of Findings, demonstrating that it has taken a “hard look” at the impacts, mitigations and alternatives. The lead agency must allow the public and agencies at least ten days to consider the Final EIS before adopting its findings. The findings conclude the CEQR process.
2.2 New York City Department of Environmental Protection:

New York City Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373

City Environmental Quality Review:
The Department of Environmental Protection often shares the responsibility of “lead agency” with the Department of City Planning in the City Environmental Quality Review process.

Permits for Discharging or Drawing Water:
The New York Department of Environmental Protection (NYCDEP) administers permits for any device or system that discharges into the air or sewers or draws from the local water supply. The Department provides information for businesses, including a guide called Smart Business, a listing of environmental regulations and permitting requirements for businesses in New York City. You may also call the DEP Environmental Economic Assistance Unit at 718.595.4359 for guidance on meeting with city, state, and federal regulations related to environmental issues.

Recreational Permits:
NYCDEP issues permits for a variety of recreational activities including hunting, fishing, hiking, and water access. To see a list of recreational permits and forms, visit the agency’s Water Recreational Use Permits page at the following link:

Source:
The Department of Small Business Services (NYCDSBS), formerly known as the Department of Ports and Trades, is a City agency designed to help businesses start, operate and expand in New York City. NYCDSBS has an office within the Department of Buildings dedicated to processing applications for permits to construct on waterfront property. To learn whether your building permits will be processed by the Department of Small Business Services or Department of Buildings, contact one of the departments.

Applications for permits to construct on waterfront property are often processed by Department of Small Business Services (DSBS, formerly known as the Department of Ports and Trades) staff located at the Department of Buildings.

For more information on the Department of Small Business Services, call the agency at (311.NEW.YORK), or visit the agency website at the link above.

2.4 New York City Landmarks Preservation Commission:

Landmarks Preservation Commission
Municipal Building
1 Centre Street, 9th Floor
New York, NY 10007

The Landmarks Preservation Commission is the New York City agency that is responsible for identifying and designating the City's landmarks and the buildings in the City's historic districts. The Commission also regulates changes to designated buildings.

Landmark and Historic District Designations:

There are three types of landmarks: individual (exterior) landmarks, interior landmarks, and scenic landmarks. The Landmarks Preservation Commission may also designate areas of the city as historic districts.

1. Exterior: An individual landmark is a property, object, or building that has been designated by the Landmarks Commission. These properties or objects are also referred to as "exterior" landmarks because only their exterior features have been designated. The Roosevelt Island Lighthouse, the Edgewater Village Hall on Staten Island, Grand Central Terminal in Manhattan, and Old West Farms Soldiers' Cemetery in the Bronx are examples of individual landmarks.

2. Interior: An interior landmark is an interior space that has been designated by the Landmarks Commission. Interior landmarks must be customarily accessible to the public. The lobby of the Woolworth Building in Manhattan, the dining room of Gage & Tollner restaurant in Brooklyn, and the waiting room of the Marine Air Terminal at LaGuardia Airport in Queens are examples of interior landmarks.

3. Scenic: A scenic landmark is a landscape feature or group of features that has been designated by the Landmarks Commission. Scenic landmarks must be situated on
city-owned property. Prospect Park, Verdi Square at Broadway and 73rd Street, Central Park, and Ocean Parkway are all scenic landmarks.

4. Historic District: An historic district is an area of the city designated by the Landmarks Commission that represents at least one period or style of architecture typical of one or more areas in the city's history; as a result, the district has a distinct "sense of place." Fort Greene, Greenwich Village, Mott Haven, and SoHo are examples of sections of the city that contain historic districts. Maps of historic districts can be found at the following web address: http://www.nyc.gov/html/lpc/html/maps/historic_district.shtml

**Performing Work on a Landmarked Property:**

Before doing certain kinds of work on landmark properties, building owners or tenants need to apply for a permit from the Landmarks Preservation Commission. By law, the Commission must review any proposals for alterations to landmark buildings and determine whether they have any effect on the significant features of a building or a historic district. To learn more about the permitting process and to download applications please visit the Working With Landmarks page at the following web address: http://www.nyc.gov/html/lpc/html/working_with/perform_work.shtml

**Source:**


**2.5 New York City Department of Buildings:**

New York City Department of Buildings
280 Broadway, 7th floor
New York, NY 10007

The NYC Department of Buildings enforces the City's Building Code, Electrical Code, Zoning Resolution, New York State Labor Law and New York State Multiple Dwelling Law. The Department’s primary activities include performing plan examinations, issuing construction permits, inspecting properties, and licensing trades. The Department also issues Certificates of Occupancy and Place of Assembly permits.

At the municipal level, the end goal is to receive a building permit from the New York City Department of Buildings (NYCDB). However, NYCDB will only issue a building permit after you receive any required State and Federal permits and have demonstrated that your project complies with the zoning resolution and building code.

**Do You Need A Permit?**

If you plan to demolish, alter, build an addition or erect a new structure, you must obtain a building permit from the Department of Buildings to ensure that the resulting structure
complies with all applicable laws, including zoning laws and the Building Code. Fees are based on the size of the structure for new buildings/enlargements or, for alteration or demolition work, the estimated cost of the project.

**What Is The Process?**

Most construction projects in New York City require a two-step process to receive approval from the Department of Buildings. First, a New York State licensed Professional Engineer (PE) or Registered Architect (RA) submits an application to the Department of Buildings. The application typically requires the submission of construction plans along with forms. These application materials are usually submitted to the Department on behalf of the building owner. If the Department’s plan examiner has any legal objections to the application or plans, they are presented to the project PE or RA for resolution. Once the Department’s objections have been satisfied, the application and plans are approved. Plans may also be professionally certified by the owner’s PE or RA as conforming to all applicable laws in which case the Department does not review the plans prior to approval. After an application to do construction work has been approved, the contractor can apply for a building permit to begin the work. All contractors are required to have insurance, but not all are required to be licensed.
A detailed step-by-step guide to the application and permitting process can be found at the following link:

**Other Relevant Agencies:**
In addition to approval from the Department of Buildings, some structures may need additional approvals and permits. For example, if a building or site is landmarked or within a historic district, permission from the Landmarks Preservation Commission must be obtained before the alteration or construction begins. Many construction projects also routinely require permits from other City agencies before construction can start. Under Express Service, some of these approvals (for sewer connections, drainage, septic and builders pavement plans formerly issued by the Department of Environmental Protection and Department of Transportation) can now be obtained at the Department of Buildings.

**Applications for permits to construct on waterfront property are often processed by Department of Small Business Services (DSBS, formerly known as the Department of Ports and Trades) staff located at the Department of Buildings.**

**Permits for Change of Use, Egress or Occupancy:**
If the planned construction will result in a change of use, egress or occupancy, a new or amended Certificate of Occupancy is necessary. This is a document issued by the Department of Buildings indicating the legal use of a property. A new building cannot be legally occupied until a Certificate of Occupancy has been issued.

**Place of Assembly Permit:**
A special permit called a Place of Assembly permit may also be required for premises where 75 or more members of the public gather indoors or 200 or more gather outdoors, for religious, recreational, educational, political or social purposes, or to consume food or drink. In order to have a legal Place of Assembly, certain Fire and Building Code requirements must be fulfilled. See Places of Assembly for more information.

**Source:**
Chapter 3: New York State Regulation of Waterfront Development

In New York State, the primary agencies regulating water-related projects are the New York State Department of Environmental Conservation (NYSDEC), the New York Department of State, and the New York Office of General Services. NYSDEC is responsible for issuing various permits for projects that are in, or have an impact on, a wetland or waterway. The New York Department of State is responsible for ensuring that projects within the “coastal zone” are consistent with the State’s Coastal Zone Management Plan. The Office of General Services is responsible for issuing land grants, leases and easements for projects that occupy public land (most submerged land is public).

Your first stop at the state level—and as soon as possible in the process—should be NYSDEC. It is advisable to schedule a pre-application meeting with the NYSDEC early in the planning phase of your project. NYSDEC staff will help coordinate with other State agencies and can guide you through the permitting process. In addition, NYSDEC employees can help you design your project in a way that is likely to satisfy permitting requirements and environmental reviews.

Please note: much of the information in this chapter is taken directly from the NYSDEC website.

3.1 New York State Department of Environmental Conservation:

New York State Department of Environmental Conservation - Region 2 Office
1 Hunter's Point Plaza
47-40 21st Street
Long Island City, NY 11101
Phone (general information): (718) 482-4900
Phone (permit information): (718) 482-4997
Website: http://www.dec.ny.gov/index.html

The New York State Department of Environmental Conservation (NYSDEC) is the State agency responsible for management and protection of natural resources and environmental quality. NYSDEC regulates activities that may have a negative impact on wetlands and water quality. Activities such as draining, filling or building structures within a wetland or its adjacent buffer area may be undertaken only if NYSDEC has granted a permit. In granting a permit, NYSDEC is empowered to place conditions and restrictions on an activity which can include mitigation measures.

All but the simplest waterfront projects require that a joint permit application be filed with NYSDEC and Army Corps of Engineers (AOCE). The joint application streamlines the process by combining the two permit applications into one; however each agency processes the permit application separately, and each may have different concerns and
requirements. Approval from one agency does not equal or necessitate approval from the other.

**How To Apply For A NYSDEC Permit**
The following applies to both wetlands permits and protection of waters permits.

**Step 1: File an Application**
The first step in applying for a NYSDEC permit is to contact the regional office (Region 2 for New York City) for advice on completing the forms and on any other requirements to complete your application. The regional office will help you obtain appropriate application materials, including application forms and instructions. It is recommended that you request a pre-application conference with NYSDEC staff to clarify project objectives and requirements, get a preliminary reaction to your proposal and discuss alternative approaches. Be willing to adjust your project proposal to meet NYSDEC requirements. Once your application is filled out, file the application with the Regional Permit Administrator.

**Step 2: Respond to NYSDEC Comments**
A complete application will generally include the appropriate application form, location map, plans, and environmental assessment prescribed by NYSDEC. The Department must notify you if your application is complete within 15 days, except in the case of hazardous waste management facilities, certain wastewater discharges and certain air permit applications, for which NYSDEC has 60 days. Prepare a thorough, accurate application, fully justified and clearly represented on plans, to prevent multiple information requests and reviews. If the application is incomplete, you will be told what else is needed. When you respond, the above time frame for DEC review will again apply.

**Step 3: Respond to Public Comments**
The NYSDEC permitting process is regulated by The Uniform Procedures Act. The Act divides projects into two categories, minor and major. The majority of permit applications qualify as minor projects, which do not require public review. If your project is major, then the project is subject to public review, as follows:
A Notice of Complete Application is published in the Environmental Notice Bulletin. You must also publish this Notice in a local newspaper.
The public must submit any comments before the deadline in the Notice which, for most projects, is at least 15 days after the date the Notice is published.
NYSDEC decides whether to hold a public hearing. Before NYSDEC makes this decision, you may be asked to provide the agency with responses to public comments.
Prepare clear and informative responses that address public concerns and seriously consider recommendations. This will reduce the likelihood of a public hearing.

**Step 4: Final Decision**
If your project is a “minor” project, NYSDEC must make a final decision regarding your permit application with 45 days of determining that your application is complete. If you project is a “major” project, but did not require a public hearing, NYSDEC has 90 days to review the application. If your project is a “major” project that does require a hearing,
the timeline is less certain because the length of the hearing is unknown. However, NYSDEC has 60 days to make its decision after the hearing process is complete.

**What If NYSDEC Misses a Decision Deadline?**

The Uniform Procedures Act (UPA) controls the timelines affecting NYSDEC actions on permit applications. Under the UPA, once an application is submitted, the Department must mail a notice of its determination of completeness or incompleteness to the applicant within 15 days after receipt for most applications, and 60 days after receipt of the application for hazardous waste management facilities, certain wastewater discharges and certain air permit applications.

Section 621.6(h) of the Department’s regulations states that if the Department fails to mail notice of its determination of completeness or incompleteness to the applicant within the time specified above, the application will be deemed complete. This timeline resets each time an application is resubmitted. It is important to note, however, that the Department can continue to seek information that they require in order to issue a permit. If you refuse to provide documents that they seek, you risk the denial of your permit application.

Once an application is deemed complete, either by Department decision or by operation of law, the Department is required to make a final decision on the application within a second set of regulatory timelines. The UPA and Section 621.10 of the Department’s regulations state that notice of a final decision to issue a permit, to issue a permit with conditions, or to deny a permit must be mailed to the applicant is 45 days for minor projects. For major projects, where no hearing is held, NYSDEC has 90 days to issue a notice. For major projects for which a hearing is held, NYSDEC must notify the applicant and the public of a hearing within 60 days of the completeness determination. The hearing must commence within 90 days of the completeness determination. Once the hearing ends, NYSDEC must issue a final decision on the application within 60 days after receiving the final hearing record.

These timelines can be temporarily suspended if the project requires an environmental review under SEQR and NYSDEC is not the lead agency for that review. Once NYSDEC receives either a final environmental impact statement, or a determination of nonsignificance from the lead agency, the timeline resumes. The timeline may also be extended for Title V permit decision to allow EPA review.

If the Department fails to mail notice of a final decision on the application within the above timelines, the applicant may make notice of that failure by mailing the Department Commissioner. If the department or its agent fails to mail the decision to the applicant within five working days of the receipt of such notice, the application will be deemed approved and the permit deemed granted, subject to the standard terms or conditions applicable to such a permit. This is the so-called “five day letter.” The Department will not be required to issue a decision on an application, nor will a permit be deemed issued, until the applicant has provided satisfactory proof of any public notice required, posted any bonds required, and paid all fees or costs assessed by the Department. Remember, the Department is not required to approve your application within this five-day period, they are simply required to make a decision.
3.1.1 Protection of Waters Program And Permits:

*Please note: much of the information in this section is taken directly from the NYSDEC website.*

If your project includes any of the following activities, you will likely need to obtain a permit from the NYSDEC under the Protection of Waters Program.

- Disturbance of the bed or banks of a “protected stream” or other watercourse;
- Construction, reconstruction or repair of dams and other impoundment structures;
- Construction, reconstruction or expansion of docking and mooring facilities; and
- Excavation or placement of fill in “navigable waters” and their adjacent and contiguous wetlands.

The policy of New York State, set forth in Title 5 of Article 15 of the Environmental Conservation Law, is to preserve and protect the lakes, rivers, streams and ponds in the State. To implement this policy, the NYSDEC created the Protection of Waters Regulatory Program to prevent undesirable activities on water bodies by establishing and enforcing regulations that:

1. are compatible with the preservation, protection and enhancement of the present and potential values of the water resources.
2. protect the public health and welfare.
3. are consistent with the reasonable economic and social development of the state.

**Waterway Classification:**

The Protection of Waters Program regulates waterways based on the designation given to the specific body of water. Each waterway is assigned a class and standard designation based on its existing or expected best usage. The classification AA or A is assigned to waters used as a source of drinking water. Classification B indicates a best usage for swimming and other contact recreation, but not for drinking water. Classification C is for waters supporting fisheries and suitable for non-contact activities. The lowest classification and standard is D. Waters with classifications A, B, and C may also have a standard of (T), indicating that it may support a trout population; or (TS), indicating that it may support trout spawning. Special requirements are intended to sustain these waters that support these valuable and sensitive fisheries resources. Small ponds and lakes with a surface area of 10 acres or less, located within the course of a stream, are considered to be part of a stream and are subject to regulation under the stream protection category of Protection of Waters. To determine the classification and standard of a given waterway, contact the NYSDEC regional office responsible for the area in which the watercourse is located.
**Regulated Activities:**

1. Modification or disturbance of the bed or banks of protected streams that are classified C(t) and above, including removal of sand or gravel.
2. Filling or dredging in navigable waters.
3. Construction, reconstruction, or repair of certain dams.
4. Construction, reconstruction, or modification of certain docks, mooring areas or other structures in navigable waters.

Some examples of activities requiring a permit are:
- Placing structures in or across a stream (i.e., bridges, culverts or pipelines)
- Placing fill for bank stabilization or to isolate a work area (i.e., rip-rap or coffer dams)
- Excavating for gravel removal or as part of a construction activity
- Lowering stream banks to establish a stream crossing
- Using equipment in a waterway to remove debris or to assist in construction

**Exempt Activities:**

A regulated activity may be conducted without a permit by local public corporations (towns, cities, villages, and counties) under a Memorandum of Understanding, which establishes procedure for review by the department.

A permit is not required for:
- Docks, piers, wharfs, platforms, moorings or other structures for which a lease or conveyance authorizing use and occupancy has been obtained from Commissioner of General Services;
- A dock, pier, wharf or other structure used solely as landing place on water providing dockage for five (5) or fewer boats and encompassing within its perimeter an area of less than four thousand (4,000) square feet;
- A mooring area which accommodates fewer than ten (10) boats;
- Seasonal replacement or reinstallation of floating docks and other structures existing prior to May 4, 1993;
- Relocation of floating docks, temporary ramps, walkways, and anchoring devices within the established perimeter of a marina or boat basin; and
- Ordinary maintenance or repair of existing structures (such as redriving piles, replacing boards in docks, repainting).

**What are “Major” and “Minor” Projects?**

The time allotted for agency review (timeframes), the procedures, and public notice requirements for applications differ according to whether the project is considered “major” or “minor” according to the regulations implementing the Uniform Procedures Act. Generally, minor projects have shorter review time frames and require less public review.

“Major” project are generally those that fit under the defined regulated activities above and are not included in the following list of “Minor” projects.

“Minor” projects typically include:
1. Repair or in-place, in-kind replacement of existing structures.
2. Repairs of existing registered dams.
3. Filling of less than 100 cubic yards.
4. Maintenance dredging at least once every 10 years, and dredging of 5,000 square feet or less.
5. Installation of riprap of less than 100 lineal feet for each parcel of land.
6. Disturbances of less than 50 lineal feet along any 1,000 feet of waterway.

**General Application Requirements:**

A complete application must include:

1. For disturbance of the bed or banks of a protected stream:
   a. A complete application must include a properly completed joint application for permit form, plan and profile sketches of the proposed project and a map at a scale of 1" = 2,000' (1 cm = 240 m) or larger showing its location.
   b. Minor streambed or bank disturbance actions include the following: repair or in-kind replacement of existing structures; disturbances of less than 100 linear feet (30.48 linear meters) along any 1,000 feet (304.8 meters) of watercourse.

2. For construction or repair of dams:
   a. A complete application must include a properly completed joint application for permit and supplemental forms and the information specified in the permit program implementing regulations.
   b. Minor dam projects include only repairs of existing dams inventoried by the department.

3. For construction, reconstruction and expansion of piers, wharfs, platforms, breakwaters, docking facilities and the placement of moorings:
   a. A complete application must include a properly completed joint application for permit and supplemental forms, plan and profile sketches of the proposed project, and a map at a scale of 1" = 2,000' (1 cm = 240 m) or larger showing the project location. For docking or mooring facilities the applicant must submit a plan drawn to scale depicting structures, and where appropriate, delineated facility perimeters that include a reference point to a permanent structure or significant natural feature.
   b. Minor dock and mooring projects include:
      i. Construction or installation of docks, piers, wharfs or other structures used solely as a landing place, providing dockage for 10 or fewer boats and encompassing within a facility perimeter an area of 8,000 square feet or less;
      ii. The in-kind replacement of a structure on open supports; and,
      iii. Establishing a mooring facility for 20 or fewer boats.

4. Excavation or placement of fill in navigable waters:
   a. A complete application must include a properly completed joint application for permit form, plan and profile sketches of the proposed project, a map at a scale of 1" = 2,000' (1 cm = 240 m) or larger showing
its location, and must identify the means and location of dredged material disposal.

b. Minor excavation or placement of fill projects include: fill of less than 100 cubic yards; maintenance dredging occurring at least once every 10 years; excavation or placement of fill of 5,000 square feet or less; riprap of less than 100 linear feet for each parcel of land; repair or replacement in-kind and in-place of existing structures.

If a project requires more than one DEC permit, the applicant must submit all applications forms and information simultaneously.

If variances are sought and provided for by the specific regulatory program in their regulations, the application must include a request and statement of justification for such variances.

The application must include a list of related permits required for the project from any other agency or government, with a statement of each agency's status for decision and their determination under the State Environmental Quality Review (SEQR) Regulations, 6 NYCRR Part 617.

The Department may request information of the applicant to determine the party responsible for compliance with conditions of the permit, statutes and regulations, for remediation of any resultant environmental degradation, and to determine any financial security, which may be required.

Additional Documentation:
1. Maps - Always Required
2. Plans - Always Required
3. Environmental Assessment - Always Required
4. Professional License - Sometimes Required
5. Drawings - Always Required
6. Photographs - Sometimes Required
7. Specifications - Sometimes Required
8. Project Description - Always Required

Special Requirements:
- Public Notice - Sometimes Required
  - Public notice is required for all projects classified major under the Uniform Procedures Act. Those projects classified minor generally do not required public notice, but the NYS DEC may require notice at its discretion, when warranted.
- Public Hearing - Sometimes Required
  - Public hearing is required, only when environment review indicates one is needed.
- Inspection - Sometimes Required

Additional Information:
1. A pre-application conference is recommended
2. Permit applications can be rejected by the agency without being approved or disapproved
3. The agency has an appeal process for a denied application
4. Permit/license must be posted

**Timeframe:**
Note: The following timelines are relevant only after the NYSDEC has determined that your application is “complete”. Depending on the complexity of your project and the types of information that the NYSDEC requests after your submittal (e.g., plans, maps, studies, etc), your application could take a considerable amount of time to become “complete”.

**Statutory Timeframe:**
- **Minor Projects**: NYSDEC must make a permit decision on minor projects within 45 days of determining the application complete.
- **Major Projects**:
  - If no hearing is held, NYSDEC makes its final decision on the application within 90 days of its determination that the application is complete.
  - If a hearing is held, NYSDEC notifies the applicant and the public of a hearing within 60 days of the completeness determination. The hearing must commence within 90 days of the completeness determination.

Once the hearing ends, NYSDEC must issue a final decision on the application within 60 days after receiving the final hearing record.

**Completeness Determination**:
NYSDEC must mail notice of its completeness determination within the specified time limits for the type of permit or the application is deemed to be complete. For most permits 15 days is the time limit for the Department to make its Completeness Determination. For hazardous waste management facilities, certain wastewater discharges and certain air permit applications NYSDEC has 60 days to make a completeness determination.

**Review Standards for Issuing a Permit**
The review standards the Department must follow for issuing a permit are:
- the proposal is reasonable and necessary.
- the proposal will not endanger the health, safety and welfare of the people of the State of New York.
- the proposal will not cause unreasonable, uncontrolled or unnecessary damage to the natural resources of the state including soil, forests, water, fish and aquatic and related environment.

**Application Fee**:
There is no application fee, however you may have to pay for maps, plans, studies or any other information requested by the agency.
Special Considerations:
Construction, Reconstruction or Expansion of Docking and Mooring Facilities:
Applications for permits for the construction, reconstruction or expansion of docking and mooring facilities (Including Platforms and Breakwaters) require Supplement D-2 (FORM 95-19-007). Use Supplement D-2 in addition to the Joint Application for Permit if your project involves a docking or mooring facility. Instructions are on the back of the form (the second page when downloaded from the NYSDEC website). Definitions listed on the back of the form will be helpful to you.

Construction, Reconstruction or Repair of a Dam or Impoundment Structure:
Applications for permits for the construction, reconstruction or repair of a dam or other impoundment structure require Supplement D-1 (FORM 93-19-2). Use Supplement D-1 in addition to the Joint Application for Permit if your project involves a dam or other impoundment. Instructions are on the back of the form (the second page when downloaded from the NYSDEC website). A Professional Engineer must design and supervise the work and you must include their Professional Engineer License Number in Items 19 and 20.

Other Applicable Regulations:
If your project requires a permit from the NYSDEC, you must also meet the requirements of the State Environmental Quality Review Act. This regulation requires state permitting agencies to determine if the proposed project will have an adverse impact on the environment. To comply with this regulation the applicant must complete and Environmental Assessment Form, which will either be included in the NYSDEC permit application package or will be given to the applicant during a pre-application meeting. Although the NYSDEC is the coordinator or the environmental review program, a different agency will likely be designated the “lead” agency in determining if the project has an adverse impact.

In addition to the Protection of Waters Permit Program, your project or activity may require additional permits under other NYSDEC permit programs. For example:
- Activities in navigable waters that also contain regulated freshwater wetlands or tidal wetlands require a permit under the Freshwater Wetlands Act or the Tidal Wetlands Act in addition to the Protection of Waters Permit.
- A project site located within a coastal erosion hazard area may require a permit under the Coastal Erosion Hazard Areas Act.
- Mooring buoys, swim floats and private navigational aids may require a Floating Objects Permit under NYS Navigation Law. NYSDEC has jurisdiction for this permit within the Adirondack Park and Catskill Park. A NYSDEC Application for Floating Object Permit can be obtained from the NYSDEC Regional Permit Administrator for the county where the activity or project is located. NYS Office of Parks, Recreation and Historic Preservation has jurisdiction for the rest of the state.

Authority:
Statutory Authority: NYS Environmental Conservation Law, Article 15, Title 5
Regulatory Authority: 6 NYCRR, Part 608
Federal Authority: P.L. 92-500, Title IV, Section 401 Water Quality Certification.
**Additional Information:**
For a full guide to the Protection of Waters Permit visit the User’s Guide at the following website:
http://www.dec.ny.gov/permits/6340.html

**Source:**

**3.1.2 Tidal Wetlands Program And Permits:**
Please note: much of the information in this section is taken directly from the NYSDEC website.

Activities in tidal wetlands are protected by NYSDEC regulations. Certain kinds of human activities can adversely affect, and in some cases destroy, the delicate ecological balance of these important areas. The policy of New York State, as set forth in the Tidal Wetlands Act, is to preserve and protect these wetlands.

To implement this policy, the NYSDEC administers the Tidal Wetlands Regulatory Program which is designed to prevent the despoliation and destruction of tidal wetlands by establishing and enforcing regulations that:

- Preserve, protect, and enhance the present and potential values of tidal wetlands,
- Protect the public health and welfare, and
- Give due consideration to the reasonable economic and social development of the state.

Official tidal wetlands maps showing the exact locations of New York's regulated wetlands are on file at NYSDEC regional offices in Regions 1, 2, and 3, and in the County Clerks' Offices of Nassau, Suffolk, Bronx, Kings, New York, Queens, Richmond, Rockland, and Westchester Counties.

**Development Near A Wetland:**
If your project does not touch a tidal wetland, but is within 300 feet of the tidal boundary (150 feet in New York City) the NYSDED has jurisdiction to regulate activities in the area under the Tidal Wetlands Permit. Regulation is based on the Tidal Wetlands Land Use Regulations (6NYCRR Part 661). The wetland categories used in these regulations are identified by the presence of a tide and the types of vegetation present.

**Permit Description:**
NYSDEC requires a permit for almost any activity that will alter wetlands or the adjacent areas. In general, tidal wetlands consist of all the salt marshes, non-vegetated as well as vegetated flats and shorelines subject to tides. The adjacent areas extend up to 300 feet inland from the wetland boundary (up to 150 feet inland within New York City). Be aware however, that the United States Army Corps of Engineers also has jurisdiction and a Corps permit may be required whether or not NYSDEC requires one.
Official tidal wetlands maps showing the exact locations of New York's regulated wetlands are on file at NYSDEC regional offices in Regions 1, 2, and 3, and in the County Clerks' Offices of Nassau, Suffolk, Bronx, Kings, New York, Queens, Richmond, Rockland, and Westchester Counties. They are also available at local assessing agencies in these areas.

**Regulated Activities:**

To see if your project (or “use”) is compatible with a given type of wetland, and whether that use requires a permit, visit the NYSDEC chart at the following link:

http://www.dec.ny.gov/permits/6347.html

Activities that might require a permit include, but are not limited to:

1. Construction, Reconstruction, and/or Expansion of structures, including:
   a. Residences and condominiums
   b. Accessory structures (tennis courts, swimming pools, decks, garages, etc.)
   c. Boat ramps and boat slips
   d. Commercial and/or industrial buildings
   e. Dams, dikes, weirs
   f. Docks, piers, wharves, catwalks, boardwalks
   g. Groins, jetties, and breakwaters
   h. Bulkheads, sea walls, retaining walls, rip-rap, and gabions
   i. Septic systems
   j. Roads, driveways, parking lots, bridges, drainage structures

2. Movement of Earth Material:
   a. Filling, dredge spoil placement, dune building, beach nourishment, clearing or clear-cutting (removal of vegetation by bulldozer or other heavy motorized equipment)
   b. Dredging
   c. Excavation
   d. Grading
   e. Subdividing of Land

**Exempt Activities:**

Continuation of lawfully existing uses which do not alter lands or, wetlands, and which do not change existing structures in or adjacent to the tidal wetland DO NOT require tidal wetlands permits.

Be careful - Don't interpret this category too broadly.

For example, replacing broken boards on a functional dock does not require a permit, but changing the length, width, or position of the dock does require a permit. Further, work on a structure that has so deteriorated that it is no longer functional, is not exempt from permit requirements.
What Are “Major” and “Minor Projects?”

The time allotted for agency review (timeframes), the procedures, and public notice requirements for applications differ according to whether the project is considered “major” or “minor” according to the regulations implementing the Uniform Procedures Act. Generally, minor projects have shorter review time frames and require less public review.

Major Projects Include:

1. Construction of open pile docks or catwalks greater than 4 feet in width.
2. Installation of a floating dock having a surface area of greater than 200 square feet.
3. Construction of a solid fill dock.
4. Placement of fill in a tidal wetlands
5. Construction, in a wetland, of single family or multiple family dwellings and/or accessory structures for them (driveways, garages, swimming pools, tennis courts, septic systems, etc.)
6. Construction of commercial or industrial structures.
7. Construction of groins, bulkheads, or other shoreline stabilization structures in vegetated tidal wetlands.
8. New dredging.

Minor Projects Include:

1. Construction of open pile docks or catwalks no greater than 4 feet in width.
2. Installation of a floating dock having a surface area no greater than 200 square feet.
3. Construction of single family or multiple family dwellings and/or accessory structures for them (driveways, garages, swimming pools, tennis courts, septic systems etc.) only in an adjacent area, and if no variance from the developmental regulations is required.
   a. Connection of electricity, gas, sewer, or water-lines from an existing distribution facility to an existing structure.
   b. Maintenance dredging.

General Application Requirements:

It is recommended that you schedule a pre-application conference with your regional NYSDEC office in the early planning stages of your project. Your application requirements may vary from those listed below.

To be complete, an application typically must include:

1. Application Form. The application form (submit four copies) including a detailed description of the regulated activity.
2. Describe the purpose of the project. A description of the purpose of the proposed regulated activity.
3. Location Map. A location map showing the precise location of the project by reference to known landmarks such as streets and public buildings. (A photocopy of a USGS topographic map or equivalent will usually be sufficient.) If the project site is a vacant lot, provide the number of the nearest utility pole, distance to the nearest intersection, or location of another identifying landmark (required number...
of copies). It is also necessary to provide the county, city, or village tax lot identification numbers for the project site. A photocopy of the tax bill will be sufficient for this purpose.

4. **Adjacent Owners.** A list of the names of the owners-of-record of lands adjacent to the tidal wetland or adjacent area where the project is located and, in some cases, a list of the names of known claimants of water rights for the project property or for property within 300 feet of the project property.

5. **Project Plans.** Draw project plans to a scale no smaller than 1" = 50'. Draw plans for small projects to a sufficient scale to reasonably represent the project on standard working drawings no smaller than 8-1/2" X 11". Topography drawn with a two foot contour interval may be required on some project plans (check with your regional permit administrator). The drawing must show existing conditions and the work to be performed and include all pertinent dimensions and elevations.

6. **This plan must also show the mean high water line and the tidal wetlands boundary.** The wetlands boundary may be on the plans as it was delineated at the site by an environmental consultant, or by NYSDEC staff, or shown as an accurate representation of the tidal wetland boundary as taken from the official tidal wetland maps.

7. **You must also provide a cross sectional drawing through any proposed modification of beach or lands under water.** If a septic system is part of the proposed project, the plan must show the location of the system including the test hole location and data and the elevation of the system above seasonal high groundwater.

8. **Four copies of the project plans should be submitted with the application.**

9. **Photographs.** Recent clear photographs of the project site and wetlands area mounted on a separate sheet labeled with the view shown and the date of the photographs.

10. **Satisfaction of SEQR and SHPA Requirements.** Information necessary for the requirements of the State Environmental Quality Review Act (SEQR) and the State Historic Preservation Act (SHPA) (See page 9 regarding SEQR and SHPA which will include:

11. A completed Environmental Assessment Form (EAF) (Part 1), and in certain cases, a Draft Environmental Impact Statement (DEIS)

12. A completed Structural Archaeological Assessment Form (SAAF) (if required), and in certain cases, a cultural resource survey.

13. **Landowners Permission.** If the applicant is not the owner of the land for which the application is submitted, written permission of the landowner for the applicant to file the application and undertake the proposed activity. If the application is for state-owned underwater lands, written notice that the applicant is seeking the appropriate grant, easement or lease of such lands from the New York State Office of General Services is sufficient.

14. **Other information.** Other information which the department may determine is necessary to adequately review and evaluate the application, such as engineering or supplemental reports, justifying this proposal over alternative non-wetland sites and alternative layouts or designs which might avoid or minimize impacts to wetlands.

15. **Variances.** For projects which require a variance, or which seek approval of uses designated in Section 661.5 as PIp (Presumably Incompatible-permit required), I
(Incompatible), or P (Permit required), a statement that identifies feasible alternatives to the proposed project including:
16. Alternatives located on a site that is not a tidal wetland or adjacent area;
17. Alternatives that accomplish the project's objectives by means that do not adversely affect tidal wetlands;
18. Alternatives that reduce or minimize the project's encroachment and/or impact on tidal wetlands.
19. When a variance is required, a written request setting forth the facts supporting the variance, must be submitted. This must include:
20. A clear statement of the specific element of the Development Restrictions in Section 661.6 from which you seek relief.
22. Description and justification of the minimum variance necessary.
23. Identification and explanation of the practical difficulties claimed which support the need for the variance requested.

Once an application is declared complete and review begins, it may become clear that additional information is needed to complete the review and make a decision. You will be notified of what information is necessary, and this must be submitted before a final decision can be reached on the project application.

**Timeframe:**

Note: The following timelines are relevant only after the NYSDEC has determined that your application is “complete”. Depending on the complexity of your project and the types of information that the NYSDEC requests after your submittal (e.g. plans, maps, studies, etc) your application may take several years to become “complete.”

**Statutory Timeframe:**

Minor Projects:
- NYSDEC must make a permit decision on minor projects within 45 days of determining the application complete.

Major Projects:
- If no hearing is held, DEC makes its final decision on the application within 90 days of its determination that the application is complete.
- If a hearing is held, NYSDEC notifies the applicant and the public of a hearing within 60 days of the completeness determination. The hearing must commence within 90 days of the completeness determination.
- Once the hearing ends, NYSDEC must issue a final decision on the application within 60 days after receiving the final hearing record.

**Completeness Determination:**

NYSDEC must mail notice of its completeness determination within the specified time limits for the type of permit or the application is deemed to be complete. For most permits 15 days is the time limit for the Department to make its Completeness Determination. For hazardous waste management facilities, certain wastewater discharges...
and certain air permit applications NYSDEC has 60 days to make a completeness determination.

**Review Standards for Issuing a Permit:**

Your project should be approved if it:
1. Is compatible with the policy of preserving tidal wetlands.
2. Is compatible with the public health and welfare.
3. Is reasonable and necessary.
4. Complies with use guidelines

Variances are allowed under certain circumstances.

**Other Relevant Permits, Agencies and Considerations:**

If your project requires a Tidal Wetland Permit from the NYSDEC, it is highly likely that you also require a permit from the Army Corps of Engineers. There is a joint application for NYSDEC and Army Corps permits that you must send to both agencies. Each agency will decide separately whether they approve your permit application. Approval from one agency does not mean approval from the other.

New York District, U.S. Army Corps of Engineers
Attn. Regulatory Branch
26 Federal Plaza
New York, NY 10278-0090

If your project involves any New York State-owned underwater lands, you must obtain the necessary approvals or easements for their use from the New York State Office of General Services (NYSOGS).

During review of your application NYSDEC will notify NYSOGS of your project if state-owned underwater lands appear to be involved. For questions involving underwater properties owned by the state, contact:

Office of General Services
Division of Land Utilization
Bureau of Land Management, Corning Tower
Empire State Plaza, Albany, NY 12242
(518) 474-2195

If your project requires a discretionary permit from the NYSDEC (or any other State or Federal agency) the agency considering your permit application will have to check to see that the project is consistent with the State Environmental Quality Review Act (SEQRA) and the State’s Coastal Zone Management Plans (CZMP). The agency may also have to ensure consistency with any Local Waterfront Revitalization Plans (LWRP). Any person who is considering an activity in, or affecting, the State's coastal area that requires approval from a federal, State or local agency (in a city, town, or village with an adopted LWRP) may be required to comply with certain consistency requirements or have their action subject to state agency consistency requirements.

Finally, county, city, town or village building permits, flood plain permits, or other approvals may be necessary. You should check with the appropriate offices. You must
inform NYSDEC of any other local approvals needed for your project. This will enable a coordinated review among all involved agencies.

**Application Fee:**
Affective April 1, 2009, the application fees below will apply to Tidal Wetlands Permits:
- Minor projects $200
- Modifications to Permits $200
- Other projects $900

**Authority:**
ARTICLE 25, ENVIRONMENTAL CONSERVATION LAW REGULATIONS - 6NYCRR PART 661

**Source:**

### 3.1.3 Clean Water Act §401 Water Quality Certificates

This certification is required when a Federal agency (e.g. The Army Corps of Engineers) issues a permit that might diminish the quality of the waters within a state. In order for the Federal agency to issue such a permit, an authorized state agency (NYSDEC or NJDEP) must certify that the project will not diminish the quality of the state’s waters to the point where they do not meet the standards of the Clean Water Act.

**Authority:**
Statutory Authority: NYS Environmental Conservation Law, Article 8 (eff. 1977)
Regulatory Authority: 6 NYCRR, Part 617 (eff. 1978)

**Regulated Activities:**
Officially, the Water Quality Certificate is needed for any federal authorized discharge into the Waters of the United States. However, in practice, Section 401 certifications are generally limited to discharges of dredged or fill material regulated under Section 404 of the Clean Water Act or construction and operation of hydroelectric or major interstate transmission facilities licensed by Federal Energy Regulatory Commission (FERC).

**What Are “Major” and “Minor” Projects?**
The time allotted for agency review (timeframes), the procedures, and public notice requirements for applications differ according to whether the project is considered “major” or “minor” according to the regulations implementing the Uniform Procedures Act. Generally, minor projects have shorter review time frames and require less public review.
For Section 401 certificates, minor projects are those which do not exceed the minor project thresholds for Protection of Waters, Freshwater Wetlands or Tidal Wetlands and do not involve construction or operation of hydroelectric facilities.

**Timeframe:**
The federal permit cannot be issued until the 401 certification is issued or waived usually within one year of application but may be less, e.g., 60 days for certification of activities under certain Army Corps of Engineers Nationwide Permits.

### 3.1.4 State Environmental Quality Review Program:

New York's State Environmental Quality Review Act (SEQRA) requires all Federal, State and local government agencies to consider environmental impacts equally with social and economic factors during discretionary decision-making (e.g. permitting). This means these agencies must assess the environmental significance of all actions they have discretion to approve, fund or directly undertake. If the agency decides that an action will have a significant effect of the environment, the impacts of an action are analyzed in a document called an Environmental Impact Statement (EIS).

In essence, the State Environmental Quality Review process regulates agencies to ensure that they consider the environment when approving or sponsoring projects. However, even though the applicant is not directly regulated by SEQRA, the process can significantly affect the design and scope of your project. In addition, the process of assessing environmental impacts requires the cooperation of the project proponent. If the permitting agency decides that approving your project would significantly affect the environment, the agency may suggest alternative designs and require changes before granting a permit.

**How Does SEQR Work?**

When applying for a discretionary permit, the permitting agency, for example the NYSDEC, will require the applicant to complete an Environmental Assessment Form (EAF) before the permit application is considered complete.

Upon receipt of the application and EAF, NYSDEC may choose to coordinate the SEQR environmental review of the project with other state or local agencies having jurisdiction over the project. In doing so, an agency other than NYSDEC may ultimately be designated as the "lead agency". The "SEQR Determination" is the lead agency's assessment of whether or not the proposed project will have a significant adverse impact on the environment.

This SEQR determination takes the form of either a:

1. **Negative Declaration**: If an action is determined not to have significant adverse environmental impacts, a determination of non-significance (Negative Declaration) is prepared;

2. **Conditioned Negative Declaration**: If the action can be made to equate to a non-significant action through enforceable terms conditions placed on a permit or license, a "conditioned negative declaration" may be prepared; or a
3. Positive Declaration: If an action is determined to have potentially significant adverse environmental impacts, an "Environmental Impact Statement" is required and the applicant must submit a Draft Environmental Impact Statement.

What Is An Environmental Impact Statement?

An Environmental Impact Statement concisely describes and analyzes a proposed action that may have a significant impact on the environment. The EIS is available to the public for information and comment. An EIS must include:

• description of the action, including its need and benefits;
• description of the environmental setting and areas to be affected;
• an analysis of all environmental impacts related to the action;
• an analysis of reasonable alternatives to the action;
• identification of ways to reduce or avoid adverse environmental impacts.

Type I actions and Unlisted Actions may require preparation of an Environmental Impact Statement.

The SEQR Process:

Step 1: The permitting agency decides whether the action is subject to SEQR. The action will be identified as a Type I action (which typically requires an Environmental Impact Statement (EIS)), a Type II action (which never requires an EIS), or an Unlisted Action (which may or may not trigger the need for an EIS). If the agency action is classified as a Type II, the SEQR process is over.

Step 2: Complete the Correct Environmental Assessment Form.

Step 3: Agencies conduct a coordinated review of the Environmental Assessment Form.

Step 4: Determine Significance - The lead agency has 20 calendar days to make its determination of “significance,” meaning whether or not the “action” (e.g. permit approval) will have a significant environmental impact.

Step 5: If the agency “action” is deemed to have a significant environmental effect, an Environmental Impact Statement (EIS) must be prepared. The applicant always has the right to prepare the draft EIS. If the applicant refuses to prepare the draft EIS, the lead agency has the option of preparing the draft EIS, having it prepared by a consultant, or terminating its review of the action.

Step 6: Determine the Adequacy of the Draft EIS for Public Review (Accept or Return for Revision) - Upon receipt of a submitted draft EIS, the lead agency has 45 days to determine whether the document is adequate for public review in terms of scope and content.

Step 7: Once the draft EIS is accepted, the lead agency publishes notice of its acceptance.

Step 8: The filing of the Notice of Completion of a Draft EIS starts the public comment period.

Step 9: Decide Whether to Hold a Public Hearing - After the lead agency accepts the draft EIS, it must decide whether to hold a public hearing.
**Step 10:** Preparation of the Final EIS - The lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it.

**Step 11:** SEQR Findings - Each involved agency must prepare its own written SEQR findings statement, after a final EIS has been filed and before the agency makes a final decision.

**Actions that NEVER require an EIS:**

Early in the SEQR process, your action will be classified as Type I, Type II, or as an action listed in the statewide and agency SEQR regulations which are determined not to have a significant adverse impact on the environment. Some examples include:

- rebuilding or replacement of facilities, in-kind, on the same site;
- minor structures, such as garages, barns or home swimming pools, routine permit and license renewals with no substantial change in permitted activities;
- construct or expand either primary or accessory nonresidential structures in an appropriate zone with less than 4,000 square feet of gross floor space construct or expand a single, two or three family residence on approved lot;
- routine activities of educational institutions, including expansions of existing facilities by less than 10,000 square feet;
- nondiscretionary (ministerial) approvals;
- maintenance and repair activities;
- emergency actions;
- actions of the New York State Legislature and the Governor or of any court enforcement actions; and
- actions subject to environmental review under the Adirondack Park Agency or Public Service Laws.

**Timeline:**

Initial processing to decide on a lead agency is 30 days. The lead agency has 20 days to make its determination of significance. There is a 30-day minimum for a public comment period; a minimum of 60 days for a draft scope for the EIS; a minimum of 20 days for public review of the draft scope. The lead agency has 45 days to decide if the draft scope is adequate for public review. If there is a resubmittal, the lead agency has 30 days to determine its adequacy. There is a minimum of 30 days for the Notice of Completion of a draft EIS for public comments plus 10 days following the close of a public hearing. Public hearings are held at least 15 days after the lead agency has prepared and filed a Notice of Public Hearing of the Notice of Completion of the draft EIS. The final EIS is prepared 45 days after the close of any hearing or within 6 days after the filing of the draft EIS. The findings can be finalized no sooner than 10 days after the filing of the Notice of Completion of the Final EIS but no more than 30 days.

**Authority:**

Environmental Conservation Law Sections 3-0301(1)(b), 3-0301(2)(m) and 8-0113]

**Fees:**

There is no official fee, however a fee may be charge by the lead agency in order to recover the actual costs of either preparing or reviewing the draft and/or final
environmental impact statement. You may also incur costs in preparing an Environmental Assessment Form.

**Forms and Information:**
More SEQR information can be found at the following NYSDEC website: http://www.dec.ny.gov/permits/357.html

SEQR forms are available at: http://www.dec.ny.gov/permits/6191.html

**Source:**
http://www.dec.ny.gov/permits/357.html

**3.1.5 Freshwater Wetland Program and Permits:**
*Please note: much of the information in this section is taken directly from the NYSDEC website.*

Freshwater wetlands are lands and submerged lands, commonly called marshes, swamps, sloughs, bogs, and flats, supporting aquatic or semi-aquatic vegetation. Under the Freshwater Wetlands Act, NYSDEC regulates activities in freshwater wetlands and in their adjacent areas. Adjacent areas are areas outside wetlands that extend 100 feet from the wetland boundary, measured horizontally. In rare cases, this adjacent area distance measurement may be larger. Almost any activity that may adversely impact the natural values of the wetlands or their adjacent areas is regulated.

NYSDEC has classified regulated freshwater wetlands according to their respective functions, values and benefits. Wetlands may be Class I, II, III or IV. Class I wetlands are the most valuable and are subject to the most stringent standards.

**Permit Description:**
This permit allows an applicant to perform an activity or erect a structure that will impact a regulated freshwater wetland or an adjacent area. Examples of activities are: filling, draining, excavating, grading, and dredging; construction of buildings, roadways, septic systems, bulkheads, dikes, dams, and docks; or clear cutting timber and other vegetation. Generally, the permit applies to freshwater wetlands that are 12.4 acres or larger in area or smaller wetlands deemed to be of unusual local importance, and which appear on the Freshwater Wetlands regulatory maps. The purpose of this permit is to preserve and protect freshwater wetlands, and prevent their degradation and destruction while giving due consideration to the reasonable economic, social, and agricultural development of New York State.
**Tips for Getting Started:**

1. Before submitting your application, and preferably very early in the planning stages of your project, visit your town or county clerk's office or NYSDEC Regional Office and ask to review the wetland maps.

2. Locate your property and check whether or not a protected wetland is either on or adjacent to it. Not all wetlands are protected by NYSDEC. Be aware however, that most wetlands will come under the jurisdiction of the US Army Corps of Engineers whether protected by NYSDEC or not.

3. If a protected wetland is on or near your property and your project may come within 100 ft. of it, contact the NYSDEC Regional Office serving the project location and request a Division of Fish, Wildlife and Marine Resources biologist to visit your site and mark the wetland boundary.

4. Freshwater Wetland permit issuance standards require you to avoid or minimize impacts to the wetlands - you need the above information to plan for meeting these standards.

5. Showing the wetland boundary on your project plans is usually required when the project is determined to be a "major" project. Request the NYSDEC to "flag" the wetland boundary for you. If a field determination is needed, you may be able to schedule one at this time.

6. Contact the appropriate NYSDEC regional Environmental Permits office to schedule a pre-application meeting before beginning detailed design and engineering work. Keep initial plans flexible until involved regulatory program staff review your proposal and comment on its conformance with permit issuance standards. On occasion, minor changes in layout can avoid disagreements and delays, and in some cases, even eliminate the need for a permit.

**Application Requirements:**

Some requirements may be waived for small projects but in general, a complete application must include:

1. Application Form: The application form including a detailed description of the proposed project (provide four copies and retain a fifth for your records).

2. Location Map: Four copies of a location map showing the precise location of the project by reference to known landmarks such as streets and public buildings. (A photocopy of a USGS topographic map or equivalent will usually be sufficient.) If the project site is a vacant lot, provide the number of the nearest utility pole, distance to the nearest intersection, or location of another identifying landmark.

3. Project Plans: Four copies of the project plans at a scale of 1"=50' or larger, including topography at a contour interval prescribed by the NYSDEC Regional Permits Office. The plan must show existing conditions and the work to be performed. The wetlands boundary verified by NYSDEC staff may also be shown on the plans. (See Pre-application Assistance, above.) The extent of all fills or excavations and the dimensions of all proposed buildings or structures must be shown on the plans. If a septic system is part of the proposed project, the plan must show the location of the system including the test hole location and data and the elevation of the system above seasonal high ground water.
4. Photographs: Recent clear photographs of the project site and wetlands area mounted on a separate sheet labeled with the view shown and the date of the photographs.

5. Satisfaction of SEQR and SHPA requirements: Information necessary for the requirements of the State Environmental Quality Review Act (SEQR) and the State Historic Preservation Act (SHPA) which will include:
   a. A completed Environmental Assessment Form (Part 1), and in certain cases, a Draft Environmental Impact Statement
   b. A completed Structural Archaeological Assessment Form (if required), and in certain cases, a cultural resource survey.

6. Landowner's Permission: If the applicant is not the owner of the land for which the application is submitted, written permission of the landowner for the applicant to file the application and undertake the proposed activity. If the application is for State-owned underwater lands, written notice that the applicant is seeking the appropriate grant, easement or lease of such lands from the New York State Office of General Services is sufficient.

7. Other information NYSDEC staff may require additional information to adequately review and evaluate the application, such as engineering or supplemental reports that justify this proposal over alternative non-wetland sites, and alternative layouts or designs which might avoid or minimize impacts to wetlands.

This information will assist NYSDEC in evaluating the project using the regulatory standards for permit issuance in 6NYCRR Part 663. If, after this examination of alternatives, impacts to the wetlands remain and cannot be avoided, you may be required to submit a proposal to compensate for losses by replacing lost wetlands or wetland natural values (e.g., construct new wetlands, enhance habitat diversity of existing wetlands, or construct facilities replacing wetland functions such as flood control structures or waste treatment facilities).

Even after an application is determined complete and review begins, NYSDEC may require additional information to complete the review and make a decision. The applicant will be notified of what information is necessary, and must submit this before a final decision can be reached on the project application.

What Are “Major” and “Minor” Projects?
The time allotted for agency review, the procedures, and public notice requirements for applications differ according to whether the project is considered “major” or “minor” according to the regulations implementing the Uniform Procedures Act. Generally, minor projects have shorter review time frames and require less public review.

Minor Projects in Wetlands Include:
   1. In-kind and in-place reconstruction of existing functional bulkheads or similar structures.
   2. Restoration, reconstruction, or modification of existing functional structures or facilities that involve the temporary disturbance of less than 50 square meters (approximately 540 square feet) of ground surface.
3. Installation of a dock, pier, or wharf built on floats or open-work supports and having a top surface area of 20 square meters (approximately 200 square feet) or less.
4. Installation of utility service to an individual residence or installation of utilities to a structure from an existing distribution facility, not involving major modifications or construction activities (e.g. clearing and grading) in the wetland.
5. Selective cutting but not elimination or destruction of vegetation that does not significantly affect the benefits of the wetland.
6. Dredging of less than 400 cubic meters (approximately 523 cubic yards) to maintain presently existing navigational channels.
7. Routine beach regrading and cleaning.
8. Drilling of a water well for a single-family dwelling.
9. Application of a pesticide to the grounds of a private residence by the owner of that residence.

Minor Projects in Adjacent Areas Include:
1. In-kind and in-place reconstruction of existing functional bulkheads or similar structures.
2. Restoration, reconstruction, or modification of existing functional structures or facilities which involve the temporary disturbance of less than 50 square meters (approximately 540 square feet) of ground surface.
3. Installation of a dock, pier, or wharf built on floats or open-work supports and having a top surface area of 20 square meters (approximately 200 square feet) or less.
4. Expansion or substantial modification of existing functional structures, excluding drainage ditches.
5. Installation of utilities to a structure from an existing distribution facility, not involving major modifications or construction activities (e.g. clearing and grading) in the wetland. (Installation of utility service to an individual residence is an exempt activity in an adjacent area.)
6. Removal or breaching of beaver dams.
7. Selective cutting but not elimination or destruction of vegetation which does not significantly affect the benefits of the wetlands.
9. Dredging of less than 400 cubic meters (approximately 523 cubic yards) to maintain presently existing navigational channels.
10. Routine beach regrading and cleaning.
11. Drilling of a water well for a single-family dwelling.
12. Application of a pesticide to the grounds of a private residence by the owner of that residence.
13. Application of a pesticide pursuant to a pesticide permit issued by the NYSDEC.

Major Projects:
All regulated activities in wetlands not listed in one of the two categories above are major projects. Examples include:
1. New construction of a residence, commercial facility, industrial facility or any related structure in a wetland or within 100 feet of the wetlands.
2. Expansion of or substantial modification of existing structures or facilities in a wetland including residential, commercial, and industrial buildings or sanitary disposal systems within 100 feet of the wetlands.
3. Draining, except as part of an agricultural activity.
4. Clear cutting of trees or other vegetation in a wetlands.
5. Filling, even for agricultural purposes.
6. Dredging except as listed above in the minor project categories.
7. Mining.
8. Road construction.
9. Construction of new or replacement of non-functional dams, docks, or bulkheads.
10. Application or storage of pesticides, except applications in an adjacent area as described above in minor projects.

**Timeframe:**

Note: The following timelines are relevant only after the NYSDEC has determined that your application is “complete”. Depending on the complexity of your project and the types of information that the NYSDEC requests after your submittal (e.g. plans, maps, studies, etc) your application may take several years to become “complete”.

Statutory Timeframe for Minor Projects:
- NYSDEC must make a permit decision on minor projects within 45 days of determining the application complete.

Statutory Timeline for Major Projects:
1. If no hearing is held, NYSDEC makes its final decision on the application within 90 days of its determination that the application is complete.
2. If a hearing is held, NYSDEC notifies the applicant and the public of a hearing within 60 days of the completeness determination. The hearing must commence within 90 days of the completeness determination.
3. Once the hearing ends, NYSDEC must issue a final decision on the application within 60 days after receiving the final hearing record.

**Completeness Determination:**

NYSDEC must mail notice of its completeness determination within the specified time limits for the type of permit or the application is deemed to be complete. For most permits 15 days is the time limit for the Department to make its Completeness Determination. For hazardous waste management facilities, certain wastewater discharges and certain air permit applications NYSDEC has 60 days to make a completeness determination.

**Fees:**

There are no application fees for freshwater wetlands permits applications, however you may encounter costs in preparing a complete application.

**Other Related Agencies and Permits:**

Your project or activity may require additional permits under other NYSDEC programs.
Examples:
1. Protection of Waters permits are required for certain activities such as:
   a. dredging or filling which take place in navigable waters
   b. activities which may result in disturbance to the bed or banks of protected streams.
2. If an activity will require a permit from the Corps of Engineers, then a Section 401 Water Quality Certification by NYSDEC may also be needed.
   If the activity will involve a discharge to ground water, a SPDES permit will be required

**Authority:**
Statutory Authority: NYS Environmental Conservation Law, Article 24 (eff. 9/1975)
Regulatory Authority: 6 NYCRR, Parts 663, 664, 665 (eff. 6/1980)
Federal Authority: Public Law, 92-500, Title IV, Section 401 Water Quality Certification

**Source:**

### 3.1.6 Resource Conservation and Recovery Act:

*Please note: much of the information in this section is taken directly from the NYSDEC website.*

The Resource Conservation and Recovery Act (RCRA) is the Federal law that regulates the characterization, generation, handling, transportation, and disposal of hazardous waste. New York has been authorized by the Federal Environmental Protection Agency to administer RCRA permitting at the State level. Contact NYSDEC to learn more about the State’s Hazardous Waste Program.

**What Are Hazardous Wastes?**

Hazardous wastes can be liquids, solids, or sludges. They can be by-products of manufacturing processes or discarded commercial products. If hazardous wastes are not handled properly, they pose a potential hazard to people and the environment. To ensure that companies handle waste safely and responsibly, EPA has written regulations that track hazardous wastes from the moment they are produced until their ultimate disposal. The regulations set standards for the hazardous waste management facilities that treat, store, and dispose of hazardous wastes.

**What Is A Hazardous Waste Management Facility?**

Hazardous waste management facilities receive hazardous wastes for treatment, storage, or disposal. These facilities are often referred to as treatment, storage, and disposal facilities, or TSDFs.

Treatment facilities use various processes (such as incineration or oxidation) to alter the character or composition of hazardous wastes. Some treatment processes enable waste to be recovered and reused in manufacturing settings, while other treatment processes dramatically reduce the amount of hazardous waste.
Storage facilities temporarily hold hazardous wastes until they are treated or disposed of.

Disposal facilities permanently contain hazardous wastes. The most common type of disposal facility is a landfill, where hazardous wastes are disposed of in carefully constructed units designed to protect groundwater and surface-water resources.

**What Laws And Regulations Govern TSDFs?**

EPA has written detailed regulations to make sure that TSDFs operate safely and protect people and the environment. EPA wrote these regulations to implement the Resource Conservation and Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste Amendments of 1984. The U.S. Congress passed these laws to address public concerns about the management of hazardous waste.

EPA can authorize states to carry out the RCRA program. To receive authorization, State requirements must be as strict, or stricter, than the Federal requirements. Federal or State agencies that implement RCRA are known as "permitting agencies."

**What Is A RCRA Permit?**

A RCRA permit is a legally binding document that establishes the waste management activities that a facility can conduct and the conditions under which it can conduct them. The permit outlines facility design and operation, lays out safety standards, and describes activities that the facility must perform, such as monitoring and reporting. Permits typically require facilities to develop emergency plans, find insurance and financial backing, and train employees to handle hazards. Permits also can include facility-specific requirements such as ground-water monitoring. The permitting agency has the authority to issue or deny permits and is responsible for monitoring the facility to ensure that it is complying with the conditions in the permit. According to RCRA and its regulations, a TSDF cannot operate without a permit, with a few exceptions.

**Who Needs A RCRA Permit?**

All facilities that currently or plan to treat, store, or dispose of hazardous wastes must obtain a RCRA permit.

- New TSDFs must receive a permit before they even begin construction. They must prove that they can manage hazardous waste safely and responsibly. The permitting agency reviews the permit application and decides whether the facility is qualified to receive a RCRA permit. Once issued, a permit may last up to 10 years.
- Operating TSDFs with expiring permits must submit new permit applications six months before their existing permits run out.
- TSDFs operating under Interim Status must also apply for a permit. Congress granted "interim status" to facilities that already existed when RCRA was enacted. Interim status allows existing facilities to continue operating while their permit applications are being reviewed.
Who Does Not Need A RCRA Permit?
There are certain situations where a company is not required to obtain a RCRA a permit.
- Businesses that generate hazardous waste and transport it off site without storing
  it for long periods of time do not need a RCRA permit.
- Businesses that transport hazardous waste do not need a RCRA permit.
- Businesses that store hazardous waste for short periods of time without treating it
  do not need a permit.

What Are The Steps In The RCRA Permitting Process?
1. Starting the Process
   Before a business even submits a permit application, it must hold an informal meeting
   with the public. The business must announce the "preapplication" meeting by putting up a
   sign on or near the proposed facility property, running an advertisement on radio or
   television, and placing a display advertisement in a newspaper. At the meeting, the
   business explains the plans for the facility, including information about the proposed
   processes it will use and wastes it will handle. The public has the opportunity to ask
   questions and make suggestions. The business may choose to incorporate the public's
   suggestions into its application. The permitting agency uses the attendance list from the
   meeting to help set up a mailing list for the facility.

2. Applying for a Permit
   After considering input from the preapplication meeting, the business may decide to
   submit a permit application. Permit applications are often lengthy. They must include a
   description of the facility and address the following:
   - how the facility will be designed, constructed, maintained, and operated to be
     protective of public health and the environment;
   - how any emergencies and spills will be handled, should they occur;
   - how the facility will clean up and finance any environmental contamination that
     occurs; and
   - how the facility will close and clean up once it is no longer operating.

3. Receipt and Review of the Application
   When the permitting agency receives a permit application, it sends a notice to everyone
   on the mailing list. The notice indicates that the agency has received the application and
   will make it available for public review. The permitting agency must then place a copy
   of the application in a public area for review.

   Simultaneously, the permitting agency begins to review the application to make sure it
   contains all the information required by the regulations. The proposed design and
   operation of the facility are also evaluated by the permitting agency to determine if the
   facility can be built and operated safely.

4. Revisions, Revisions, Revisions
   After reviewing the application, the permitting agency may issue a Notice of Deficiency
   (NOD) to the applicant. NODs identify and request that the applicant provide any missing
   information. During the application review and revision process, the permitting agency
   may issue several NODs. Each time the permitting agency receives a response from the
   applicant, it reviews the information and, if necessary, issues another NOD until the
application is complete. Given the complex and technical nature of the information, the review and revision process may take several years.

5. Drafting the Permit for Public Review
When the revisions are complete, the agency makes a preliminary decision about whether to issue or deny the permit. If the agency decides that the application is complete and meets appropriate standards, the agency issues a draft permit containing the conditions under which the facility can operate if the permit receives final approval. If the permitting agency determines that an applicant cannot provide an application that meets the standards, the agency tentatively denies the permit and prepares a "notice of intent to deny."

The permitting agency announces its decision by sending a letter to everyone on the mailing list, placing a notice in a local paper, and broadcasting it over the radio. It also issues a fact sheet to explain the decision. Once the notice is issued, the public has 45 days to comment on the decision. Citizens also may request a public hearing by contacting the permitting agency. The permitting agency may also hold a hearing at its own discretion. The agency must give 30-day public notice before the hearing.

6. The End Result: A Final Permit Decision
After carefully considering public comments, the permitting agency reconsiders the draft permit or the notice of intent to deny the permit. The agency must issue a "response to public comments," specifying any changes made to the draft permit. The agency then issues the final permit or denies the permit.

Even after issuing a permit, the permitting agency continues to monitor the construction and operation of the facility to make sure they are consistent with state and federal rules and with the application.

Several additional steps can also take place after the original permit is issued:

- Permit Appeals. Facility owners and the public both have a right to appeal the final permit decision. The appeal is usually decided upon by administrative law judges.
- Permit Modifications. If a facility changes its management procedures, mechanical operations, or the wastes it handles, then it must secure a permit modification. For modifications that significantly change facility operations, the public must receive early notice and have a chance to participate and comment. For minor modifications, the facility must notify the public within a week of making the change.
- Permit Renewals. The permitting agency can renew permits that are due to expire. Permit holders that are seeking a permit renewal must follow the same procedures as a facility seeking a new permit.
- Permit Terminations. If a facility violates the terms of its permit, the permitting agency can terminate the permit.

3.2 New York State Department of State

New York State Department of State
3.2.1 Coastal Zone Management Program Consistency Determination:

The Coastal Zone Management Act (CZMA) creates a set of State coastal policies. These policies are intended to guide the development of the State’s coastal waterfronts. If a project is located in a coastal area and approval (a permit) is needed from a State or Federal agency, the agency must obtain a Coastal Consistency Certification from the New York State Department of State before it can give its approval. This certification states that the proposed agency action (issuing a permit) will not detract from the goals and policies set out in the Coastal Zone Management Plan. If such a certification is needed, you will be informed of this by the permitting agency involved. In New York State, coastal areas include the Atlantic Ocean, Long Island Sound, Arthur Kill, Kill van Kull, Harlem River, East River, Hudson River south of the Federal dam in Troy, Niagara River, St. Lawrence River, Lake Ontario, Lake Erie, and all connecting water bodies, bays, harbors, shallows, and marshes.

The CZMA also allows municipalities to create local coastal plans, called Local Waterfront Revitalization Plans (LWRP). State agency actions that are not consistent with State coastal policies or with an approved LWRP are not to be undertaken.

State agencies must complete a Coastal Assessment Form as soon as the agency contemplates an action that may affect the policies for the coastal area or of an approved LWRP. The completion of a Coastal Assessment Form is designed to assist the State agency in making a determination regarding the consistency of its action with coastal policies or an approved LWRP. It is also intended to aid the State agency in making its determination of significance pursuant to the State Environmental Quality Review Act.

When a State agency is considering an action that may affect the policies or purposes of an approved LWRP, the agency must contact the LWRP municipality directly. This is to provide the municipality with the opportunity to identify any potential conflicts between the State agency action and their LWRP. If the municipality identifies a conflict, the State agency and the municipality should meet to resolve the issue. If they cannot agree, either party may notify the Secretary of State. The Secretary will confer with the State agency and the municipality to modify the proposed action to be consistent with the LWRP.

The Division of Coastal Resources reviews the actions of State agencies and advises them regarding consistency procedural matters and the consistency of their actions with State coastal policies, approved Local Waterfront Revitalization Programs, and other CZMP special management area plans.

For questions involving the coastal consistency program contact:

NYS Department of State
Coastal Management Program,
Division of Coastal Resources
41 State Street
Albany, NY 12231
(518) 474-6000
http://www.dos.state.ny.us/

Authority:
New York State's requirements to assure that actions of State agencies are consistent with policies for the State's coastal areas and inland waterways are contained in Article 42 of the State Executive Law, Department of State regulations in 19 NYCRR Part 600 , and State Environmental Quality Review Act regulations in 6 NYCRR Part 617. State agency actions are required to be consistent with:
State coastal policies in 19 NYCRR Part 600.5,
Long Island Sound coastal policies in 19 NYCRR Part 600.6, or
a State approved Local Waterfront Revitalization Program.

Source:
New York State Department of State Division of Coastal Resources. Coastal Resources Online. State Consistency. April 19, 2009.
http://www.nyswaterfronts.org/consistency_state.asp

3.3 New York State Office of General Services:
New York State Office of General Services
Real Estate Development - Land Management
Corning Tower, 26th floor
Empire State Plaza
Albany, New York 12242
Phone (518) 474-2195
Email: LandUnderWater@ogs.state.ny.us

Most navigable bodies of water in New York State are State-owned, including the bed of the Atlantic Ocean, Long Island Sound, Great Peconic Bay, Gardiners Bay, Hudson River, Mohawk River, St. Lawrence River, Lake Champlain, Lake Erie, Lake Ontario and the Finger Lakes. The title to the bed of these bodies of water is held in trust for the people of New York under the jurisdiction of the Office of General Services. Structures, including fill, located in, on, or above State-owned lands underwater are regulated under the Public Lands Law and may require authorization from the state in the form of a license, grant or easement.

If your project extends on or over State lands you will likely require a grant, easement, or license from the Office of General Services. If you are unsure whether your project involves State lands and requires a conveyance from Office of General Services, contact the Office.
By telephone: (518) 474-2195
By email: LandUnderWater@ogs.state.ny.us
Application forms for Licenses, grants and easements can be found at the following links:

Petition for a License for commercial marinas:  
http://www.ogs.state.ny.us/realEstate/permits/luwappl.pdf

Petition for a Grant for previously filled in State Owned Lands Under Water:  
http://www.ogs.state.ny.us/realEstate/permits/ApplicationFor75_7.pdf

Petition for an Easement for pipelines, cables, docks, wharves, moorings and permanent structures:  
http://www.ogs.state.ny.us/realEstate/permits/ApplicationFor3_2Easement.pdf
Chapter 4: New Jersey Municipal Regulation of Waterfront Development

This guide details many of the permits required for the development of waterfront projects along the New York-New Jersey Harbor Estuary. This includes waterfront projects in Jersey City, Newark, Union City, Bayonne, and Hoboken. Projects in each of these cities may require State and Federal permits, as well as permits and approvals from municipal agencies.

4.1 New Jersey Construction Code and Enforcement:

Construction Code and Permit Application Process:
The New Jersey State Uniform Construction Code (UCC) Act, which was signed into law in 1975, authorizes the Commissioner of the Department of Community Affairs to adopt and enforce rules pertaining to construction codes and provides for the administration and enforcement of those rules throughout the State.

The UCC is comprised of four basic technical subcodes for construction: building, electrical, fire protection, and plumbing. In addition, the UCC contains technical subcodes for fuel gas installations; mechanical installations; one- and two-family dwellings; accessible (barrier free) construction; the rehabilitation of existing buildings; the construction of manufactured homes; asbestos hazard abatement; radon hazard abatement; and playground safety.

In short, the UCC is a complete set of technical standards for construction with a uniform method of administration and enforcement.

The UCC provides one stop service at the local level. A construction permit is required for any new construction as well as for work on existing buildings, including structural, plumbing, mechanical, and electrical work. There are some exceptions to the general permit requirement. For example, construction permits are not required for ordinary maintenance, which includes routine repair.

Property owners or contractors are responsible for obtaining construction permits and for submitting any required fees. The State adopts a fee schedule that applies to work performed by the State and to work performed in municipalities where the Department serves as the local enforcing agency. Municipalities adopt their own fee schedules by ordinance. Information about fee schedules for an individual municipality may be obtained from that local enforcing agency.

Applications for construction permits are submitted to local enforcing agencies. Under the UCC, local enforcing agencies are required to act on construction permit applications, including building plans and specifications, within specific timeframes. Not later than 20 business days after the submission of a complete application, the permit application must be approved or denied. Construction work may begin when the construction permit is issued.
If plans and specifications have been submitted with the construction permit application, the plans and specifications must be released before the permit is issued. During construction, the code official or inspector conducts regular inspections to ensure that the work performed complies with the UCC. The permit applicant is responsible for notifying the local enforcing agency that the project is ready for inspection. The inspection must be performed within three days of the notification.

As the construction project approaches completion, the permit applicant notifies the local enforcing agency that it is ready for the final inspections. At this time, the permit applicant also applies for a Certificate of Occupancy. When the project has passed the final inspections and it has been determined that the project complies with the UCC, that all required fees have been paid, and that the conditions of any prior approvals have been met, the construction official issues a Certificate of Occupancy. A Certificate of Occupancy verifies that the construction work authorized by the construction permit has been completed in accordance with the UCC. A Temporary Certificate of Occupancy (TCO) may be issued if the work is substantially complete, there are no outstanding health or safety issues and the building or space can be occupied safely. A TCO is issued for a defined period of time during which any remaining items are to be completed. The TCO may be renewed if additional time is needed.

**Who Enforces It:**

In New Jersey, State-licensed, municipally employed code enforcement professionals—construction officials, subcode officials, and inspectors—are responsible for the enforcement of the UCC. A construction official is a State-licensed code enforcement official who is responsible for administering the UCC within the jurisdiction of the enforcing agency. Construction officials oversee subcode officials and inspectors, but a construction official cannot overrule a subcode official on a technical issue in a field in which the construction official does not hold a license. A subcode official is a State-licensed code enforcement official who implements the provisions of a specific technical subcode of the UCC and oversees the technical and administrative provisions of that subcode. Inspectors are State-licensed code enforcement officials who enforce the requirements of a specific technical subcode under the supervision of a subcode official. The primary responsibility of code enforcement professionals is to protect the health, safety, and welfare of New Jersey’s citizens. To accomplish this, construction officials and subcode officials review construction permit applications to ensure that building plans and specifications conform to the UCC and inspectors perform field inspections for construction projects to ensure that the construction is in accordance with the UCC.

In certain instances, the State has responsibility for code enforcement. For certain categories of buildings, the State performs the plan review while the local enforcing agency retains the responsibility for performing the field inspections. These include casinos and hospitals. For State-owned buildings and in municipalities where the Department serves as the local code enforcement agency, the Department performs both plan review and inspections.

**4.2 Jersey City:**

Department of Housing, Economic Development & Commerce
It is recommended that permit seekers get in contact with the Department of Housing, Economic Development and Commerce as a first step in their planning process.

4.3 City of Newark:

City of Newark Division of City Planning and Community Development
The Division of City Planning includes the following units, each responsible for separate aspects of city planning:

- Development Review, which updates and manages the city’s Zoning Ordinance and all regulatory reviews associated with the Central Planning Board and Board of Zoning Adjustments.
- Downtown Planning, which is responsible for the economic and physical planning of the Central Business District.
- Geographic Information Systems, which prepares demographic and spatial analysis, develops specialized GIS tools, and creates maps for planners, other government agencies, consultants and the general public.
- Historic Preservations, which is responsible for all review and regulatory functions associated with new and future historic assets.
- Long-Range Planning, which is responsible for the revision and management of the citywide Master Plan.
- Neighborhood Planning, which oversees community-planning initiatives in each of the five wards of the city.
- Urban Design, which is responsible for the overall coordination and development of an urban design agenda for all public and private projects executed in the city.
- Waterfront Planning, which plans and coordinates execution of the Passaic Riverfront master plan and planning related to the Port Area redevelopment activities.

Zoning:
The Zoning Map and Zoning Ordinance are available at the City Clerk's office, room 415.

4.4 Bayonne:

Community Development Office
City Hall, 630 Avenue C
Bayonne, New Jersey 07002
Phone: (201) 858-6076
Contact: community@bayonnenj.org
Website: http://www.bayonnenj.org/commdev.htm

It is recommended that permit seekers contact the Community Development Office at (201) 858-6073 prior to starting their project.

### 4.5 Union City:

Bureau of Land and Facilities Planning  
Phone: (908) 527-4268  
Fax: (908) 527-4715

Department of Parks Planning and Environmental Services  
Phone: (908) 527-4086  
Union County Administration Building  
10 Elizabethtown Plaza  
Elizabeth, New Jersey 0720  
Web address: http://www.ucnj.org/p&cr/planning.html

It is recommended that permit seekers get in contact with the Department of Parks Planning and Environmental Services prior to starting their project.

### 4.6 Hoboken:

Community Development Office  
Phone: (201) 420-2233  
Fax: (201) 222-2096  
94 Washington Street  
Hoboken, NJ 07030

Web Address: http://www.hobokennj.org/departments/community-development/

The Hoboken Community Development Office oversees all property development in Hoboken. It includes The City's Planning and Zoning Boards as well as facilitating The City's redevelopment and historic preservation initiatives. It is recommended that permit seekers get in contact with the Community Development Office prior to starting their project.
Chapter 5: New Jersey State Regulation of Waterways

The State permitting process for water-related projects in New Jersey begins at the New Jersey Department of Environmental Protection (NJDEP). The first step in identifying the State permits required for your project is to go the NJDEP website, download a Permit Identification Form, and submit the form to the NJDEP Office of Permit Coordination and Environmental Review. This program was established as a way to help applicants identify relevant permits, coordinate the permitting process, and facilitate communication between applicants and agencies. It allows applicants to consult one source to identify all permits required for a development. After the applicant completes a questionnaire, NJDEP assembles a permitting team and arranges a pre-application meeting to guide the applicant through the permitting process. To find out more information about the Permit Coordination and Environmental Review Program visit the program website at: http://www.state.nj.us/dep/opppc/permitcoor.htm. If your project is fairly simple, pre-application consultations will be done over the phone.

5.1 New Jersey Department of Environmental Protection:

Send regular mail to this address:
Department of Environmental Protection
Division of Land Use Regulation
P.O. Box 439
Trenton, New Jersey 08625-0439

Send courier or hand deliveries to this address:
Department of Environmental Protection
Division of Land Use Regulation
501 E. State Street, Second Floor
Trenton, New Jersey 08609

Bureau of Tidelands: (609) 292.2573
Freshwater Wetland questions: (609) 777.0454
Waterfront Development, C.A.F.R.A. or Flood Hazard Area questions: (609) 984.0162

The New Jersey Department of Environmental Protection (NJDEP) regulates waterfront development through its Division of Land Use Regulation. This division administers six permits that may be required for a waterfront project. These programs are described briefly in the below table, and in more detail in the following chapters.
<table>
<thead>
<tr>
<th>LAW</th>
<th>NATURAL FEATURE PROTECTED</th>
<th>ACTIVITIES REGULATED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freshwater Wetlands Protection Act, N.J.S.A. 13:9B, and rules at N.J.A.C. 7:7A</td>
<td>Freshwater wetlands.</td>
<td>Disturbance or destruction of water level, soil or vegetation, such as by draining, filling, or clearing</td>
</tr>
<tr>
<td></td>
<td>Transition areas or “buffers” around freshwater wetlands.</td>
<td>Same activities as in freshwater wetland except that normal property maintenance is allowed</td>
</tr>
<tr>
<td></td>
<td>Lakes, ponds, rivers, streams, etc.</td>
<td>Discharge of dredged or fill material</td>
</tr>
<tr>
<td>Flood Hazard Area Control Act, N.J.S.A. 58:16A, and rules at N.J.A.C. 7:13</td>
<td>Rivers, lakes and streams, and their flood plains.</td>
<td>Any construction activity or human land disturbance, such as placement of structures or fill, excavation, or dredging that could block or displace flood waters.</td>
</tr>
<tr>
<td>Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19, and rules at N.J.A.C. 7:7 and 7:7E</td>
<td>Most coastal and shore areas in New Jersey south of Raritan Bay.</td>
<td>Development activities, including excavation, grading, filling, and site preparation; and construction or placement of structures, including docks, bulkheads, shore protection structures, single family homes, residential developments, and commercial or industrial facilities.</td>
</tr>
<tr>
<td>Waterfront Development Act, N.J.S.A. 12:5-3, and rules at N.J.A.C.</td>
<td>All land within or under tidally flowed waters throughout New Jersey; and in addition land adjacent to tidally flowed waters outside the CAFRA area, up to a maximum of 500 feet from the high water line</td>
<td></td>
</tr>
<tr>
<td>Tidelands Act, N.J.S.A. 12:3-1</td>
<td>Lands owned by the State of New Jersey that are now tidally flowed, or were formerly tidally flowed (unless specifically granted to another owner by the State).</td>
<td>Placement of a structure that will exist for more than ten days, excavation, dredging. The riparian grant program is administered by the Department’s Bureau of Tidelands Management as (609)292-2573</td>
</tr>
</tbody>
</table>
5.1.1 Waterfront Development Permit:
The Waterfront Development Law is a very old law, passed in 1914, that seeks to limit problems that new development could cause for existing navigation channels, marinas, moorings, other existing uses, and the environment.

**Regulated Activities:**
If you are proposing any development in a waterway that experiences tidal flow anywhere in New Jersey, you need a Waterfront Development Permit. Examples of projects that need a Waterfront Development Permit include docks, piers, pilings, bulkheads, marinas, bridges, pipelines, cables, and dredging.

For development outside of the CAFRA area, the Waterfront Development Law regulates not only activities in tidal waters, but also the area adjacent to the water, extending from the mean high water line to the first paved public road, railroad or surveyable property line. At a minimum, the zone extends at least 100 feet but no more than 500 feet inland from the tidal water body. Within this zone, NJDEP must review construction, reconstruction, alteration, expansion or enlargement of structures, excavation, and filling. However, this part of the law does not apply within the Hackensack Meadowlands Development District.

**Exempted Activities:**
The Waterfront Development Program exempts the repair, replacement or reconstruction of some legally existing docks, piers, bulkheads and buildings, if the structure existed before 1978 and if other conditions are met. Also, there are exemptions for certain single family homes and for small (5,000 square feet) additions to certain existing structures, if the single family home or structure is located more than 100 feet inland from the mean high water line.

**Application Materials:**
The list of application material that must be submitting with the application is several pages long. You can see the full list by downloading a NJDEP PDF with the following link: [http://www.nj.gov/dep/landuse/forms/waterfdev.pdf](http://www.nj.gov/dep/landuse/forms/waterfdev.pdf)

Forms and Applications:
Forms and applications for Waterfront Development Permits can be found at the Division of Land Use Regulation website: [http://www.nj.gov/dep/landuse/forms/index.html#Coastal](http://www.nj.gov/dep/landuse/forms/index.html#Coastal)

**Other Relevant Agencies and Permits:**
If your project requires a tideland conveyance in the form of a grant, lease or license, it is likely that the project also requires other State approvals. Depending on the project, you may need a Tidelands Conveyance, Coastal or Freshwater Wetlands Permit, CAFRA Permit or Water Quality Certificate. For more information about these regulatory permits, you should contact the Division of Land Use Regulation tech support line at (609) 777.0454. In addition, your project may require authorization form the Army Corps of Engineers.
5.1.2 Tidal Wetlands Permit:

**How Do I Tell If My Land Contains Tidal Wetlands?**

When land is located near tidal water, there is a good possibility of coastal wetlands on the property. Some signs that may indicate the presence of wetlands are tall reeds and grasses, or ground that is often soggy.

The regulated coastal wetlands are shown on maps prepared by the NJDEP. Unlike NJDEP’s freshwater wetlands maps, the coastal wetlands maps are used to determine jurisdiction. These maps are available for public inspection at each county clerks office.

**Regulated Activities:**

If your project extends into an area identified as a tidal or coastal wetland NJDEP jurisdictional maps, and includes excavation, dredging, filling or placing a structure you must have a Tidal Wetlands Permit. A Permit is typically required for activities including excavation of small boat mooring slips, maintenance or repair of bridges, roads, or highways, and construction of catwalks, piers, docks, landings and observation decks.

**Forms and Applications:**

Forms and applications for Tidal Wetlands Permits can be found at the Division of Land Use Regulation website: [http://www.nj.gov/dep/landuse/forms/index.html#Coastal](http://www.nj.gov/dep/landuse/forms/index.html#Coastal)

**Other Relevant Agencies and Permits:**

If your project requires a tideland conveyance in the form of a grant, lease or license, it is likely that the project also requires other State approvals. Depending on the project, you may need a Tidelands Conveyance, Waterfront Development Permit, Freshwater Wetlands Permit, CAFRA Permit or Water Quality Certificate. For more information about these regulatory permits, you should contact the Division of Land Use Regulation tech support line at (609) 777.0454. In addition, your project may require authorization from the Army Corps of Engineers.

5.1.3 Freshwater Wetlands Permit:

If your land contains freshwater wetlands, you are very limited in what you may do in the wetlands. The Freshwater Wetlands Protection Act requires NJDEP to regulate virtually all activities proposed in the wetland, including cutting of vegetation, dredging, excavation or removal of soil, drainage or disturbance of the water level, filling or discharge of any materials, driving of pilings, and placing of obstructions.

**How Do I Tell If My Land Might Contain Wetlands?**

Determining whether your land has wetland requires detailed information about the site, and may require an inspecting the property. For a definite determination, you may need to hire an environmental consultant. Here are some clues that an area might be a wetland. If your land has any of the conditions below, you should investigate before going ahead with a project:

- The area often has standing water;
- The area is a low spot that holds water for several days after a heavy rain;
• The water table in the area is not far below the ground surface;
• Your land contains a stream or pond, with gentle banks (you may have a fringe of wetlands along the banks); or
• Your land is located near a river, stream, or lake.

Do not assume that an area cannot be a wetland because it has a mature forest on it, or because it does not have standing water. Many wetlands in New Jersey are forested areas without visible standing water.

**If you think you might have wetlands on your land:**

Look at the New Jersey freshwater wetlands maps. Your municipal clerk and county clerk's office have both been given these maps for public use. The maps can also be obtained from NJDEP's Maps and Publications Office at (609) 777-1038, or, if your county or public library has a GIS (Geographic Information System) computer system, the maps can be viewed on their computer.

The New Jersey freshwater wetlands maps provide guidance on where wetlands are found in New Jersey, but they are not the final word. Only an official determination from NJDEP, called a "letter of interpretation" can tell you for sure if you have freshwater wetlands on your property. A letter of interpretation verifies the presence, absence, or boundaries of freshwater wetlands and transition areas on a site.

To get a letter of interpretation from the NJDEP, call (609) 777-0454 and ask for the letter of interpretation information and application package.

**Regulated Activities:**

A freshwater Wetlands Permit is needed prior to engaging in a regulated activity in or around freshwater wetlands and associated transition areas. Regulated activities include:

The removal, excavation, disturbance or dredging of soil, sand, gravel or aggregate material of any kind;
• The drainage or disturbance of the water level or water table;
• The dumping, discharging or filling with any material;
• The driving of pilings;
• The placing of obstructions; and
• The destruction of plant life which would alter the character of a freshwater wetland or transition area, including the cutting of trees. In addition, the placement of dredged or fill material into state open waters will require an open water fill permit.

**General Permits vs. Individual Permits:**

The most common type of freshwater wetlands permit is a general permit. General permits cover a limited number of very minor activities, such as:

• repair of existing structures
• short roads or driveways;
• docks;
• utility lines;
• stream bank stabilization; and
• septic system repair

If your activity is not eligible for authorization under a general permit, NJDEP may, in very limited circumstances, issue an individual freshwater wetlands permit. Individual permits require an extensive alternatives analysis and are therefore much less common than general permits.

**Timeline:**
Once an application has been declared administratively complete for review, the NJDEP must issues the following:
- Letter of Exemption within 75 days
- Letter of Interpretation within 75 days
- Individual Permit within 180 days
- Transition Area Waiver within 90 days
- General Permit within 60 days

**Forms and Applications:**
To obtain the necessary forms and applications visit the following website: http://www.nj.gov/dep/landuse/forms/index.html#FWW

**Fees:**
Fees for Freshwater Wetlands permit range from free to $600, depending on the type of activity.

**Other Relevant Agencies and Permits:**
If your project requires a tideland conveyance in the form of a grant, lease or license, it is likely that the project also requires other State approvals. Depending on the project, you may need a Tidelands Conveyance, Waterfront Development Permit, Coastal Wetlands Permit, CAFRA Permit or Water Quality Certificate. For more information about these regulatory permits, you should contact the Division of Land Use Regulation tech support line at (609) 777.0454. In addition, your project may require authorization form the Army Corps of Engineers.

**5.1.4 Clean Water Act §401 Water Quality Certificates:**
All projects that require a federal permit for the discharge of dredged or fill material into New Jersey State waters and/or their adjacent wetlands also require the State Water Quality Certification, which insures consistency with State water quality standards and management policies. Project of this nature that lie within the Coastal Zone shall receive Water Quality Certification through a Joint Waterfront Development/Water Quality Certification application administered by the NJDEP, Land Use Regulation Program. The Waterfront Development Permit application will constitute a joint application for both requirements. Projects within the jurisdiction of the Freshwater protection Act will receive a decision on certification through the application for a Freshwater Wetland or State Open Water Permit.
**Authority:**
New Jersey Water Pollution Control Act – N.J.S.A. 58: 10A 1 to 13

**Timeline:**
Projects not under the jurisdiction of Waterfront Development or CAFRA, or projects exempt from the Freshwater Wetlands Act, will be issued individual certificates that can take up to 180 days for issuance. Projects that can be appended to Land Use Regulation Program permits will be issued within 90 days.

**Fee:**
There is no fee requirement.

5.1.5 Tidelands Conveyances:
Tidelands, also known as riparian lands, are all those lands now or formerly flowed by the mean high tide of a natural waterway. These lands are owned by the State of New Jersey. As a result, you must get permission from the State to use these lands, in the form of a tidelands license, lease, or grant. If a project is located on or over state-owned riparian lands, it will likely require a grant, lease, or licenses from the Tidelands Resource Council.

**Application Procedure:**
To receive a grant, lease, license, an applicant must obtain an application package by telephoning the Bureau of Tidelands Management or by visiting the Tidelands Literature webpage (see contact information below). Each package will contain a set of instructions as well as a list of the application requirements and a set of appropriate forms.
NJDEP Bureau of Tidelands Management: (609) 292.2573
Tideland Literature webpage: [http://www.nj.gov/dep/landuse/literature.html](http://www.nj.gov/dep/landuse/literature.html)

**Other Relevant Agencies and Permits:**
If your project requires a tideland conveyance in the form of a grant, lease or license, it is likely that the project also requires other State approvals. Depending on the project, you may need a Waterfront Development Permit, Coastal or Freshwater Wetlands Permit, CAFRA Permit or Water Quality Certificate. For more information about these regulatory permits, you should contact the Division of Land Use Regulation tech support line at (609) 777.0454. In addition, your project may require authorization from the Army Corps of Engineers.

To find out more about the Tidelands Program and read the FAQs, visit the program website at: [http://www.nj.gov/dep/landuse/tideland.html#LITERATURE](http://www.nj.gov/dep/landuse/tideland.html#LITERATURE)

5.1.6 Resource Recovery and Conservation Act:
The Resource Conservation and Recovery Act (RCRA) is the federal law that regulates the characterization, generation, handling, transportation, and disposal of hazardous waste. New Jersey has been authorized by the Federal Environmental Protection Agency
to administer RCRA permitting at the State level. Contact NJDEP to learn more about the State’s Hazardous Waste Program.

**What Are Hazardous Wastes?**
Hazardous wastes can be liquids, solids, or sludges. They can be by-products of manufacturing processes or discarded commercial products. If hazardous wastes are not handled properly, they pose a potential hazard to people and the environment. To ensure that companies handle waste safely and responsibly, EPA has written regulations that track hazardous wastes from the moment they are produced until their ultimate disposal. The regulations set standards for the hazardous waste management facilities that treat, store, and dispose of hazardous wastes.

**What Is A Hazardous Waste Management Facility?**
Hazardous waste management facilities receive hazardous wastes for treatment, storage, or disposal. These facilities are often referred to as treatment, storage, and disposal facilities, or TSDFs.

Treatment facilities use various processes (such as incineration or oxidation) to alter the character or composition of hazardous wastes. Some treatment processes enable waste to be recovered and reused in manufacturing settings, while other treatment processes dramatically reduce the amount of hazardous waste.

Storage facilities temporarily hold hazardous wastes until they are treated or disposed of.

Disposal facilities permanently contain hazardous wastes. The most common type of disposal facility is a landfill, where hazardous wastes are disposed of in carefully constructed units designed to protect groundwater and surface-water resources.

**What Laws And Regulations Govern TSDFs?**
EPA has written detailed regulations to make sure that TSDFs operate safely and protect people and the environment. EPA wrote these regulations to implement the Resource Conservation and Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste Amendments of 1984. The U.S. Congress passed these laws to address public concerns about the management of hazardous waste.

EPA can authorize states to carry out the RCRA program. To receive authorization, state requirements must be as strict, or stricter, than the federal requirements. Federal or state agencies that implement RCRA are known as "permitting agencies."

**What Is A RCRA Permit?**
A RCRA permit is a legally binding document that establishes the waste management activities that a facility can conduct and the conditions under which it can conduct them. The permit outlines facility design and operation, lays out safety standards, and describes activities that the facility must perform, such as monitoring and reporting. Permits typically require facilities to develop emergency plans, find insurance and financial backing, and train employees to handle hazards. Permits also can include facility-specific requirements such as ground-water monitoring. The permitting agency has the authority.
to issue or deny permits and is responsible for monitoring the facility to ensure that it is complying with the conditions in the permit. According to RCRA and its regulations, a TSDF cannot operate without a permit, with a few exceptions.

**Who Needs A RCRA Permit?**
All facilities that currently or plan to treat, store, or dispose of hazardous wastes must obtain a RCRA permit.

- New TSDFs must receive a permit before they even begin construction. They must prove that they can manage hazardous waste safely and responsibly. The permitting agency reviews the permit application and decides whether the facility is qualified to receive a RCRA permit. Once issued, a permit may last up to 10 years.
- Operating TSDFs with expiring permits must submit new permit applications six months before their existing permits run out.
- TSDFs operating under Interim Status must also apply for a permit. Congress granted "interim status" to facilities that already existed when RCRA was enacted. Interim status allows existing facilities to continue operating while their permit applications are being reviewed.

**Who Does Not Need A RCRA Permit?**
There are certain situations where a company is not required to obtain a RCRA a permit.

- Businesses that generate hazardous waste and transport it off site without storing it for long periods of time do not need a RCRA permit.
- Businesses that transport hazardous waste do not need a RCRA permit.
- Businesses that store hazardous waste for short periods of time without treating it do not need a permit.

**What Are The Steps In The Permitting Process?**
1. **Starting the Process**
   Before a business even submits a permit application, it must hold an informal meeting with the public. The business must announce the "preapplication" meeting by putting up a sign on or near the proposed facility property, running an advertisement on radio or television, and placing a display advertisement in a newspaper. At the meeting, the business explains the plans for the facility, including information about the proposed processes it will use and wastes it will handle. The public has the opportunity to ask questions and make suggestions. The business may choose to incorporate the public's suggestions into its application. The permitting agency uses the attendance list from the meeting to help set up a mailing list for the facility.

2. **Applying for a Permit**
   After considering input from the preapplication meeting, the business may decide to submit a permit application. Permit applications are often lengthy. They must include a description of the facility and address the following:
   - how the facility will be designed, constructed, maintained, and operated to be protective of public health and the environment;
• how any emergencies and spills will be handled, should they occur;
• how the facility will clean up and finance any environmental contamination that occurs; and
• how the facility will close and clean up once it is no longer operating.

3. Receipt and Review of the Application
When the permitting agency receives a permit application, it sends a notice to everyone on the mailing list. The notice indicates that the agency has received the application and will make it available for public review. The permitting agency must then place a copy of the application in a public area for review.

Simultaneously, the permitting agency begins to review the application to make sure it contains all the information required by the regulations. The proposed design and operation of the facility are also evaluated by the permitting agency to determine if the facility can be built and operated safely.

4. Revisions, Revisions, Revisions
After reviewing the application, the permitting agency may issue a Notice of Deficiency (NOD) to the applicant. NODs identify and request that the applicant provide any missing information. During the application review and revision process, the permitting agency may issue several NODs. Each time the permitting agency receives a response from the applicant, it reviews the information and, if necessary, issues another NOD until the application is complete. Given the complex and technical nature of the information, the review and revision process may take several years.

5. Drafting the Permit for Public Review
When the revisions are complete, the agency makes a preliminary decision about whether to issue or deny the permit. If the agency decides that the application is complete and meets appropriate standards, the agency issues a draft permit containing the conditions under which the facility can operate if the permit receives final approval. If the permitting agency determines that an applicant cannot provide an application that meets the standards, the agency tentatively denies the permit and prepares a "notice of intent to deny."

The permitting agency announces its decision by sending a letter to everyone on the mailing list, placing a notice in a local paper, and broadcasting it over the radio. It also issues a fact sheet to explain the decision. Once the notice is issued, the public has 45 days to comment on the decision. Citizens also may request a public hearing by contacting the permitting agency. The permitting agency may also hold a hearing at its own discretion. The agency must give 30-day public notice before the hearing.

6. The End Result: A Final Permit Decision
After carefully considering public comments, the permitting agency reconsiders the draft permit or the notice of intent to deny the permit. The agency must issue a "response to public comments," specifying any changes made to the draft permit. The agency then issues the final permit or denies the permit.
Even after issuing a permit, the permitting agency continues to monitor the construction and operation of the facility to make sure they are consistent with state and federal rules and with the application.

**Several additional steps can also take place after the original permit is issued:**
- Permit Appeals. Facility owners and the public both have a right to appeal the final permit decision. The appeal is usually decided upon by administrative law judges.
- Permit Modifications. If a facility changes its management procedures, mechanical operations, or the wastes it handles, then it must secure a permit modification. For modifications that significantly change facility operations, the public must receive early notice and have a chance to participate and comment. For minor modifications, the facility must notify the public within a week of making the change.
- Permit Renewals. The permitting agency can renew permits that are due to expire. Permit holders that are seeking a permit renewal must follow the same procedures as a facility seeking a new permit.
- Permit Terminations. If a facility violates the terms of its permit, the permitting agency can terminate the permit.

**5.1.7 Coastal Area Facility Review Act Permit:**

The Coastal Area Facility Review Act (CAFRA) Permit applies to projects near coastal waters in the **southern part of New Jersey**. The CAFRA area begins where the Cheesequake Creek enters Raritan Bay in Old Bridge, Middlesex County. It extends south along the coast around Cape May, and then north along the Delaware Bay ending at the Kilcohook National Wildlife Refuge in Salem County. If your project is in the northern part of New Jersey, and not within the defined CAFRA jurisdiction, your project is regulated under the Waterfront Development Permit, not CAFRA.

The CAFRA Permit regulates all development on beaches and dunes, and the first house or other development within 150 feet of tidal waters, beach or a dune. However, if there is an existing, intervening development (for example, a house) between a proposed project and the water, beach or a dune, CAFRA will apply only to: residential developments with three or more units; to commercial developments with five or more parking spaces, and to all public and industrial developments.

**Other Relevant Agencies and Permits:**

If your project requires a tideland conveyance in the form of a grant, lease or license, it is likely that the project also requires other State approvals. Depending on the project, you may need a Tideland Conveyance, Waterfront Development Permit, Coastal or Freshwater Wetlands Permit, or Water Quality Certificate. For more information about these regulatory permits, you should contact the Division of Land Use Regulation tech support line at (609) 777.0454. In addition, your project may require authorization form the Army Corps of Engineers.
Chapter 6: Federal Regulation of Waterfront Development

Many proposed activities in wetlands or waterways in the New York and New Jersey Harbor area will require one or more permits from a federal agency. If the project includes the construction or alteration of a structure over, on, or in a waterway, or if the project includes any amount of dredging or filling in a waterway, or if the project changes or obstructs the flow of water in any other way, the project will likely require a permit from the U.S. Army Corps of Engineers (ACOE). The permits issued by the ACOE are often reviewed by other federal agencies such as the U.S. Coast Guard, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (The U.S. National Marine Fisheries Service is a United States federal agency, a division of the National Oceanic and Atmospheric Administration (NOAA) and the Department of Commerce).

NYSDEC and NJDEP both use joint permit application forms with the U.S. Army Corps of Engineers (for certain State permits and Federal “Section 404” and “Section 10” permits) so that applicants need to fill out just one application to obtain both state and federal permits. However, projects require separate authorizations from each agency before proceeding, and each agency may require additional information during their respective application review periods. For more information on the federal permit program for activities in wetlands and waterways in New York and New Jersey, go to the U.S. Army Corps of Engineers, New York District Regulatory Program Website: www.nan.usace.army.mil/business/buslinks/regulat/forms.htm

6.1 U.S. Army Corps of Engineers:

The Army Corps of Engineers (ACOE) is responsible for the protection and management of the nation's waterways and wetlands. Like the NYSDEC or NJDEP, ACOE is empowered to review and issue permits for activities occurring in navigable waters and in tidal or freshwater wetlands that meet the national designation criteria. These activities include dredging, filling, bulkheading and placement of structures in the water. A central mandate of the ACOE is to maintain navigable channels and the general functioning of the waterways of commerce. In reviewing projects, the ACOE consults with other federal agencies including the U.S. Fish and Wildlife Service, the Coast Guard and the Environmental Protection Agency.

Much of the development occurring in or near the New York and New Jersey Harbor area requires permits from the state environmental agency (NYSDEC or NJDEP) and the ACOE. To receive permits from either agency, a proposed project must be consistent with the state Coastal Zone Management Program and the local Waterfront Revitalization Plan (see Chapter XX).

The ACOE issues three primary permits affecting waterfront development, the “Section 10” permit (referring to Section 10 of the Rivers and Harbors Appropriation Act), and the “Section 404” and “Section 403” (referring to Section 404 and 403 of the Clean Water Act).
The ACOE provides the following illustrated depictions to explain the jurisdiction of each permit.
6.1.1 Rivers and Harbors Appropriation Act “Section 10” Permit

Section 10 of the Rivers and Harbors Appropriation Act requires authorization from the U.S. Army Corps of Engineers (Army Corps) for the construction of any structure in or over any navigable water of the United States, the excavation/dredging or deposition of material in these waters or any obstruction or alteration in a "navigable water" (see below). Structure or work outside the limits defined for navigable waters of the U.S. require a Section 10 permit if the structure or work affects the course, location, condition, or capacity of the water body.

The application for a Section 10 permit will be part of the joint permit application supplied by either NJDEP or NYSDEC. Information pertaining to the Section 10 permit

* "Navigable waters" of the U.S. are those subject to the ebb and flow of the tide shoreward to the mean high water mark and/or presently used, or have been used in the past, or are susceptible for use to transport interstate or foreign commerce. The term includes coastal and inland waters, lakes, rivers and streams that are navigable, and the territorial seas.

6.1.2 Clean Water Act “Section 404” Permit:

Section 404 of the Clean Water Act (CWA) establishes a permit program administered by the Army Corps of Engineers to regulate the discharge of dredged material or fill material into waters of the United States, including wetlands. Activities in waters of the United
States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects. Section 404 requires a permit before dredged material or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g. certain farming and forestry activities).

The basic premise of the program is that no discharge of dredged or fill material may be permitted if: 1) a practicable alternative exists that is less damaging to the aquatic environment or 2) the nation’s waters would be significantly degraded. In other words, when you apply for a permit, you must show that you have, to the extent practicable:

- Taken steps to avoid wetland impacts;
- Minimized potential impacts on wetlands; and
- Provided compensation for any remaining unavoidable impacts.

The application for a Section 404 Permit will be part of the joint permit application supplied by either the NJDEP or the NYSDEC.

**What Constitutes a Discharge of Dredged Material or Fill Material?**

Discharges of fill material generally include, without limitation: placement of fill that is necessary for the construction of any structure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for intake and outfall pipes and subaqueous utility lines; fill associated with the creation of ponds; and any other work involving the discharge of fill or dredged material. **A Corps permit is required whether the work is permanent or temporary.** Examples of temporary discharges include dewatering of dredged material prior to final disposal, and temporary fills for access roadways, cofferdams, storage and work areas.

**Agency Roles and Responsibilities:**

**U.S. Army Corps of Engineers:**
- Administers day-to-day program, including individual and general permit decisions;
- Conducts or verifies jurisdictional determinations;
- Develops policy and guidance; and
- Enforces Section 404 provisions.

**U.S. Environmental Protection Agency:**
- Develops and interprets policy, guidance and environmental criteria used in evaluating permit applications;
- Determines scope of geographic jurisdiction and applicability of exemptions;
- Approves and oversees State and Tribal assumption;
- Reviews and comments on individual permit applications;
- Has authority to prohibit, deny, or restrict the use of any defined area as a disposal site

**U.S. Fish and Wildlife Service and National Marine Fisheries Service:**
- Evaluates impacts on fish and wildlife of all new Federal projects and Federally permitted projects; and
• Elevates specific cases or policy issues.

**Other Related Permits and Agencies:**
In accordance with the Clean Water Act, an applicant for a permit will obtain a Clean Water Act “Section 401” water quality certificate or waiver from the appropriate state agency prior to permit decision by the federal government. In New York, Section 401 water quality certificates are granted by the NYSDEC. In New Jersey, Section 401 water quality certificates are granted by the NJDEP.

Under the Clean Water Act, the EPA may prohibit, restrict, or withdraw use of a site for the discharge of dredged or fill material which would have unacceptable effects on fish, wildlife, shellfish, recreation, or municipal water supplies.

*Section 10 and Clean Water Act Section 404 do overlap in some activities involving wetlands. Permits for activities regulated under both programs are processed simultaneously by the Army Corps.*

**6.1.3 Clean Water Act “Section 401” Water Quality Certificate:**
For information about Section 401 water quality certificates see the relevant chapters under New York and New Jersey State Regulation.

**6.2 National Environmental Policy Act:**
The National Environmental Policy Act (NEPA) established environmental protection as a national policy goal and directed all federal agencies to consider the environmental consequences of their projects and permitting actions. The NEPA review provides opportunities for integration of national environmental policy into project planning; public and agency review of potential environmental effects of federal actions (including issuance of federal permits) and programs; coordinated and inter-disciplinary program planning; and resolution of disputes among agencies. Most federal agencies have promulgated regulations governing the incorporation of NEPA's reviews into their programs.

**Authorities:**

**Jurisdiction:**
Projects or programs requiring a federal agency action.

**Applicability:**
Federal agencies must evaluate the environmental effects, including alternatives, to the proposed action or program.
**Review Process:**

NEPA set up a system for formal evaluation of environmental impacts of the actions of federal agencies, the centerpiece of which is the Environmental Impact Statement (EIS). This document includes an analysis of alternatives to the proposed action, a discussion of impacts from the proposed action, and disclosure of any irretrievable commitment of resources. Typically, a federal agency with an action on a project will prepare an Environmental Assessment (EA). Following publication in the Federal Register and a comment period, the agency will either issue a Finding of No Significant Impact (FONSI) or will decide to prepare an EIS to more fully examine alternatives, impacts, and mitigation. One federal agency is usually designated as the “lead” agency, and this agency will prepare the EIS. Other federal and state agencies may play an official role in preparation by becoming “cooperating” agencies with the lead agency. At the completion of the EIS process, the lead agency issues a Record of Decision making environmental findings.

**Forms:**

NEPA regulations (at 40 CFR 1502.10) include an outline for an EIS.

**Fees:**

Project proponents are likely to be asked to contribute to the cost of preparation of the EIS.

Website: [http://www.whitehouse.gov/ceq/index.html](http://www.whitehouse.gov/ceq/index.html).

Contact: The lead federal agency is the point of contact for a NEPA review process.

**6.3 United States Fish and Wildlife Service & National Marine Fisheries Service:**

The Fish and Wildlife Coordination Act provides the Fish and Wildlife Service (FWS) an opportunity to review projects requiring Army Corps of Engineers’ permits. FWS provides comments and recommendations to the Corps and coordinates with the National Marine Fisheries Service (NMFS), the EPA, and the applicant. FWS encourages project planners to coordinate with the Service and other federal agencies as early as possible to identify and minimize potential adverse impacts to fish and wildlife.

**Federal Fisheries Regulation:**

The 1996 amendments to the Magnuson-Stevens Act strengthened the ability of National Marine Fisheries Service (NMFS) and the Fisheries Councils to protect Essential Fish Habitat (EFH), including the waters and substrates necessary for fish to spawn, breed, feed, or grow to maturity. Habitat for managed species must be identified and adverse effects to EFH minimized. NMFS and other federal agencies must coordinate with each other on efforts to preserve and enhance EFH.

**Authorities:**

16 U.S.C. §1801 et seq.: Magnuson-Stevens Fishery Conservation and Management Act; 50 CFR 600.00: Essential Fish Habitat.
Jurisdiction:
Habitat of marine, estuarine, and anadromous finfish, mollusks, and crustaceans.

Applicability:
Projects affecting Essential Fish Habitat (EFH) that require a federal permit may be subject to an EFH Assessment.

Review Process:
Generally, NMFS incorporates its EFH Assessment into existing interagency coordination processes established under the National Environmental Policy Act, the Endangered Species Act (6), the Clean Water Act (18), the Fish and Wildlife Coordination Act, and other applicable federal laws. Upon being notified of a project proposal, NMFS must develop EFH Conservation Recommendations for the project. These recommendations are reflected in the federal permit.

Forms:
None.

Fees:
None.

Website: http://www.nero.nmfs.gov.
Contact: NMFS, Habitat Conservation Division (978) 881-9102.

6.3.1 Federal Endangered Species Act:
The Endangered Species Act (ESA) is a Federal law designed to protect and recover species that are in danger of extinction and the ecosystems upon which they depend. It is administered by the Interior Department’s U.S. Fish and Wildlife Service (FWS) and the Commerce Department’s National Marine Fisheries Service (NMFS). Under the ESA, species may be listed as either “endangered” or “threatened”. These designations afford the species special protections.

There are two primary ways in which the ESA can affect a water-related project. First, the ESA requires a permit for any activities that “take” endangered or threatened species. Take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” Through regulations, the term “harm” is defined as “an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.”

The second way in which the ESA affects water-related projects is through Section 7, which requires federal permitting agencies to consult with FWS and NMFS before issuing permits. Section 7 requires Federal agencies to use their legal authorities to promote the conservation purposes of the ESA and to consult with the FWS and NMFS, as appropriate, to ensure that effects of actions they authorize (e.g. issuing permits), fund,
or carry out will not jeopardize the continued existence of listed species. Typically, these consultations do not stop the Federal agency from issuing the permit. However, if the project will jeopardize a listed species, or degrade “critical habitat”, the federal agency may refuse the permit or require conditions on the permit.

**Authorities:**


**Jurisdiction:**

Plants and wildlife of the United States that are listed as endangered or threatened, and their habitats.

**Applicability:**

Non-federal projects that “take” federally-defined endangered or threatened species must have an Incidental Take Permit. The permit is issued in the context of a Habitat Conservation Plan filed by the applicant.

**Regulatory Summary:**

The federal Endangered Species Act conserves the ecosystems on which endangered and threatened species depend. Species are protected under the Act as either endangered or threatened. Endangered means a species is in danger of extinction throughout all or a significant portion of its range. Threatened means a species is likely to become endangered within the foreseeable future. The National Marine Fisheries Service (NMFS), which is responsible for marine species, and the U.S. Fish and Wildlife Service jointly administer the law, which is responsible for terrestrial and freshwater species.

**Review Process:**

With the assistance of USFWS personnel, a habitat conservation plan is prepared to detail the level of take and measures to minimize and mitigate the impact of the project to endangered or threatened species. An application for an Incidental Take Permit includes a completed application form, the habitat conservation plan, and a National Environmental Policy Act (NEPA) Environmental Assessment (EA) or Environmental Impact Statement (EIS). Review deadlines are not specified in the regulations and depend on the complexity of the issues involved. According to USFWS, typical processing time is approximately 100 days.

**Forms:**

Not yet available electronically. Contact USFWS Regional Office at (413) 253-8200 for a copy of the application form.

**Fees:**

$25 processing fee.

6.4 Resource Conservation and Recovery Act:

The Resource Conservation and Recovery Act (RCRA) is the federal law that regulates the characterization, generation, handling, transportation, and disposal of hazardous waste. EPA has the authority to directly regulate hazardous waste through the RCRA program, but can also delegate that authority to State agencies. Both New York and New Jersey have been authorized by the EPA to administer RCRA permits and enforce RCRA regulations at the State level. To learn more about RCRA regulations and permits, see the State RCRA chapters of this guide. If your project may require RCRA permits, contact NJDEP or NYSDEC to learn more about your State’s Hazardous Waste Program.

6.5 Marine Protection, Research, and Sanctuaries Act (Disposal of Dredged Material):

The Marine Protection, Research, and Sanctuaries Act (MPRSA), also known as the Ocean Dumping Act, prohibits the dumping of material into the ocean that would unreasonably degrade or endanger human health or the marine environment. Ocean dumping cannot occur unless a permit is issued under the MPRSA. In the case of dredged material, the decision to issue a permit is made by the U.S. Army Corps of Engineers, using EPA's environmental criteria and subject to EPA's concurrence.

If your project includes the dumping of material into the ocean, contact the ACOE for information about a permit under MPRSA.