

Regulating Wetlands and Waterways

2012 Delaware Wetlands Conference

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DNREC Wetlands and Subaqueous Lands
Section

How to Pronounce

Sub-ae-quee-us

Subaqueous Lands



Jurisdictional Authorities

- Subaqueous Lands Act (7 Del. C. Ch. 72) (1986)
- Regulations Governing the Use of Subaqueous Lands (1991)
- Environmental Control Act (7 Del. C. Ch. 60) (1973)
- Regulations Governing the Control of Water Pollution (as amended in 2003)
- Delaware Marina Regulations (1990)

Which Waters does DNREC regulate? (Geographic Jurisdiction)

- All tidal waters (up to the mean high water line)
- Non-tidal “rivers, streams, lakes, ponds, bays and inlets” (up to the ordinary high water line)
- In practice, State jurisdiction in non-tidal streams typically includes perennial (always wet) and intermittent (seasonally wet) watercourses

Which Waters are Not Regulated?

- **Ephemeral channels (only wet after a rain event)**
- **Road-side ditches**
- **Lateral or grid ditches in agricultural fields**
- **Farm ponds and other ponds that are groundwater fed and not otherwise connected to surface waters**
- **Stormwater ponds permitted under Ch. 40 (Delaware's Sediment & Stormwater Law)**



So...
*Do I need
a permit?*

Regulated Activities

(in Subaqueous Lands)

- Placement of any structures in, on, over or under subaqueous lands (docks, piers, buoys, ramps, dolphins, pilings, dams, culverts, bridges, etc.)
- Laying of any pipeline or utility line in, on, over or under subaqueous lands (electric, telephone, fiber optic, water, sewer, etc.)
- Bank or channel stabilization structures (rock veins, grade controls, rip-rap, groins, gabions, breakwaters, bulkheads, biologs/vegetation, etc.)
- Dredging, filling, excavating or extracting materials
- Establishing an anchorage for mooring more than two vessels

Non-regulated Activities

- Breathing
- Eating
- Sleeping
- Clearing and snagging of blockages caused by trees, logs and other woody vegetation
- Removal of any debris, trash or nuisance vegetation from steam channels

Non-regulated Activities

(continued)

- Excavating designed drainage channels from non-subaqueous lands
- Repair of existing structures above the water which do not increase the dimension or use
- Anchoring up to 2 vessels in front of your own waterfront property
- Deployment of certain fishing/shellfishing gear and equipment already regulated under Title 7 of the Delaware Code

Permittable?



seen on www.englishrussia.com

<http://16m.ru>

WETLANDS



Jurisdictional Authorities

- Delaware Wetlands Act
(7 Del. C. Ch. 66) (1973)
- Delaware Wetlands Regulations
(Adopted December, 1976)

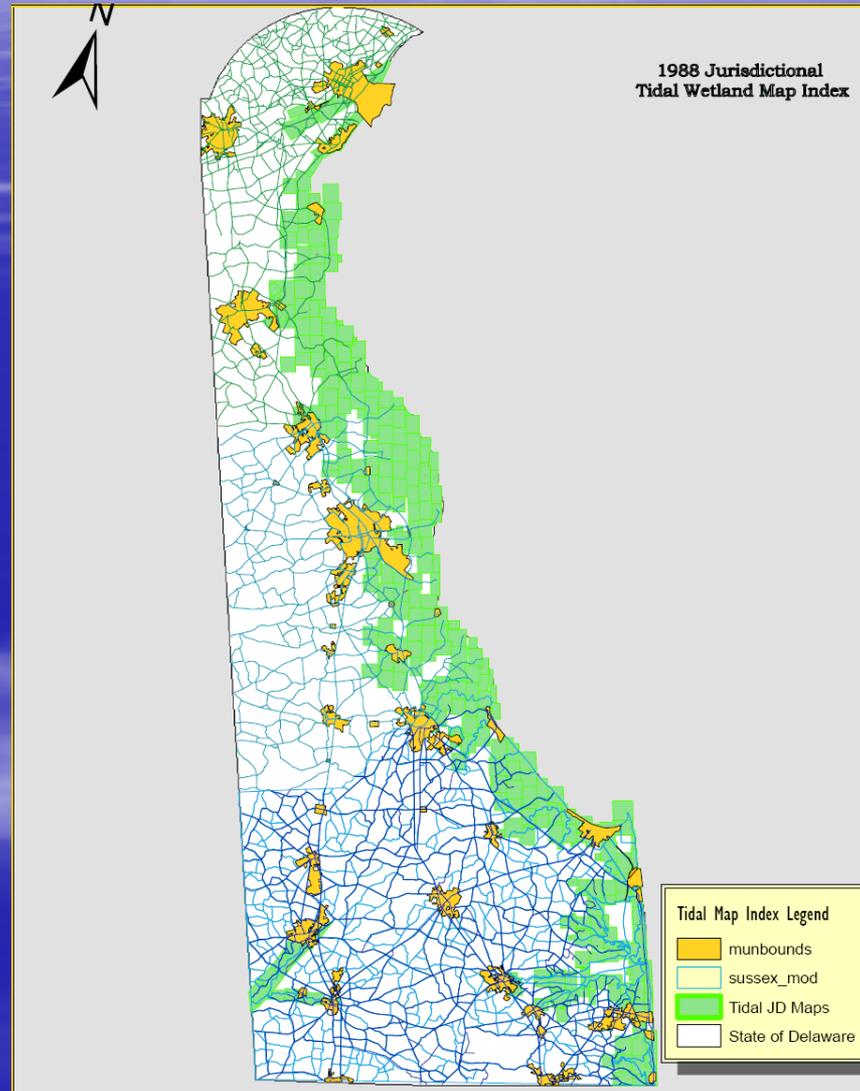
Which Wetlands does DNREC regulate?

- Tidal wetlands and non-tidal wetlands of 400 or more contiguous acres
- Impounded wetlands that have been connected to tidal waters within the last century
- Definition: Those lands lying at or below 2 ft above local mean high water which support or are capable of supporting the wetland plant species listed in the law and regulations.

Which Wetlands does DNREC regulate? (continued)

- Jurisdiction is determined by regulatory maps which utilize aerial photography with the jurisdictional boundary superimposed on them
- New maps using latest technology are needed and will go through a formal regulatory adoption process

State-Regulated Wetlands



State Wetland Map



State of Delaware Wetlands
 SUSSEX COUNTY, DELAWARE
(in accordance with the Delaware Wetlands Act # 6467)
 Approximate Scale 1:10,000

Prepared for: DEPARTMENT OF NATURAL RESOURCES
 AND ENVIRONMENTAL CONTROL

Produced by: DELAWARE STATE UNIVERSITY
 IMAGE PROCESSING & REMOTE SENSING CENTER
 SALMON, MARYLAND

Legend for Delaware Tidal Wetland Delineations:

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> 0 - Beach DS - Disturbed Freshwater Swamp DM - Disturbed Marine Vegetation (removed for agricultural activities) TW - Tidal Freshwater Swamp SW - Submerged Freshwater Wetland LM - Impounded Low Marsh HM - Impounded Marsh | <ul style="list-style-type: none"> IS - Impounded Scrub Shrub Wetland IM - Impounded Marsh LM - Low Marsh M - Marsh M - Marsh (in open water) N - Non-Tidal Wetlands (400 acres) - (including tidal forested swamps) O - Other (Upland or Non-Tidal Wetlands less than 400 acres) | <ul style="list-style-type: none"> S - Tidal Scrub Shrub Swamp SL - Areas flooded by tidal water season SL - Areas flooded by storm water in a higher flood stage situation SL - Areas flooded by storm water in a higher flood stage situation SL - Areas flooded by storm water in a higher flood stage situation W - Water W - Water in a small area W - Wetlands among different commissioners (page for M's) |
|--|--|---|





BURTELLE

DELAWARE

BURTELLE

DELAWARE

PORTER

BURTELLE

Regulated Activities in State Wetlands

- **Dredging**
- **Draining**
- **Filling**
- **Construction of any kind**
- **Bulkheading**
- **Mining**
- **Drilling**
- **Excavation**

Exempt Activities in State Wetlands

- Department authorized mosquito control activities
- Construction of navigation aids
- Placement of boundary stakes
- Wildlife nesting structures
- Duck blinds
- Grazing of domestic animals
- Haying
- Hunting
- Fishing
- Trapping
- Foot bridges (upland to upland/< 3 feet wide)

State vs Federal Authority in Delaware Wetlands

- State geographical jurisdiction is smaller (mainly in tidal areas), but most activities in State wetlands are regulated

vs.

- Federal geographical jurisdiction is much broader (includes tidal and non-tidal wetlands) but fewer activities in those wetlands are regulated.

Jurisdictional Determination for Streams and State-Regulated Wetlands

- Hydrographic features (blue lines) on the USGS Topo Quads serve as presumptive guidance/wetland maps for wetland line determinations
- Field determinations are made in questionable cases where Topo Quad water features do not agree with what is found in the field
- Field determinations/verifications should be scheduled with the Wetlands and Subaqueous Lands Section at 302/739-9943 and can usually be accomplished within 15 – 30 days.

Permitting Help

Joint Permit Processing Meeting (JP Meeting)

Held at DNREC monthly on the third Thursday

Voluntary Service for potential applicants with projects in waters or wetlands to receive informal pre-application information and project feedback from State and Federal regulators.

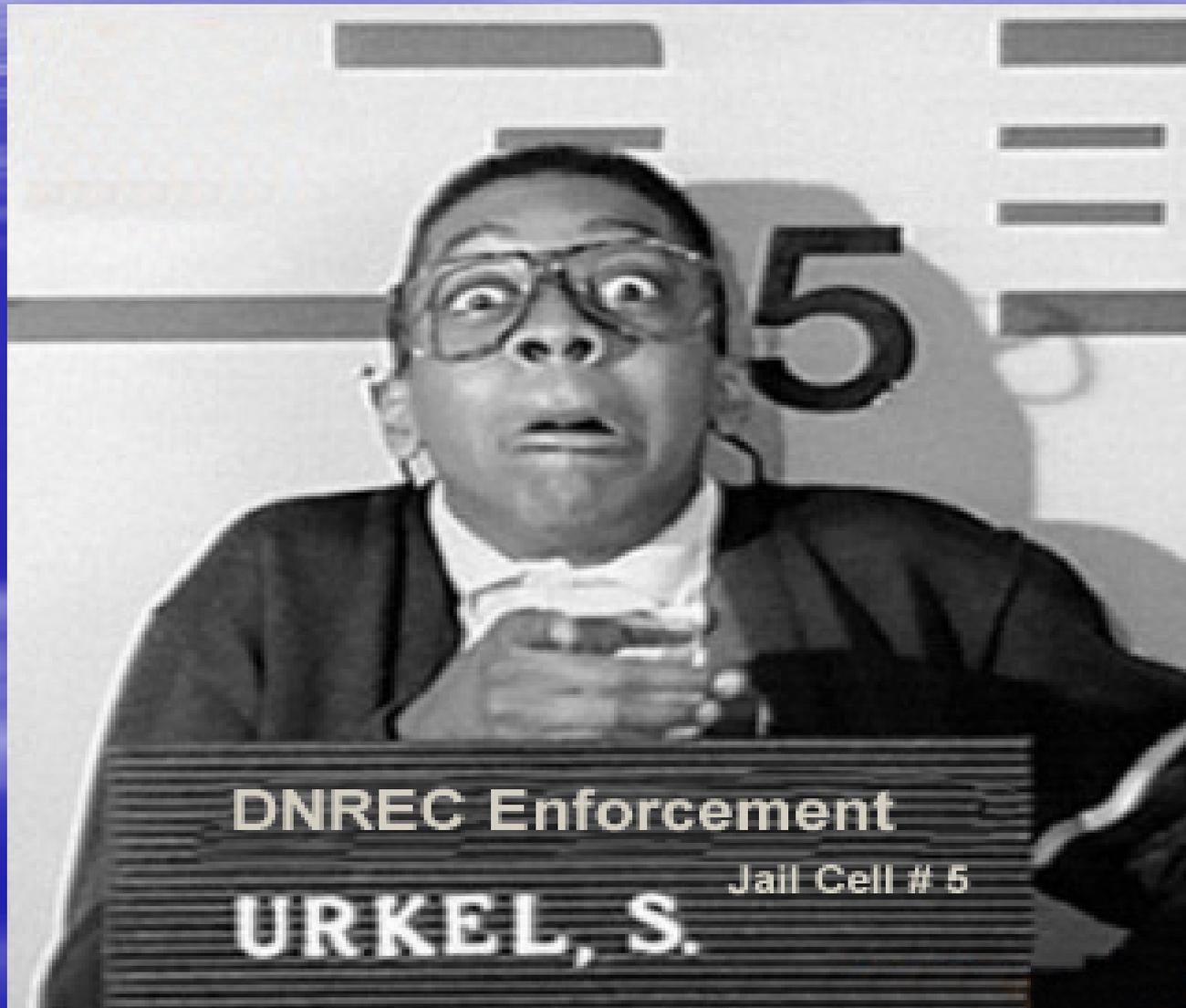
Agencies who attend the meeting typically include:

- DNREC (Wetlands, Div of F&W, Coastal Mgmt Program)
- Army Corps of Engineers
- EPA
- State Historic Preservation Office
- US F&W Service (occasionally)

Violations



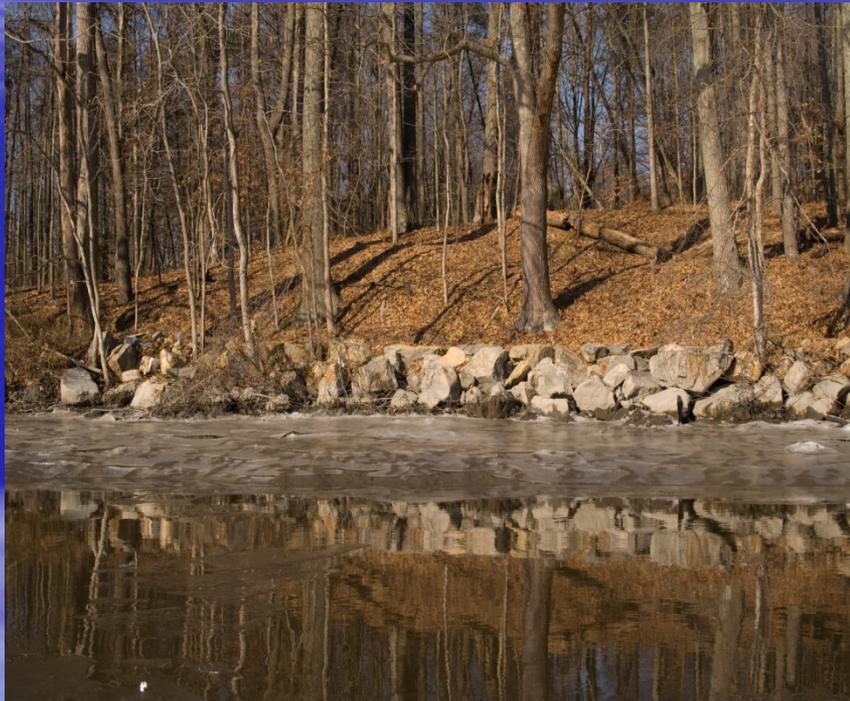
What do we do about Violations?





Offer of Voluntary Compliance

From Violation...



To Compliance.



The Blackbird Creek Violation

How was Voluntary Compliance Achieved?

- Cooperation between DNREC Divisions, Sections and Staff
- Coordination with the U.S. Army Corps of Engineers
- Good Interpersonal Communication Skills
- Patience

**Please contact DNREC's
Wetlands and Subaqueous Lands Section
with any questions: 302-739-9943**

