

1. Adopt the amendment, in whole or in part, as proposed in the New Jersey Register or with changes that do not effectively destroy the value of the public notice; or
2. Deny the proposed amendment, in whole or in part.

(h) The Department shall provide written notification of the decision to the applicant and the designated planning agency, where applicable. Notice of the final decision shall also be published in the New Jersey Register and the DEP Bulletin.

(i) Applicants with projects requiring NJPDES permits will be advised at the time of public notice, in accordance with (c) above whether or not to submit an application for a NJPDES permit to the Division of Water Quality.

Recodified from N.J.A.C. 7:38-11.5 and amended by R.2006 d.420, effective December 4, 2006.

See: 37 N.J.R. 4767(a), 38 N.J.R. 5011(a).

In (a), substituted a comma for "or" preceding "6.8", and inserted "or 6.9 (construction of 100 percent affordable housing).

Former N.J.A.C. 7:38-11.6, Final decisions, recodified to N.J.A.C. 7:38-11.7.

7:38-11.7 Final decisions

(a) The Department shall approve or deny an application for a Highlands general permit within 120 days, or for an HPAA or HPAA with waiver within 180 days of receipt of a complete application, or for good cause, within such additional period of time as the Department shall notify the applicant in writing is required to complete its review under this chapter. However, if an application requires coordination with U.S. Environmental Protection Agency (USEPA) in accordance with N.J.A.C. 7:7A-12.2, a WQMP amendment, or a Safe Drinking Water, NJPDES or treatment works review the HPAA will not be approved until all requirements have been satisfied. If an applicant does not receive a response from the Department within this time, the application shall not be deemed approved.

(b) When the Department issues a decision under this chapter, the Department shall send notice thereof to the applicant.

(c) The Department may issue an HPAA imposing conditions necessary for compliance with the Highlands Act, this chapter, and all statutes listed at N.J.A.C. 7:38-1.3(a). Any regulated activities undertaken under the authority of any issued approval shall constitute an acceptance by the applicant of the entire approval including all conditions therein.

(d) Decisions by the Department shall be published in the DEP Bulletin. A copy of every HPAA or HPAA with waiver that requires USEPA review under N.J.A.C. 7:38-11.3 shall be transmitted to USEPA. Decisions by the Department on approval or denial of a WQMP amendment shall be published in the New Jersey Register and the DEP Bulletin.

Recodified from N.J.A.C. 7:38-11.5 and amended by R.2006 d.420, effective December 4, 2006.

See: 37 N.J.R. 4767(a), 38 N.J.R. 5011(a).

In (a), inserted "for a Highlands general permit within 120 days, or"; and in (d), substituted "11.3" for "11.2".

Former N.J.A.C. 7:38-11.7, Cancellation, withdrawal, resubmission and amendment of applications for HPAAAs, HPAAAs with waiver, HRADs or Highlands Applicability Determinations, recodified to N.J.A.C. 7:38-11.8.

7:38-11.8 Cancellation, withdrawal, resubmission and amendment of applications for HPAAAs, Highlands general permits, HPAAAs with waiver, HRADs or Highlands Applicability Determinations

(a) The Department shall be entitled to cancel an application if the Department submits a request to the applicant in writing for additional information and the applicant does not submit that information within 30 days of the date of the request. Before canceling an application, the Department shall send the applicant a letter stating that the application will be cancelled. If, within 15 days of the date of the Department's letter, the applicant submits the information, or a letter providing good cause for the delay, the Department shall extend the time required for submission of the information as it deems appropriate. If the applicant does not submit the information or a letter providing good cause, the application shall be deemed cancelled as of the date of the Department's last letter to the applicant.

(b) If the Department cancels an application, the application fee will not be refunded. A new application, including a new application fee, will be required if the applicant wishes to pursue the project.

(c) An applicant may withdraw an application at any time in the application review process. For all applications other than a Highlands Applicability Determination, if an application is withdrawn, the application fee will not be refunded. However, if the requirements of (e)2 below are met, the fee may be credited toward a future application.

(d) If the Department cancels an application, or if the applicant withdraws an application, the applicant may resubmit an application for a revised project on the same site. The Department will treat the submission as a new application. The fees for the resubmitted application shall be as follows:

1. If the Department cancelled the original application under (b) above, a new fee under N.J.A.C. 7:38-10 will be required;
2. If the applicant withdrew the original application under (d) above, and resubmits the application within one year of the date of withdrawal, the original application fee will be credited to the new application.

(e) An applicant may choose to amend an application as part of the review process. If an applicant amends an application:

1. The applicant shall provide a copy of the new or amended information to the same persons who received a complete copy of the initial application under N.J.A.C.

7:38-9.2(b)5 (public notice requirements for Highlands Applicability Determinations), 9.4(b)2 (public notice requirements for HRADs) or 9.5(a)3 (public notice requirements for HPAAAs). The information need not be provided to persons who received only a notice of the application, unless the Department determines that the new or amended information will increase the environmental impact of the project; and

2. The amendments shall constitute a new submission and the Department may, at its discretion, require reinitiation of the entire application and review process, particularly if the amendments are significant and/or a public hearing has already been held.

(f) If the Department denies an application, the applicant may resubmit an application for a revised project on the same site. The Department will treat this submission as a new application requiring a fee in accordance with N.J.A.C. 7:38-10.

Recodified from N.J.A.C. 7:38-11.7 and amended by R.2006 d.420, effective December 4, 2006.

See: 37 N.J.R. 4767(a), 38 N.J.R. 5011(a).

Section was "Cancellation, withdrawal, resubmission and amendment of applications for HPAAAs, HPAAAs with waiver, HRADs or Highlands Applicability Determinations". In (c), substituted "For all applications other than a Highlands Applicability Determination, if" for "If"; former (g) recodified to (f) to correct the omission of designation (f).

SUBCHAPTER 12. CONTENTS OF APPROVALS

7:38-12.1 Standard conditions that apply to all orders, decisions, approvals or determinations issued pursuant to the Highlands Act and its implementing rules

(a) The following standard conditions apply to all HPAAAs, Highlands general permits, HPAAAs with waiver, HRADs and orders issued under this chapter:

1. Duty to comply: The permittee shall comply with any order, decision, approval, determination or authorization issued pursuant to the Highlands Act, including all permit programs incorporated into the HPAA, their implementing rules and the approved site plan or subdivision, if any. Failure to comply constitutes a violation of the Highlands Act and this chapter, and shall authorize the Department to bring an enforcement action against the permittee and, with notice to the permittee, issue such orders or decisions as necessary to protect the Highlands environment from unlawful destruction or degradation. In some cases, noncompliance may also constitute a violation of the Water Pollution Control Act and/or the Federal Clean Water Act and subject the permittee to prosecution, fines and penalties under those laws or their implementing regulations;

2. Duty to reapply: If the permittee wishes to continue an activity regulated by an HPAA (including an HPAA with waiver) after the expiration date of the approval, the

permittee must apply for and obtain an extension or a new approval, prior to the expiration of the approval;

3. Duty to halt or modify activity: If the Department approves an HPAA that results in unanticipated consequences that violate Federal or State law or regulation, the permittee shall immediately halt or modify the activity to eliminate or cure the violation, notify the Department of the action taken, and, if necessary, apply for an emergency HPAA or a modified HPAA. A permittee who fails to take such action shall be subject to penalty as provided by the relevant law or regulation;

4. Duty to minimize environmental impacts: The permittee shall prevent, minimize or correct any adverse impact on the Highlands environment resulting from activities conducted pursuant to the HPAA, or from noncompliance with an HPAA. Mitigation consistent with N.J.A.C. 7:7A-15 will also be required for disturbance to freshwater wetlands or State open waters;

5. If the permittee, before or during the work authorized under an HPAA, encounters a probably historic and/or archaeological area, the permittee shall immediately notify the Department and proceed as directed;

6. Duty to assure proper operation and maintenance: The permittee shall at all times properly operate and maintain all facilities and systems for pollution, wastewater, stormwater treatment and control which are installed or used to achieve compliance with the HPAA. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the permit. This provision requires the proper execution of any approved mitigation proposal designed to mitigate losses caused by the permitted activity. The permittee shall maintain the authorized work areas in good condition and in accordance with the permit;

7. Duty to provide information: The permittee shall furnish to the Department within a reasonable time, any information which the Department requests to determine whether cause exists for modifying, terminating and re-issuing, or terminating the HPAA or HRAD, or to determine compliance with an HPAA, a Department order or decision or a court order. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by the approval;

8. Duty to permit entry and inspection: The permittee shall allow the Department, or an authorized representative, upon the presentation of credentials, to:

i. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the HPAA or order;