

i. In all cases of emergency diversion, the person responsible for the diversion shall contact the Department within 48 hours of initiation of the emergency diversion. If the emergency diversion is expected to continue for more than 31 days, the person responsible for the emergency diversion shall apply for a water supply diversion permit pursuant to N.J.A.C. 7:19 within 30 days after initiating the emergency diversion.

Amended by R.2006 d.420, effective December 4, 2006.

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

In the introductory paragraph of (a), substituted "preservation area" for "Preservation Area"; in (a)2, substituted "an" for "a" and inserted "with waiver"; deleted (b)2; recodified (b)3 and (b)4 as (b)2 and (b)3; in (b)2, inserted "as of March 29, 2004 for a diversion within the preservation area who diverts water in an amount" and "under N.J.A.C. 7:38-3.2(i)2"; in (b)3, inserted "in the preservation area" and updated N.J.A.C. reference.

7:38-2.6 Applicability for purposes of NJPDES-permitted discharges and wastewater facilities

(a) Pursuant to N.J.S.A. 58:11A-7.1, within the preservation area, designated sewer service areas for which wastewater collection systems have not been installed as of August 10, 2004, were revoked effective August 10, 2004, and any associated treatment works approvals in the impacted areas expired on August 10, 2004 except for sewer service areas and any associated treatment works approvals necessary to serve:

1. Development that is exempt from the Highlands Act pursuant to N.J.A.C. 7:38-2.3; or

2. Major Highlands development that is approved in accordance with an HPAA with a waiver in accordance with N.J.A.C. 7:38-6.

(b) Except as provided in (d) below, any application for an individual NJPDES permit, request for authorization under a general NJPDES permit, or application for treatment works approval under N.J.A.C. 7:14A for an activity in the preservation area shall be submitted to the Division of Water Quality at the address in N.J.A.C. 7:38-1.2(a)3. If the Department determines the proposed activity for which the application is submitted constitutes major Highlands development, the activity will require a Highlands Applicability Determination that the activity is exempt from the Highlands Act and consistent with the WQMP, exempt from the Highlands Act and not addressed under a WQMP, or has received an HPAA prior to the application being declared administratively complete for review under N.J.A.C. 7:14A.

(c) For a major Highlands development not exempt from this chapter, the permits, authorizations, approvals and certifications listed below shall not be approved unless an HPAA is first obtained in accordance with N.J.A.C. 7:38-6. For applications and forms, please contact the Division of Water Quality at the address in N.J.A.C. 7:38-1.2(a)3:

1. An individual NJPDES permit or an authorization under a general NJPDES permit;

2. A treatment works approval issued under N.J.A.C. 7:14A or 7:9A for building, installing, modifying, or operating any treatment works; and

3. A certification issued pursuant to N.J.S.A. 58:11-25.1 (for 50 or more realty improvements) for any sewerage facility.

(d) Except for projects to be constructed by the New Jersey Department of Transportation (NJDOT), a request for authorization (RFA) under NJPDES Permit No. NJ0088323 (category 5G3 "construction activity" stormwater general permit) shall be submitted directly to the appropriate Soil Conservation District, from which RFA forms may also be obtained. Notwithstanding N.J.A.C. 7:38-2.4(b) and (c), requests for authorization shall not be considered complete for review under N.J.A.C. 7:14A unless accompanied by a HPAA or a Highlands Applicability Determination that the proposed activity is exempt from the Highlands Act and consistent with a WQMP, or exempt from the Highlands Act and not addressed by a WQMP.

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 "Applicability for purposes of wastewater discharges and treatment systems". In (a)2, substituted "an HPAA with a waiver in accordance with N.J.A.C. 7:38-6" for "N.J.A.C. 7:38-6.4"; in (b), inserted "NJPDES" twice; in the introductory paragraph of (c), substituted "a major Highlands development" for "an activity"; and in (d), inserted "(RFA)", substituted "RFA forms" for "applications" and "Notwithstanding N.J.A.C. 7:38-2.4(b) and (c), requests" for "Except as provided at N.J.A.C. 7:38-2.4(b), a request".

SUBCHAPTER 3. PRESERVATION AREA STANDARDS

7:38-3.1 Scope and applicability

(a) In accordance with the Highlands Act at N.J.S.A. 13:20-32, the Department shall issue an HPAA only if the proposed development or activity satisfies all the requirements in this subchapter and N.J.A.C. 7:38-6.2.

(b) An applicant is subject to the standards in this subchapter if any of the environmental resources described in this subchapter existed on a lot on August 10, 2004. If a resource appears on photographs from the Department's 2002 aerial overflight of the State, the Department shall assume the resource existed on the lot on August 10, 2004. An applicant may rebut this presumption by providing the Department credible proof that the resource was lawfully disturbed before August 10, 2004.

Amended by R.2006 d.420, effective December 4, 2006.

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

In (b), substituted "disturbed" for "removed from the lot".

7:38-3.2 Standards for water supply diversion sources

(a) Any person applying for a new or modified water supply allocation or an increased diversion under an existing water use registration as established under (i) below where at

least one of the diversion sources is located within the preservation area shall obtain an HPAA including compliance with the standards and requirements in the Water Supply Allocation Permit Rules, N.J.A.C. 7:19.

(b) The Department shall not approve as part of an HPAA any new or increased diversion within the preservation area resulting in a total permitted diversion of greater than 50,000 gallons of water per day unless:

1. Individual and cumulative impacts of multiple diversions are fully assessed;
2. Existing stream base flows are maintained;
3. Depletive use within the sub-drainage basin is minimized. For the purposes of this section, sub-drainage area is defined as the HUC 14;
4. Existing water quality is maintained; and
5. Ecological uses are protected.

(c) Any water allocation approved as part of an HPAA for a diversion located within the preservation area that impacts or has the potential to impact any Highlands open water that is a surface water body, shall include a passing flow for the affected portion of the surface water body. In establishing the passing flow, the Department shall take into account the needs of existing downstream users holding a valid water allocation permit or HPAA, aquatic and water-dependent ecological requirements, use and classification of the water body, natural seasonal flow regimes of the affected water body, and impacts to the safe yield of existing water supply systems.

1. The Department may use passing flow assessment methods to ensure that the ecological integrity of water bodies in the preservation area is protected as mandated by the Highlands Act.

(d) The Department shall not approve as part of an HPAA any new or increased diversion within the preservation area unless water conservation measures are implemented to the maximum extent practicable. Such measures include those identified at (g)2 below.

(e) The Department shall not approve as part of an HPAA any new or increased diversion that results in a diversion of greater than 50,000 gallons of water per day for a non-potable use that is greater than 50 percent consumptive unless the applicant submits documentation that the diversion will not result in a net increase in this type of use within the sub-drainage area. The Department shall approve a diversion for this type of use provided:

1. The applicant documents that, within the same sub-drainage area, there is an equivalent reduction in a non-potable use that is greater than 50 percent consumptive that is achieved by:
 - i. Groundwater recharge of storm water;

ii. Beneficial reuse of reclaimed water; or

iii. The permanent termination of an equivalent non-potable use that is greater than 50 percent consumptive; and

2. Water allocated in accordance with a water supply allocation to a water purveyor or other potable user shall not be used to serve new activities in the preservation area that are greater than 50 percent non-potable and greater than 50 percent consumptive.

(f) In accordance with N.J.S.A. 13:20-32d, the Department may revoke an existing unused water supply allocation approval for non-potable purposes if it determines that the permittee is not implementing demand reduction measures to the maximum extent practicable.

(g) In accordance with N.J.S.A. 13:20-32d, and pursuant to (h) below, the Department may reduce an approved water allocation to eliminate any unused portion as follows:

1. Monthly and/or annual allocations may be reduced through a Department-initiated minor permit modification, or during the review of a permit renewal or modification application, if usage is less than 80 percent of the allocation, based on records for the previous five years; or

2. If all practicable water conservation measures are not undertaken. Practicable water conservation measures include:

i. Implementation of best management practices to ensure maximum water use efficiency and reduction in water losses, including:

(1) On-going leak detection; and

(2) State-of-the-art (industry-specific) equipment and techniques; and

ii. A maximum limit on unaccounted-for water of 15 percent.

(h) Before reducing an allocation pursuant to (g) above, the Department shall:

1. Consider projected water demands associated with approved water main extensions, approved water supply contracts, and facility expansions planned within the next five years;

2. Provide the permittee with an opportunity for a public hearing pursuant to N.J.A.C. 7:19-2.8, prior to final permit modification; and

3. Depending on the purpose of the diversion, allow the permittee to implement a water-use practice during the term of the renewed or modified permit that will significantly improve water conservation.

(i) Any person in the preservation area who has the capability to divert more than 50,000 gallons of water per day (1.55 million gallons of water per month), but who does not