Freshwater Wetlands

May 2026 – Regulations Update

NEW YORK STATE | Department of Environmental Conservation

On April 8, 2026, the Albany County Supreme Court issued a decision affecting DEC freshwater wetlands regulations. In compliance with State Environmental Conservation Law Article 24, DEC is continuing to exercise jurisdiction over wetlands 12.4 acres or larger and previously mapped wetlands until DEC promulgates new regulations.

Review of Recent Supreme Court Decision

Q1: What are "Previously Mapped Freshwater Wetlands?'

A: Previously Mapped Wetlands are freshwater wetlands mapped by DEC prior to January 1, 2025. These are shown on DEC's Environmental Resource Mapper as "Previously Mapped Freshwater Wetlands" and are available for download on the NYS GIS Clearinghouse. Previously Mapped Freshwater Wetlands include wetlands that were previously determined to be 12.4 acres or greater as well as wetlands of Unusual Local Importance (ULIs).

Q2: Are wetlands of 12.4 acres or greater in size that are not Previously Mapped Freshwater Wetlands regulated by DEC?

A: Yes. Any wetlands that are 12.4 acres or larger in size, regardless of whether they were included as Previously Mapped Freshwater Wetlands, continue to be regulated pursuant to Environmental Conservation Law Article 24. In addition, DEC regulates a 100-foot adjacent area surrounding the wetland to further protect state-jurisdictional wetland functions and values.

Q3: Does DEC have jurisdiction over any of the Unusual Importance criteria other than Previously Mapped Freshwater Wetlands or those mapped as Unusual Local Importance?

A: No. The court decision results in DEC restricting jurisdiction to freshwater wetlands that are 12.4 acres or greater in size or Previously Mapped at this time, until DEC completes the promulgation of new regulations.

Jurisdictional Determinations

Q4: Can a Jurisdictional Determination be submitted at this time?

A: Yes. DEC is currently accepting and processing JD requests as described at: https://on.ny.gov/freshwaterwetlandsjd

Q5: What is the status of a positive Jurisdictional Determination received before April 8, 2026?

A: Positive JDs issued prior to April 8, 2026, continue to be jurisdictional if they were Previously Mapped Freshwater Wetlands or if they are greater than 12.4 acres in size.

However, if your Jurisdictional Determination letter cites Unusual Importance criteria but does not cite the presence of Previously Mapped Wetlands, the determination will require additional review by DEC. Submit a Reassessment of Jurisdictional Determination Request to determine whether it remains correct.

Wetland Delineations

Q6: Are delineations and validation of delineations going to occur this Spring/Summer?

A: Yes. DEC regional staff will conduct delineations and validations of regulated wetlands 12.4 acres or greater in size or Previously Mapped Wetlands. However, delineations and validations will be cancelled for those sites that no longer contain jurisdictional wetlands, and the requestor will be notified.

Permits

Q7: If I have a project that has received a positive JD with wetlands that met Unusual Importance criteria and is now in the permitting process, will these wetlands lose their jurisdictional status because of the court decision?

A: It depends on the nature of the original positive JD. The positive JD remains in effect if your JD letter referenced the presence of Previously Mapped Wetlands. However, if your JD letter does not cite the presence of Previously Mapped Wetlands, additional review by DEC is necessary to determine whether wetlands within the project area remain jurisdictional.

Q8: What if I submitted an application for an Article 24 permit before the April 8th court decision?

A: Each permit application is being reviewed on a case-by-case basis to identify whether the proposed activities fall within currently jurisdictional freshwater wetlands or regulated wetland adjacent areas. DEC will notify you if it is determined that your project is no longer in need of Article 24 permitting.

Q9: Are the time frames associated with General Permits applications received by DEC prior to the annulment still valid?

A: Yes. All timelines identified with each GP remain in effect. GP Authorizations for projects, including Notice of Intent authorizations, are proceeding according to existing procedures.

Miscellaneous

Q10: What about the 10-business day certified letter review? Is this still applicable?

A: No. The 10-business day certified letter notification is no longer applicable.

Q11: How would a person with a positive jurisdictional determination have wetland jurisdiction reassessed by DEC considering changes from the court decision?

A: Any person who received a positive jurisdictional determination between January 1, 2025, and April 8, 2026, can request DEC reassess that decision by submitting a request through the DEC website: https://on.ny.gov/freshwaterwetlandsjd

Q12: Will DEC be proposing new regulations?

DEC will propose a new regulation, with opportunities for public review and comment, that restores the authority providing additional wetland protections and extensive environmental benefits while also balancing the needs of local property owners and communities.

CONTACT INFORMATION

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