

Overview of the Land Use Enforcement Process

New Jersey Department of Environmental Protection
Bureau of Coastal and Land Use Compliance and
Enforcement

September 20, 2012

Disclaimer: The following is a training document . It is not intended to be a guide for compliance nor should it be distributed to the public

Regulations We Enforce

- **Acts and Statutes**

Freshwater Wetlands Protection Act, N.J.S.A. 13:B-1 et seq.

Flood Hazard Area Control Act , N.J.S.A 58:16A-52 et seq.

Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.

Waterfront Development Statutes, N.S.A. 12:5-3 et seq.

The Wetlands Act of 1970, N.J.S.A 13:9A-1 et seq.

Highlands Water Protection and Planning Act, N.J.S.A 13:20-1 et seq.

Riparian Lands Statutes (Tidelands Act), N.J.S.A. 12:3-1 et seq.

- **Rules and Regulations**

Freshwater Wetlands Protection Act, N.J.A.C. 7:7A-1

Flood Hazard Area Control Act (Stream Encroachment), N.J.A.C. 7:13-1

Highlands Water Protection and Planning, N.J.A.C. 7:38-1

Coastal Permit Program Rules, N.J.A.C. 7:7-1

Coastal Zone Management Rules, N.J.A.C. 7:7E

A Possible Land Use Violation has been discovered

NOW WHAT???

- Call NJDEP 24 hour Hotline to report it
1-877-927-6337 or
- Call Bureau of Coastal & Land Use Compliance & Enforcement

North – Chester Office 908-879-3769

Central – Trenton Office 609-292-1240

South- Toms River Office 732-255-0787

Somewhere in Somerset County...



What Wetlands? What Transition Area? What Conservation Easement?

FWPA Violation Examples



FEB 10 2006

Photo By: David Sumba NJDEP BCLUCE

FWPA Violation Examples



FWPA Violation Examples



What happens when there is a violation?

- Once investigated and confirmed through a site inspection, a Notice of Violation is issued to the property owner, identifying the violation and options for resolution. This document may not be appealed.
- The owner is advised to respond in writing, generally within 10 days, as to their course of action.
- Options include:
 - a) Apply for a permit to legalize the activity (approval can't be given unless the activity meets all standards in the regulations)
 - b) Remove violation/restoration, and/or mitigation.
- If the physical violation is resolved quickly, our Bureau generally reduces or does not issue a penalty. * determined on a case by case basis

Onsite Restoration is the #1 Goal



What happens when there is a violation and lack of cooperation?

- Under certain statutes, the NJDEP has the authority to record the Notice of Violation on the deed of record for the property where the violation occurred.
- This notice will not be removed until the violation is corrected to the satisfaction of the NJDEP.

What happens when the violation isn't fixed?

- Issue an Administrative Order (AO)
This AO may also include the assessment of administrative penalties (NoCAPA)
- When both parties are willing participants, the NJDEP can enter into an Administrative Consent Order (ACO)

Penalties & Fines

- Purpose – to Act as a deterrent for future violations
- Penalties may be assessed up to \$25,000 per violation based on a matrix of conduct and severity
- Each day that a violation goes unfixed constitutes a separate and distinct offense for which a penalty may be assessed

What happens when there is a violation?

- AO's and AOnoCAPA's can be appealed to the Office of Administrative Law
- A settlement agreement may require compensation for the area disturbed that has not been satisfactorily restored beyond that which would be required as a result of a permit

Self Reporting Violations

- If the disclosure meets the requirements of the rule and a regulated entity discovers, reports and corrects the violations they are eligible for a 75- 100% reduction of the penalty
- Forms/process available on NJDEP website
- Repeat offenders generally not eligible
- A settlement document is drafted which:
 - describes violation(s)
 - schedule for achieving compliance
 - basis for reduced penalty

Supplemental Environmental Projects (SEPs)

An environmentally beneficial project that a violator voluntarily agrees to perform as a condition of settling an enforcement action.

A SEP is an activity that the violator would not otherwise have been required to perform, and in which the public and/or the environment is the primary beneficiary.

Completed SEP examples

- retrofitting diesel vehicles
- installation of Osprey nesting platforms
- storm water basin improvement
- solar panel installation
- remediation of a closed gas station
- land preservation



Walkway

Osprey
Nests

New York Bay

Bayonne Golf
Club

© 2011 Europa Technologies

© 2011 Google

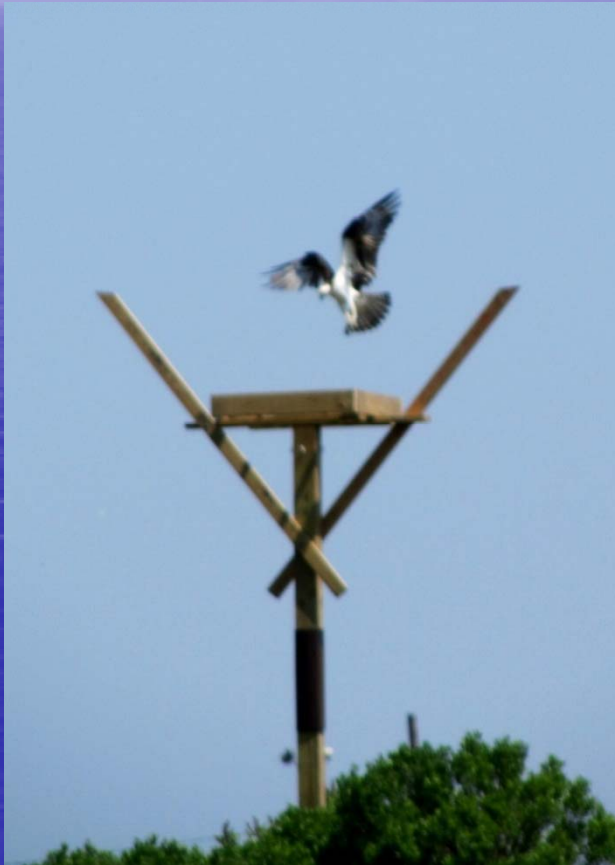
©2010 Google

Image Date: Jun 18, 2010

40°39'57.55" N 74°05'42.81" W elev. 0 ft

Eye alt 3551 ft

Bayonne Golf SEP – Osprey





Why would a regulated entity want to conduct a SEP?

- Opportunity to go beyond “return to compliance”
- Opportunity to reduce harm to the environment that noncompliance caused
- Opportunity to show community, investors and the public that they recognize the importance of the environment and environmental stewardship
- Opportunity to foster better relationships with neighbors

SEP Policy/Guidelines

- During settlement discussions, NJDEP staff will communicate with the regulated entity about SEP's and their benefits
- Acceptance of a SEP as part of a settlement agreement is at the discretion of the NJDEP
- After the final penalty settlement amount is determined, the penalty is then adjusted to account for the cost of the SEP... up to 75% to of the total penalty. (25% of final penalty must be paid. 50% for WPCA violations)

Future SEP goals for CLUE Program

- Water Quality Improvements
- Stream and Riparian Zone Stabilization and Restoration
- Reforestation Projects
- Flood Storage Expansion
- Biodiversity Enhancement
- Invasive Species Abatement & Control
- Habitat Enhancement / E&T Species Habitat
- Barnegat Bay Restoration
- Overburdened Communities



Questions & NJDEP BCLUCE Contact Information



- QUESTIONS???
- BCLUCE Offices
 - **Trenton Office**, (609) 292-1240
 - **Counties:** Northern and Central Burlington, Southern Bergen, Camden, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Eastern Morris, Eastern Passaic, Salem, Somerset, & Union
 - Mailing Address: 401 East State P.O. Box 420, Mail Code 401-04C, Trenton, NJ 08625
 - **Toms River Office**, (732) 255-0787
 - **Counties:** Atlantic, Southern Burlington, Cape May, Monmouth, & Ocean
 - Mailing Address: 1510 Hooper Ave, Suite 140, Toms River, NJ 08753
 - **Chester Office**, (908) 879-3769
 - **Counties:** Northern Bergen, Passaic, Morris, Sussex, & Warren
 - Mailing Address: 100 North Road, Chester, NJ 07930