

- 6A:4-3.4 Motion for leave to appeal an interlocutory order, decision, or action
 - (a) (No change.)
 - (b) Motions for leave to appeal shall conform to the requirements at N.J.A.C. 6A:4-3.1, except a brief in support of the motion also shall include the merits of the issue(s) sought to be appealed.
 - (c) (No change.)

- 6A:4-3.5 Emergency relief in matters on appeal
 - (a) Applications for emergency relief shall be made by motion conforming to the requirements at N.J.A.C. 6A:4-3.1. Opposing parties shall be given reasonable opportunity under the circumstances to file papers in response to an application for emergency relief.
 - (b) (No change.)

- 6A:4-3.6 Motion for clarification and/or reconsideration of a decision of the Commissioner on appeal
 - (a) A motion for clarification and/or reconsideration of a Commissioner’s decision rendered pursuant to this chapter shall be served and filed within 10 days after the Commissioner files the decision. The motion shall conform to the requirements at N.J.A.C. 6A:4-3.1 and shall include a copy of the decision for which clarification and/or reconsideration is sought.
 - (b)-(d) (No change.)

SUBCHAPTER 4. REVIEW AND DECISION

- 6A:4-4.3 Commissioner’s decision
 - (a) (No change.)
 - (b) The Commissioner’s decision shall be mailed to all parties or their representatives of record.

- 6A:4-4.4 Relaxation of rules
 - (a) The rules of this chapter shall be construed to secure a just determination, simplicity of procedure, fairness in administration, and elimination of unnecessary delay. Unless otherwise stated, the Commissioner may relax any rule not reflecting a statutory requirement or an applicable rule of administrative procedure if strict adherence to the rule is deemed inappropriate or unnecessary or would result in injustice.
 - (b) Briefing on appeals and motions shall be in accordance with this chapter. If the Commissioner deems it necessary to expedite proceedings or protect the interests of the parties, the Commissioner may modify time schedules or direct additional submissions or by leave upon motion of a party.

ENVIRONMENTAL PROTECTION

(a)

**PINELANDS COMMISSION
Pinelands Comprehensive Management Plan
Fees; Definitions; Development Review; and Water
Quality
Adopted Amendments: N.J.A.C. 7:50-1.6, 2.11, 4.2,
and 6.86**

Proposed: September 6, 2022, at 54 N.J.R. 1668(a).
Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments: April 3, 2023, at 55 N.J.R. 577(a).
Adopted: September 8, 2023, by the New Jersey Pinelands Commission, Susan R. Grogan, Executive Director.
Filed: October 31, 2023, as R.2023 d.137, with **substantial changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-10, and **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).
Authority: N.J.S.A. 13:18A-6.j.
Effective Date: December 4, 2023.
Expiration Date: Exempt.

The New Jersey Pinelands Commission (Commission) is adopting amendments to N.J.A.C. 7:50-1, General Provisions, 2, Interpretations and Definitions, 4, Development Review, and 6, Management Programs and Minimum Standards of the Pinelands Comprehensive Management Plan (CMP). The amendments were proposed on September 6, 2022 at 54 N.J.R. 1668(a). Substantial changes to the proposed amendments were proposed on April 3, 2023, at 55 N.J.R. 577(a). The adopted amendments relate to water withdrawals from the Kirkwood-Cohansey aquifer and to inter- and intra-basin transfers of water.

The Pinelands Commission transmitted the notice of proposal and notice of proposed substantial changes upon adoption to proposed amendments to each Pinelands municipality and county, as well as to other interested parties, for review and comment.

Additionally, the Pinelands Commission:

- Sent notice of the public hearings to all persons and organizations that subscribe to the Commission’s public hearing registry;
- Sent notice of the public hearing and provided a copy of the notice of proposal and notice of proposed substantial changes upon adoption to proposed amendments to all Pinelands counties and municipalities, and other interested parties;
- Placed advertisements of the public hearings in the four official newspapers of the Commission, as well as on the Commission’s own webpage;
- Submitted the proposed amendments and substantial changes to the Pinelands Municipal Council, pursuant to N.J.S.A. 13:18A-7.f;
- Distributed the proposed amendments and substantial changes to the news media maintaining a press office in the State House Complex; and
- Published a copy of the proposed amendments and substantial changes on its webpage at www.nj.gov/pinelands.

Summary of Public Comments and Agency Response:

Formal public hearings were held in live video format (Zoom) before the Commission staff on October 12, 2022, and November 2, 2022, on the original notice of proposal and on May 3, 2023, on the notice of proposed substantial changes. Instructions for how to participate in the video hearing were included in the public hearing notices, as well as on the Commission’s website. The public hearings were recorded in video format and are on file in the Commission’s digital records.

Six people called in to provide oral testimony on the notice of proposal and two people called in to provide testimony on the notice of proposed substantial changes.

In addition to the oral comments, the Commission received 20 written comments on the original proposal, six of which were from individuals that provided oral comment at the public hearings, and six written comments on the notice of proposed substantial changes, two of which were from individuals that provided oral comment at the public hearing.

Comments on the original notice of proposed amendments were received from the following individuals. The numbers in parentheses after each comment summarized below correspond to the following list of commenters.

1. William Layton, Executive Director (written comment) and Kyle England, CLB Partners (public hearing), NJ Concrete & Aggregate Association
2. Ryan Benson, Esq., (public hearing), Kevin Coakley, Esq. (written comment), and Brian Blum, CPG, LSRP (written comment), Clayton Companies
3. Robert S. Baranowski, Jr., Esq. (public hearing and written comment), Wade Sjogren (written comment) Whibco, Inc.
4. Joseph Gallagher, Township Administrator, Winslow Township
5. Jeffrey L. Hoffman, State Geologist, New Jersey Department of Environmental Protection, Division of Water Supply and Geoscience
6. Paul Connolly
7. Ed Beckett
8. Janet Drew
9. Logan Penna
10. David Harpell, Jackson Township
11. Dan Osterman
12. Rick Prickett

13. Brooke Handley, River Administrator (written comment) and Fred Akers, Operations Manager (public hearing and written comment), Great Egg Harbor Watershed Association

14. Sandy Van Sant

15. Grant Lucking, Chief Operating Officer, NJ Builders Association (NJBA)

16. Ryck Suydam President, Farm Bureau

17. Jennifer Moriarty, Director, New Jersey Department of Environmental Protection, Division of Land Resource Protection

18. Robert Kecskes (public hearing and written comment)

19. Jack McCausland (public hearing), Pinelands Preservation Alliance

20. Rebecca

Comments on the notice of proposed substantial changes upon adoption to proposed amendments were received from the following individuals. The numbers in parentheses after each comment summarized below correspond to the following list of commenters.

21. Kevin Coakley, Esq. (public hearing and written comment), and Brian Blum, CPG, LSRP (written comment), Clayton Companies

22. Robert S. Baranowski, Jr., Esq. (public hearing and written comment), Whibco, Inc.

23. Joseph Gallagher, Township Administrator, Winslow Township

24. Rick Prickett

25. George Lobman, Utility and Transportation Contractors Association of New Jersey

26. Bill Wolfe

1. Comments Received During Initial Comment Period Giving Rise to Substantial Changes in Proposal upon Adoption

Resource Extraction (N.J.A.C. 7:50-2.11; 4.2(b)6xi; and 6.86(d)2iii)

1. COMMENT: Resource extraction operations use mechanical and hydraulic dredging that typically involves “nonconsumptive” water use. The water is returned to the source with little or no change in the quality or quantity of water. The amendments would impose a disproportionate regulatory burden on such nonconsumptive diversions and would not accomplish the purpose of protecting the aquifer. The proposed amendments are punitive of nonconsumptive uses as they do not account for aquifer replenishment in a closed-loop use. (1, 2, and 3)

2. COMMENT: The proposed regulations will hurt the mining industry. Additional constraints on mining in the Preservation Area District, Forest Area, and Special Agricultural Production Area will hasten the demise of the industry. (1, 2, and 3)

3. COMMENT: The proposed rulemaking will force resource extraction operations to reduce production of mined sand, gravel, and crushed stone, resulting in a shortage of the products, which will threaten vital transportation projects and negatively impact the construction industry. The Commission should identify and protect these resources to ensure an uninterrupted, economical supply. The proposed rulemaking is contrary to the Federal ROCKS Act (part of the Infrastructure and Jobs Act of 2021), designed to keep aggregate building materials sustainable. The general mid-Atlantic region is dependent on these already scarce materials used for construction of buildings and roads. (1, 2, and 3)

4. COMMENT: The proposed rules will result in a shortage of sand, gravel, and crushed stone, which could result in the doubling of price for those materials. (2)

5. COMMENT: The proposed rulemaking is arbitrary in regulation of non-consumptive uses. (2)

RESPONSE TO COMMENTS 1, 2, 3, 4, AND 5: The Commission thanks the resource extraction industry for its comments and explanations regarding the specific nonconsumptive uses of water for hydraulic dredging operations. Given that there are over 70 existing resource extraction operations in the Pinelands Area, approximately half of which are located in the Preservation Area District and Forest Area where the proposed amendments would prohibit new diversions of 50,000 gallons of water per day or more from the Kirkwood-Cohansey aquifer, the industry raised valid concerns about the impact of the amendments proposed at 54 N.J.R. 1668(a) (“original proposal” or “original proposed amendments”).

In order to avoid unintended negative impacts on the resource extraction industry, the Commission revised the original proposal in a Notice of Proposed Substantial Changes (amended proposal). The

amended proposal included a new provision at N.J.A.C. 7:50-6.86(d)2iii to state that the standards at N.J.A.C. 7:50-6.86(d)3 through 9 will not apply to proposed diversions for resource extraction operations that constitute a nonconsumptive use, provided that the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel. A definition of “nonconsumptive use” was also added at N.J.A.C. 7:50-2.11 to mean the use of water diverted from surface or ground waters in such a manner that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken. This new definition focuses on water quantity and does not explicitly reference water quality, because all development in the Pinelands Area, including diversions from the Kirkwood-Cohansey aquifer, are required to meet the existing water quality standards of the Comprehensive Management Plan (CMP).

A resource extraction operation located in the Pinelands Area will continue to be required to apply to the Commission for any new or increased diversion. If the applicant for such a diversion can demonstrate as part of the application process that the proposed diversion meets the definition of nonconsumptive use at N.J.A.C. 7:50-2.11 and the conditions at N.J.A.C. 7:50-6.86(d)2iii (described in the paragraph above), the water management standards at N.J.A.C. 7:50-6.86(d)3 through 9 will not apply, even if the proposed diversion involves the withdrawal of 50,000 gallons of water per day or more from the Kirkwood-Cohansey aquifer.

In its amended proposal, the Commission also added a new provision to the application requirement section, N.J.A.C. 7:50-4.2(b)6xi, to specify the information a resource extraction operation must provide to the Commission. This information would most likely be submitted as part of an application for renewal of a resource extraction permit or as a separate application for development that would also necessitate a modification of a New Jersey Department of Environmental Protection (“Department” or “DEP”) Water Allocation Permit. Specifically, the application for resource extraction will require submission of a hydrogeologic report that estimates both the volume of the diversion and the volume of water to be returned to the source, describes the route of return to the source and the methodology used to estimate the volume of water returned to the source, and describes any other existing or proposed water diversions or discharges on or from the parcel. Reports of this type comport with reports routinely submitted to the DEP for water allocation permit modifications for nonconsumptive use by sand and gravel operations. A “parcel” will be considered as all tax lots that are a part of a resource extraction operation for which a municipal approval has been reviewed by the Commission, determined to be consistent with all CMP standards, and allowed to take effect pursuant to N.J.A.C. 7:50-4.37 and 4.40. The hydrogeologic report will have to include a map that depicts the location of the diversion, the location of the return to source, the location of all existing or proposed resource extraction operations, and the location of all wetlands on or within 300 feet of the parcel on which the diversion is proposed.

6. COMMENT: Along with recognizing mining as a nonconsumptive use, the definition of “divert” or “diversion” should be modified to exclude “mining of sand or similar materials, as long as the mining is conducted by mechanical or hydraulic dredging” and state that such mining shall not be considered development. (3)

RESPONSE: The Commission believes these concerns were addressed in its amended proposal, described in the Response to Comments 1 through 5. It should also be noted that the suggested revision would conflict with the definition of “divert” and “diversion” in the DEP’s water supply allocation rules at N.J.A.C. 7:19-1.3.

7. COMMENT: The definition of “allocation” at N.J.A.C. 7:50-6.86(b), and the standards at proposed paragraphs (d)3 through 9, should also exclude the taking or discharge of water for mining of sand or other earthen materials, even if permitted pursuant to a Water Allocation Permit, Water Use Registration, Number, NPDES, or NJPDES permit, as long as such mining is conducted by mechanical or hydraulic dredging. (3)

RESPONSE: The Commission believes that its amended proposal, described in the Response to Comments 1 through 5, sufficiently addresses the resource extraction industry’s concerns regarding compliance with the proposed new water management standards when an operation involves nonconsumptive use of water.

Definitions (N.J.A.C. 7:50-2.11)

8. COMMENT: The definition of “stream low flow margin” should be the same as the definition in the New Jersey Statewide Water Supply Plan. (5)

RESPONSE: The Commission agrees and changed the definition of stream low flow margin at N.J.A.C. 7:50-2.11 in its amended proposal to make it consistent with the New Jersey Statewide Water Supply Plan. The definition clarifies “September Median Flow” to mean a stream’s normal dry-season flow; replaces the term and definition of “statistical flow” with “drought flow;” and removes the explanation of statistical flow.

Interbasin Transfer (N.J.A.C. 7:50-6.86(b))

9. COMMENT: There are unavoidable interbasin transfers because some diversions that are located near the border of the Atlantic and Delaware River Basins are pulling water from both basins. This is difficult for municipalities whose land areas straddle both basins and can be problematic for municipalities that currently depend on interbasin transfer for a potable water source and wastewater treatment. Winslow Township purchases 1.5 million gallons per day (MGD) from New Jersey American Water that is sourced from the Delaware River Basin and is mostly transferred to the Atlantic Basin. (4)

RESPONSE: The Commission thanks the commenter for raising this concern. The Commission is aware that for Winslow Township and other municipalities, water procurement involves the transfer of water between the Atlantic and Delaware River Basins and that these transfers are from diversions located outside the Pinelands Area. In response to this issue, the Commission’s amended proposal clarifies at N.J.A.C. 7:50-6.86(b) that the prohibition against interbasin transfers applies only to transfers of water “from sources within” the Pinelands Area. It should be noted that water sourced from outside the Pinelands Area that is distributed to development within the Pinelands Area through a public or community water system will not result in an interbasin transfer, as the water will be conveyed back out of the Pinelands Area through the public sanitary sewer system or completely consumed.

Water Management Standards (N.J.A.C. 7:50-6.86(d), N.J.A.C. 7:50-6.86(d)2i)

10. COMMENT: The proposed rule does not clearly state that any proposed increase in diversion over 50,000 gpd triggers review. (4)

RESPONSE: In its original proposal, the Commission expanded the scope of wells that will be subject to the water management standards by lowering the water volume threshold from 100,000 gallons of water or more per day to 50,000 gallons of water or more a day. The original proposal at N.J.A.C. 7:50-6.86(d) specified that the 50,000 gallon per day threshold includes all of an applicant’s existing diversions in the same HUC-11 watershed, in addition to the new or increased diversion. In response to the commenter’s request for greater clarification, however, the Commission added “and new” at N.J.A.C. 7:50-6.86(d), pertaining to diversions in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer. Examples and additional explanations of how this threshold will be calculated and applied can be found in the original proposal.

Water Management Standards (N.J.A.C. 7:50-6.86(d)2i)

11. COMMENT: The cross-reference at N.J.A.C. 7:50-6.86(d)2i is incorrect. N.J.A.C. 7:9-9 was repealed and replaced with N.J.A.C. 7:9D-3. (5)

RESPONSE: The Commission corrected the cross-reference in its amended proposal.

Adverse Regional Impact (N.J.A.C. 7:50-6.86(d)6)

12. COMMENT: It is unclear which datasets in the Water Supply Plan, the Commission will rely upon to determine whether a proposed diversion exceeds 20 percent of the stream low flow margin. It is unclear if the proposed amendment is referring to allocations or peak reported use, which are estimated differently in the Water Supply Plan. Additionally, the information referred to is in Appendix A of the Water Supply Plan (Plan), which is not the referenced document. The correct reference is <https://www.state.nj.us/dep/watersupply/pdf/wsp-appendix-a.pdf>. (5)

RESPONSE: In its amended proposal, the Commission revised N.J.A.C. 7:50-6.86(d)6 to make the language consistent with the New Jersey Statewide Water Supply Plan and to specify that applicants should use Appendix A of that Plan. The revisions also included correcting the

link to Appendix A, and specifying the exact datasets/tables applicants should use at Appendix A.

2. Comments Received During Initial Comment Period, Not Giving Rise to Substantial Changes in the Rule ProposalGeneral Comments

13. COMMENT: Seven commenters supported the original proposal and specifically supported lowering the application threshold of water withdrawal to 50,000 gallons per day and setting the low flow margin at 20 percent. Some of those who supported the rule also requested specific revisions, addressed in the summary of comments below. (7, 8, 9, 12, 13, 14, 15, and 19)

RESPONSE: The Commission thanks the commenters for their support.

14. COMMENT: One commenter questioned the role played by Nestle and its subsidiary Nespresso in the rule. The commenter questioned how the companies’ extraction operations “support and protect our New Jersey water” and questioned if the rule was a way for Nestle “to get its hands on our aquifer for its profit making enterprise as it has in so many other places.” (11)

RESPONSE: Nestle and Nespresso played no role in this rulemaking. If a commercial water extraction company were to apply for a diversion from the Kirkwood-Cohansey aquifer, it would have to meet the standards, which are designed to provide ecological protections of the Kirkwood-Cohansey aquifer. One of those standards prohibits the transport of water outside the Pinelands. N.J.A.C. 7:50-6.86(a).

15. COMMENT: The commenter appreciates that agricultural water use is exempt from the application and review process but is concerned that regulating water supply on non-agricultural businesses will negatively impact the local economy, which could have an indirect impact on the agricultural industry in the Pinelands. Agriculture is reliant on the Pinelands Development Credit (PDC) program as its sole opportunity to preserve land values and any impact on development in the Pinelands is likely to affect PDC values. (16)

RESPONSE: The CMP currently regulates water supply for non-agricultural businesses. Many of the changes in this rulemaking merely clarify and quantify the existing standards. For those standards that the Commission is strengthening, such as expanding the standards to a limited set of new wells (between 50,000 gpd and 100,000 gpd), there is no evidence that these changes will have a negative impact on the local economy, nor affect development potential in Pinelands Regional Growth Areas or the demand for and value of PDCs (transferable development rights).

16. COMMENT: The Pinelands Commission does not have the regulatory authority to require application or issue permits or regulate water use. The DEP has exclusive authority to regulate water diversions and evaluate alternative source requirements where critical water areas are established. The Pinelands Protection Act does not authorize the Pinelands Commission to help implement the Water Supply Management Act. (2, 3, 4, and 16)

RESPONSE: The Commission respectfully disagrees with these statements. The Pinelands Protection Act (Act), N.J.S.A. 13:8A-1 et seq., directs the Commission to regulate development and establish standards to allow development without a significant adverse impact to the resources of the Pinelands Area. The Act specifically authorizes the Commission to regulate land and water management. N.J.S.A. 13:18A-8.d. This statutory authority to regulate water management is independent of the DEP’s authority pursuant to the Water Supply Management Act. The Commission also notes that it does not issue permits; rather, it evaluates development applications and municipal approvals to ensure compliance with the standards established in the Comprehensive Management Plan, adopted to implement the Pinelands Protection Act.

17. COMMENT: The proposed rule is duplicative of DEP rules. (2, 3, 4, and 16)

RESPONSE: The Commission respectfully disagrees, as it is not issuing water allocation permits. The proposed amendments establish standards and criteria for diversions in the Pinelands Area, some of which are more stringent than those administered by the DEP. The Commission’s evaluation of a diversion application does rely upon a modeling process similar to the DEP’s to avoid the need for duplicative

modeling by applicants in those situations where there is regulatory overlap.

18. COMMENT: Holders of current water allocation permits issued by the DEP should be “grandfathered” pursuant to the proposed amendments. The proposed amendments will prohibit new diversions or increases in diversions even though a resource extraction operation may have had a DEP-issued water allocation permit for many years. (1 and 2)

RESPONSE: There is no need for a grandfathering provision because, pursuant to the amendments, a holder of a current water allocation permit is not required to apply to the Commission for an existing diversion. The holder is required to complete an application only for a new diversion or an increase in allocation from either a single existing diversion source or from combined existing and new diversion sources in the same HUC-11 watershed in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more. A resource extraction operation that is increasing its existing water allocation will not have to meet the standards at N.J.A.C. 7:50-6.86(d) if it demonstrates the use is nonconsumptive. N.J.A.C. 7:50-6.86(d)2iii.

19. COMMENT: Developers will install private wells at each house/use rather than one large utility well or instead of connecting to a utility that might trigger compliance with the rule. (10)

RESPONSE: The Commission acknowledges that developers could circumvent the new 50,000 gpd threshold by installing individual, private wells, just as they were able to circumvent the 100,000 gpd threshold under the former rule. Possible solutions to eliminate the loophole would present other issues. For example, the Commission could require all development proposals of over 100 dwelling units or over approximately 500,000 square feet to apply for diversions for every well on the development parcel. It is not technically feasible, however, to model impacts from small wells. Alternatively, the Commission could require applicants to simultaneously apply for development of a water supply well for the needs of the proposed development. The unknown ramifications of requiring large projects to include development of a large water supply well could result in unintended obstacles to development in growth-oriented Pinelands management areas and/or result in more adverse impacts to the Kirkwood-Cohansey aquifer.

20. COMMENT: In the DEP’s anticipated rulemaking amending N.J.A.C. 7:19, a link between volumes of water (for example, 100,000 gallons per day) and pumping rates (for example, 70 gallons per minute) will be addressed. The commenter recommends the Commission include a similar link to equate new wells being installed with their pump capacity and relationship to the volumetric regulatory thresholds. (5)

RESPONSE: The Commission thanks the commenter for the suggestion but does not agree that including the suggested link will benefit applicants for development in the Pinelands Area.

21. COMMENT: One commenter noted that the United States Geological Survey (USGS) no longer supports the HUC-11 mapping and DEP is most likely going to shift to HUC-12s for future analyses and recommends that the Commission also shift to HUC-12s. (5)

RESPONSE: It would be premature to shift to HUC-12s at this time, as the amended rule relies on the New Jersey Statewide Water Supply Plan (Water Supply Plan) for low flow margin data in each HUC-11. If the Water Supply Plan is revised to shift to HUC-12 for future analyses, the Commission may propose a CMP amendment to align with that change.

22. COMMENT: A commenter suggested that the Commission coordinate with USGS and DEP to calculate low flow margin (LFM) for HUC-14 watersheds. (18)

RESPONSE: If the DEP decides at some point to shift to HUC-14s in the Statewide Water Supply Plan, the Commission will consider amending the rule to use LFM data for HUC-14s. There has been no indication, however, that DEP is shifting to HUC-14s.

23. COMMENT: The proposed amendments rely upon flawed studies that model “excessive” drawdown of up to 30 percent of streamflow, six inches of water table lowering, or pumping at 30 percent of groundwater recharge. (2)

RESPONSE: The Commission disagrees that the studies are flawed. The studies provide insight into the level of impact that can occur before those impacts have significant adverse effects on the Pinelands ecology.

24. COMMENT: The proposed rule does not address surface water withdrawals. (18)

RESPONSE: The rulemaking does address surface water withdrawals by defining “divert” or “diversion” to include taking water from a river, stream lake, etc., and by requiring applicants for all proposed increases in diversion to demonstrate that no adverse impacts will occur. Specific modeling standards for stream withdrawals are not necessary because the immediate impacts to streamflow, wetlands, and habitats that would be caused by these large diversions are more easily recognized and quantified.

25. COMMENT: The commenter believes the rule should require a more in-depth analysis of increased land subsidence and associated increase in rate of sea level rise from groundwater withdrawals. (18)

RESPONSE: Such impacts are beyond the scope of the current rule, particularly if the effects occur outside the Pinelands Area.

Resource Extraction

26. COMMENT: Disparate treatment of different Pinelands Management Areas is arbitrary, and nothing in the Pinelands studies supports a prohibition on diversions in the Forest Area and Preservation Area District. Most mines are located in the Forest Area or Preservation Area District; therefore, the proposed standard at N.J.A.C. 7:50-6.86(d)3 is a problem. (2 and 3)

RESPONSE: The Commission disagrees. The Pinelands Protection Act, N.J.S.A. 13:8A-1 et seq., authorizes greater protections for the Pinelands Preservation Area, and a fundamental premise of the CMP is the importance of providing enhanced protection to both the Preservation Area District and the Forest Area based on the ecology of these management areas. The Commission recognizes, however, that certain nonconsumptive uses of water can be consistent with those necessary protections and, as discussed in the response to prior comments, revised the original proposal to recognize that such uses can maintain the values of the most ecologically valuable management areas.

27. COMMENT: One of the commenters noted that its resource extraction site is bisected by watershed management area boundaries and by the nature of the extraction operation, it cannot avoid interbasin transfers. (3)

RESPONSE: If a resource extraction company can demonstrate that its operation constitutes a nonconsumptive use of water, then, by definition, there will be no interbasin transfer of water. Nonconsumptive use is being defined to mean that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken. No interbasin transfer of water will occur if 90 percent of the diverted water is returned in this manner. In addition, where permitted resource extraction results in open water mining that straddles the mapped boundary of the basins defined in the rule, the mapped basin boundary can no longer be considered accurate, and the non-consumptive use would not constitute an interbasin transfer.

28. COMMENT: The Commission should identify and protect sand, gravel, and crushed stone resources to ensure an uninterrupted, economical supply. (1)

RESPONSE: The CMP has long recognized existing extraction operations in the Pinelands Area and provided for their continuation, even in the most ecologically important portions of the Pinelands region. The amended proposal, described in the response to prior comments, further recognizes the extraction industry’s nonconsumptive use of water and should help to ensure the continued production and supply of the resources.

Definitions (N.J.A.C. 7:50-2.11)

29. COMMENT: Various definitions in the rule proposal are already defined at N.J.A.C. 7:19-1.3. The commenter recommends for consistency that the definitions of these terms in the CMP be revised to say that the term has the same meaning as that at N.J.A.C. 7:19-1.3. (5)

RESPONSE: For the terms defined in the current rulemaking, the Commission has decided to adopt its own definitions that it deems more aligned with the intent and goals of the CMP.

Interbasin Transfer (N.J.A.C. 7:50-6.86(b))

30. COMMENT: The Pinelands Protection Act already prohibits the export of water greater than 10 miles, so there is no need for interbasin transfer prohibition. (2)

RESPONSE: The Commission disagrees. The prohibition against interbasin transfer of water is not necessarily the same as the prohibition in the Pinelands Protection Act against exporting water greater than 10 miles (N.J.S.A. 58:1A-7.1), as there could be instances where an interbasin transfer of water occurs within a 10-mile area or simply occurs within the Pinelands Area regardless of distance. In addition, the amendments merely strengthen the existing restriction against interbasin transfer at N.J.A.C. 7:50-6.86(a) and clarify that restriction by defining the basins.

Water Management Standards (N.J.A.C. 7:50-6.86(d))

31. COMMENT: The Commission's existing 100,000 gallon per day threshold pumping volume at which a diversion would need to meet the existing standards at N.J.A.C. 7:50-6.86 adequately prevents excessive or nonessential diversions from the Kirkwood-Cohansey aquifer and does not need to be modified. (3)

RESPONSE: The Commission respectfully disagrees. The 12 studies on the impacts of diversions on the Kirkwood-Cohansey aquifer, described in the original notice of proposal and at <https://www.nj.gov/pinelands/science/complete/kc/>, revealed a need to update the CMP to better protect the aquifer.

Replacement Wells (N.J.A.C. 7:50-6.86(d)2i)

32. COMMENT: The proposed reference to replacement wells at N.J.A.C. 7:50-6.86(d)2i is current with respect to DEP's current policy for replacement wells and N.J.A.C. 7:19-1.5(b)3. The DEP anticipates revising its rule to make it less stringent and suggests that the Commission's rule refer to DEP's rule at N.J.A.C. 7:19-1.5(b)3, so that the two rules will be consistent when DEP amends its rule. (5)

RESPONSE: The Commission will review any adopted amendments to DEP rules and consider amending the CMP if deemed appropriate but will not modify a reference to DEP's rule before DEP makes the changes. While the Commission often adopts rules that are consistent with DEP rules, there are instances where it opts for different or more stringent standards to provide greater protection of the Pinelands resources.

33. COMMENT: Several references to N.J.A.C. 7:9D are inconsistent with those rules, including the requirement to decommission wells that are replaced. The Commission's proposal is more in line with how replacement wells are modified pursuant to the water allocation rules at N.J.A.C. 7:19-1.5. The commenter recommends that the Commission clarify its proposed requirements on replacement wells and impacts on individual domestic wells, and the proposed requirements for Allocation Permit or Registration wells to make them consistent. Typically, replacement wells are needed on an emergency basis. See N.J.A.C. 7:19-1.4(a)4 for the DEP's applicability provisions regarding emergency diversions from wells. (5)

RESPONSE: The only reference to N.J.A.C. 7:9D in the current rulemaking is at N.J.A.C. 7:50-6.86(d)2, which, as originally proposed, stated that for a replacement well to be exempt from meeting the standards at N.J.A.C. 7:50-6.86(d), it must be sealed in accordance with N.J.A.C. 7:9D-3, be located less than 100 feet from the existing well, be at the same depth and in the same aquifer, and have the same or lesser pump capacity. These requirements mirror the definition of replacement well found at N.J.A.C. 7:19-1.3. The Commission recognizes that DEP changed the terminology at N.J.A.C. 7:9D-3.1 from "sealing" abandoned wells to "decommissioning" wells and is making this non-substantial change at N.J.A.C. 7:50-6.86(d)2 upon adoption to reflect DEP's change. (Note that the reference to N.J.A.C. 7:9-9 at N.J.A.C. 7:50-6.86(d)2 was corrected in the Notice of Proposed Substantial Changes Upon Adoption so that it now refers to N.J.A.C. 7:9D).

The DEP provision for minor modification of water allocation permits or registrations to allow similar replacement wells is not analogous.

34. COMMENT: Replacement wells should be required to be located in the same HUC-11 watershed. (6, 19, and 20)

RESPONSE: The Commission agrees. The amended rule, at N.J.A.C. 7:50-6.86(d)2i(4), does require that a replacement well be located in the same HUC-11 watershed as the existing well.

Agricultural and Horticultural Exemption (N.J.A.C. 7:50-6.86(d)2ii)

35. COMMENT: Four commenters believe that horticultural operations should not be exempt from the new standards for diversions. (6, 7, 9, and 19)

RESPONSE: Both the Pinelands Protection Act (N.J.S.A. 13:18A-3.b) and the CMP (N.J.A.C. 7:50-4.1(a)3) expressly state that no application to the Commission is required for the improvement, expansion, construction, or reconstruction of any structure used exclusively for agricultural or horticultural purposes. "Agricultural or horticultural purpose or use" is defined broadly in both the Act and CMP. No distinction is made between agricultural operations and horticultural operations in terms of the applicability of the CMP's application requirements. The Commission believes it is inappropriate to do so in the water management section of its rules.

It is worth noting that the concerns raised by these commenters appear to be related to the growing interest in developing cannabis facilities in the Pinelands Area. To the extent that such facilities involve processing of cannabis and are not purely cultivation facilities, they will be subject to the CMP's application requirements and need to demonstrate consistency with all CMP environmental standards, including those related to water management.

36. COMMENT: The rulemaking exempts agricultural activities but does not include reference to aquaculture, which is clearly defined as agriculture at N.J.A.C. 7:20A. The DEP has received multiple inquiries regarding aquaculture facilities proposed in southern New Jersey, including in the Pinelands Area. Aquaculture should be included in this section and continue to be exempt from the proposed rule. (5)

RESPONSE: The CMP definition of "agricultural or horticultural purpose or use" at N.J.A.C. 7:50-2.11 includes aquaculture, specifically, "the production of plants or animals useful to man, including ... aquatic organisms as part of aquaculture." As discussed in the Response to Comment 35, agricultural or horticultural uses are exempt from application to the Commission.

Viable Alternative Water Supply (N.J.A.C. 7:50-6.86(d)4)

37. COMMENT: Several commenters requested that applicants not be able to use "prohibitive cost" as a way of demonstrating that there are no viable alternative water supply sources. (7, 9, 15, 19, and 20)

38. COMMENT: There should be specific and reliable criteria regarding prohibitive cost, technological limits, and significant timing issues. (15)

RESPONSE TO COMMENTS 37 AND 38: The new standards will permit diversions from the Kirkwood-Cohansey aquifer only if an applicant demonstrates that no alternative water supply source is available or viable. N.J.A.C. 7:50-6.86(d)4. Information regarding viable alternative water sources will be maintained on the Commission's website. In the Summary statement of the original proposal, the Commission explained that if there is an alternative water supply source that an applicant does not believe is viable, the applicant will have to demonstrate to the Commission the reason why the source is not viable. 54 N.J.R. 1668(a). It then gave examples of reasons for lack of viability, including prohibitive cost, limits on available technology, and significant timing issues. 54 N.J.R. 1668(a).

Reasons why a particular source is not viable will vary, however, and will be too project-specific to be codified in a rule. The Commission believes that, in limited circumstances, prohibitive cost may be an appropriate reason for determining that an alternative source is not viable. For example, this may be the case when installing water distribution lines over great distances and at great impact to the resources of the Pinelands, including wetlands, wetlands transition areas, and critical habitat.

39. COMMENT: Leakage to confined aquifers may be increased by the requirement to seek alternative sources. Those alternative sources might be confined aquifers that will lead to greater leakage from the Kirkwood-Cohansey aquifer into confined aquifers. (18)

RESPONSE: The impacts from leakage to confined aquifers are not quantifiable in such a way that the Commission can evaluate those impacts to the Kirkwood-Cohansey aquifer.

Applicability (N.J.A.C. 7:50-6.86(d))

40. COMMENT: Three commenters expressed concerns regarding existing wells and whether they are required to meet the new standards or

whether only the development of additional wells or additional allocations are required to meet the new standards. (4, 5, and 15)

RESPONSE: The new standards at N.J.A.C. 7:50-6.86 apply only to new or increased diversions. Existing wells are not considered development and, therefore, do not trigger a review pursuant to the new rules. Only a new well or an increase in allocation resulting in withdrawals of more than 50,000 gpd would be considered development and would have to meet the new standards. All diversions by the same applicant or owner in the same HUC-11 will be considered for the purpose of determining whether the 50,000 gpd threshold is met, but only the new or increased diversion will be evaluated pursuant to the new standards at N.J.A.C. 7:50-6.86(d).

Adverse Regional Impact (N.J.A.C. 7:50-6.86(d)6)

41. COMMENT: The State Water Supply Plan low flow margin data includes non-Kirkwood-Cohansey aquifer water in some HUC-11s, particularly in those that are split between Pinelands and non-Pinelands areas and the proposed rulemaking does not deal with this split. (5)

RESPONSE: While the Commission agrees that there are some HUC-11 watersheds that straddle the Pinelands Area boundary where non-Pinelands areas contribute to stream flow, the bulk of the land area contributing to streamflow in the HUC-11 watersheds is in the Pinelands Area, where the Kirkwood-Cohansey is the surface aquifer. The number of HUC-11 watersheds that include unconfined aquifers other than the Kirkwood-Cohansey formation contributing to surface water flow and that extend beyond the Pinelands Area are very limited (Evesham, Medford, Southampton, and Pemberton Townships) and should not affect the Commission's reliance on the low flow margin (LFM) data in the Water Supply Plan.

The HUC-11 watersheds in Monroe and Winslow Townships that have some volume attributable from areas outside the Pinelands Area are stressed watersheds and 20 percent of the LFM is entirely used by existing diversions. The Pinelands Commission has monitoring agreements and limits in place on water use and sewer exports for those two municipalities that act as further protections against regional adverse impacts to the resources of the Pinelands.

It would also be difficult to distinguish between the portions of the LFM from the Kirkwood-Cohansey aquifer from those outside the aquifer, as the volume of the LFM in the Water Supply Plan that is associated with non-Kirkwood-Cohansey aquifers is not published.

42. COMMENT: The LFM data maintained by the Division of Water Supply and Geosciences, within DEP includes agricultural, horticultural, and aquacultural water use and allocations. The proposed rulemaking refers to these results, but the Department is unaware of the authority to regulate water withdrawals regulated pursuant to N.J.A.C. 7:20A pursuant to the proposed rulemaking. (5)

RESPONSE: The Commission is not regulating agricultural and horticultural uses but rather, has established a proposed impact standard in recognition of the fact that the LFM includes agricultural and horticultural water use. The amended rules use the LFM as a tool for evaluating regional adverse impacts of non-agricultural development. To allow for the additional agricultural/horticultural diversions, the Commission has set an impact standard of 20 percent of the LFM rather than 25 percent of the LFM.

43. COMMENT: The proposed rule should take into account the fact that LFM methodology is based on consumptive and depletive losses in a watershed. (5)

RESPONSE: Although the Commission intends to base its determination of remaining stream volume on current depletive-consumptive net use as published in the Water Supply Plan, it will base its evaluation of regional adverse impact on the potential for full use (100 percent) of the new diversion. As the Commission's evaluation is not for the purpose of issuing a water use permit, but rather to assess the potential impact of a proposed diversion, it is reasonable and acceptable to rely upon the LFM, a published value, as a benchmark.

44. COMMENT: The commenter supports the ability of a diversion applicant to permanently offset the new diversion and encourages the Commission to provide a list of acceptable offsets. (5)

RESPONSE: The amended rule permits an applicant who proposes a diversion in an HUC-11 watershed that is already constrained by

withdrawals exceeding 20 percent of the stream low flow margin—before the proposed diversion is even factored in—to permanently offset the new diversion. N.J.A.C. 7:50-6.86(d)6i. The Commission decided not to include a list in the rulemaking because it did not want to preclude any offset solutions that an applicant may propose nor encourage debate as to the value or appropriateness of any particular offset as part of the rulemaking process.

45. COMMENT: The Commission should consider requiring offsets to be located toward the portion of the watershed where impacts are greatest. (18)

RESPONSE: The Commission thanks the commenter for the suggestion and notes that the rulemaking does not prohibit or discourage applicants from locating offsets toward the portion of the watershed where diversion impacts will be greatest. Making it a requirement, however, may have unintended consequences that prevent implementation of offset projects.

Adverse Local Impact (N.J.A.C. 7:50-6.86(d)7)

46. COMMENT: The Commission should accept historical aquifer pump test data instead of requiring an applicant conduct its own hydrogeological testing to show that a diversion will not have an adverse local impact. The commenter noted that diversion applicants can submit a pump test waiver to DEP pursuant to N.J.A.C. 7:19-2.2(c) where recent and applicable pump test data can be used to evaluate the hydrogeological impacts of a diversion on the aquifer and watershed. (4)

RESPONSE: Submission of historic pump test data is not prohibited at N.J.A.C. 7:50-6.86(d)7i(3). The Commission, however, reserves the right to require a new pump test if the location of the well has changed, other pumping in the area has changed, or the historic pump data has not been reviewed for consistency with the CMP.

47. COMMENT: The requirements at N.J.A.C. 7:50-6.86(d) are redundant with current DEP water allocation permitting requirements, specifically for applicants that request a major modification to their water allocation permit. The DEP already requires applicants to prepare an extensive and technical pump test work plan and hydrogeological report that "fully encompasses evaluations of regional and local ecological impacts." (4)

RESPONSE: The proposed rulemaking was designed to substantially align with DEP's water allocation permitting process to reduce the need for an applicant to conduct additional hydrogeologic design, testing, and modeling. The review of an applicant's hydrogeologic report is not redundant with DEP's review, however, as the Commission's standards are different than DEP's. The Commission's review involves an evaluation of ecological impacts of the diversion that DEP's review does not entail.

48. COMMENT: Alternative guidance should be prepared by the Commission, rather than using procedures referenced in DEP's Technical Memorandum 12-2 (TM12-2). TM12-2 procedures are only accurate for greater than 100,000 gpd and only for evaluating one foot of drawdown, especially in the Kirkwood-Cohansey aquifer. (5)

RESPONSE: The Commission disagrees that alternative guidance is necessary. When drafting the rule, the Commission consulted with the United States Geological Survey (USGS), which advised that the data required pursuant to the new rulemaking is acceptable for the evaluation of the impacts of a proposed diversion from the Kirkwood-Cohansey aquifer, using the standards at N.J.A.C. 7:50-6.86(d).

49. COMMENT: Evaluating the potential impact of a new diversion without considering existing diversions is inconsistent the evaluation methodology of DEP, Division of Water Supply and Geosciences. (5)

RESPONSE: The amended rules do require an evaluation of all existing permitted allocations for the purpose of determining whether the new or increased diversion will have an adverse regional impact. N.J.A.C. 7:50-6.86(d). Specifically, a proposed diversion will be deemed to have an adverse regional impact if it, combined with all existing permitted allocations in the same HUC-11 watershed, exceeds a specific threshold at which water availability in that watershed will be deemed to be adversely impacted. N.J.A.C. 7:50-6.28(d)6. The low flow margin in the State Water Supply Plan will be used in this evaluation.

All diversions pursuant to the same water allocation permit are also collectively considered for the purposes of determining whether the new

or increased diversion meets the 50,000 gpd threshold in the amended rule (N.J.A.C. 7:50-6.28(d)), but not in determining whether the new or increased diversion will result in adverse impacts to the resources of the Pinelands.

50. COMMENT: The commenter supports measures to prevent drawdown in wetlands. (17)

RESPONSE: The Commission thanks the commenter for its support.

51. COMMENT: The LFM volume should be based on HUC-14 rather than HUC-11, to be more protective because the volume of LFM is set for the lowest elevation in the watershed and wells not at the lowest point will have a greater impact. By decreasing the watershed size, this impact will be minimized. (18)

RESPONSE: The Commission relies upon LFM data in the State Water Supply Plan but the Plan does not currently include LFM data for all HUC-14s in the Pinelands Area. The Commission will consider using LFM data in HUC-14s if the State Water Supply Plan is updated to include such data.

Water Conservation (N.J.A.C. 7:50-6.28(d)8)

52. COMMENT: The Commission should require soil moisture sensors for all landscape irrigation systems for customers served by purveyors with wells in the Kirkwood-Cohansey aquifer. (18)

RESPONSE: The rulemaking strengthens and clarifies the water conservation requirement currently in the CMP by requiring documentation of measures that have been implemented or that are planned for implementation and requiring that the conservation efforts be measurable. The amended rules also broaden the water conservation requirements of the existing rules by requiring conservation to occur not just in areas served by centralized sanitary sewer systems, but throughout all areas to be served by the proposed diversion. N.J.A.C. 7:50-6.28(d)8. Mandatory soil moisture/rain sensors for landscape irrigation systems is one of many examples the Commission noted in the Summary section of its original proposal.

3. Comments Received upon Publication of Notice of Proposed Substantial Changes upon Adoption to Proposed Amendments to N.J.A.C. 7:50-1.6, 2.11, 4.2, and 6.86

General Comments

53. COMMENT: The commenter objects to the Commission staff's meeting with the DEP after the close of the comment period. (26)

RESPONSE: The Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., does not prohibit a State agency from meeting with any stakeholders, including another State agency, to discuss possible changes to a proposed rule at any time during or after the comment period.

Resource Extraction (N.J.A.C. 7:50-2.11; 4.2(b)6xi; and 6.86(d)2iii)

54. COMMENT: The commenters thank the Commission for its consideration of their comments on the original proposal and support the changes in the amended proposal related to the resource extraction industry and nonconsumptive use. (21, 22, 24, and 25)

RESPONSE: The Commission thanks the commenters for their support.

55. COMMENT: The Commission should add a definition of "parcel," consistent with the language in the Response to Comments 1, 2, 3, and 4 in the Notice of Proposed Substantial Changes (21 and 22)

RESPONSE: In its Response to Comments 1, 2, 3, and 4 in the Notice of Proposed Substantial Changes and its Response to Comments 1 through 5 in this notice of adoption, the Commission described the new diversion application requirements at N.J.A.C. 7:50-4.2(b)6xi. An applicant will have to provide a description of any other existing or proposed water diversions or discharges on or from the parcel. The Commission explained that for the purposes of this provision, "parcel" will be considered as all tax lots that are a part of a resource extraction operation for which a municipal approval has been reviewed by the Commission, determined to be consistent with all CMP standards and allowed to take effect pursuant to N.J.A.C. 7:50-4.37 and 4.40.

The term "parcel" is already defined in the CMP at N.J.A.C. 7:50-2.11 as "any quantity of land, consisting of one or more lots, that is capable of being described with such definiteness that its location and boundaries may be established." The Commission's description of what will constitute a parcel for the purposes of N.J.A.C. 7:50-4.2(b)6xi is wholly

consistent with this definition and, therefore, it is neither necessary nor appropriate to adopt a new definition of the term solely for resource extraction water diversions.

56. COMMENT: A commenter suggested that a provision be added to specifically state that if a resource extraction company demonstrates that its operation constitutes a nonconsumptive use, then the diversion will not be deemed an interbasin transfer of water. The Commission explained in the response to a comment in the Notice of Proposed Substantial Changes that nonconsumptive use is being defined to mean that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken and that no interbasin transfer of water will occur if 90 percent of the diverted water is returned in this manner. The commenter would like this language incorporated into the rule amendments. (22)

RESPONSE: The Commission included the explanation noted in the comment in the Response to Comment 10 in the Notice of Proposed Substantial Changes. It is not necessary or appropriate to codify this explanation in a rule, as it does not set a new standard or clarify existing language. The explanation was offered merely to explain a regulatory conclusion based on the definition of interbasin transfer at N.J.A.C. 7:50-6.86(b).

57. COMMENT: The commenter objects to the requirement at N.J.A.C. 7:50-4.2(b)xi in the amended proposal that an applicant for a proposed diversion demonstrate that the diversion is a nonconsumptive use of water. The commenter believes that the determination should be based on the DEP's determination that such operations return more than 90 percent of water to source. The commenter submits that due to the nature of sand mining, it is "virtually impossible" to calculate the exact amount of water returned to the source because a sand mine operation does not return the water to the ground through a single metered pipe—that water returns to ground through land runoff, as much as by piping. There are too many variables to account for, including rainfall, hours of sunlight, and evaporation.

The commenter further states that the amended proposal will pose a significant burden on the resource extraction industry, that exact or empirical measurements of flow to account for the water diverted and returned in an undiminished manner is impracticable for the resource extraction industry. The specific location from which the diverted water is removed in the resource extraction industry is not typically from a fixed point, but instead from a water body where the point of diversion is dynamic (that is, not static or fixed) as is the water body itself. In addition, the water that is returned to the environment during mechanical/hydraulic mining operation is also not to a specific location. (21)

RESPONSE: The Commission disagrees. Applicants for DEP water allocation permits are required to submit hydrogeologic reports that include a quantitative discussion of the nonconsumptive nature of the diversion. Contrary to what the commenter states, it is possible for applicants to accurately estimate the amount of water returned to the source. The Commission has, in fact, reviewed a recent report from a resource extraction applicant that included a quantitative analysis of the diverted water that will be returned to the source.

The added requirement at proposed N.J.A.C. 7:50-4.2(b)xi was drafted with DEP's water allocation permit requirements in mind. It was intended to facilitate the application process for resource extraction applicants, as those applicants would be providing similar, if not identical, information to the DEP in a water allocation permit application.

The email correspondence with the DEP that the commenter attached to its comment seems to relate to TM12-2 and consumptive use coefficients assigned to certain water uses. The emails further indicate that increased evaporation may occur and thereby raise the consumptive nature of the resource extraction operation. The Commission notes that the DEP email suggested a depletive/consumptive rate for a mining operation of greater than 10 percent.

Adverse Local Impact (N.J.A.C. 7:50-6.86(d)7)

58. COMMENT: The commenter submitted a new comment to reiterate concerns that were included in a comment submitted on the original proposal, and summarized in Comment 47, regarding the need for technical reviews by two State agencies. The commenter added that simultaneous reviews of the same technical reports are redundant, time-

consuming, and an inefficient use of agency resources and can be problematic if the agencies reach differing conclusions on the same report. (23)

RESPONSE: Please see the Response to Comment 47.

59. COMMENT: The commenter submitted a new comment to reiterate its request in a comment submitted on the original proposal, and summarized in Comment 46, that the Commission accept historical aquifer pump data instead of having to conduct its own hydrogeological testing to show that a diversion will not have an adverse local impact. (23)

RESPONSE: Please see the Response to Comment 46.

Summary of Agency-Initiated Changes:

The Commission is clarifying N.J.A.C. 7:50-6.86(d)2ii by adding the word “proposed” before “diversion.”

Federal Standards Statement

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. § 471i) called upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals that the plan must meet, including the protection, preservation, and enhancement of the land and water resources of the Pinelands. The adopted amendments are designed to meet those goals by imposing stringent requirements and restrictions on groundwater withdrawals from the Kirkwood-Cohansey aquifer, which, in turn, will protect wetlands habitats and plants and animals that are characteristic of undisturbed Pinelands ecosystems, including at least one wetlands plant that is on the Federal endangered species list.

There are no other Federal requirements that apply to the subject matter of these amendments.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 1. GENERAL PROVISIONS

7:50-1.6 Fees

(a) Except as provided at (a)1 and 2 below, all applications required or permitted by any provision of this Plan shall be accompanied by a nonrefundable, nontransferable, application fee of \$250.00 or a fee calculated according to the fee schedule set forth at (b) through (l) below, whichever is greater. No application filed pursuant to this Plan shall be reviewed or considered complete, unless all fees required by this Part have been paid and any escrow required pursuant to N.J.A.C. 7:50-1.7 has been submitted.

1.-2. (No change.)

(b) (No change.)

(c) The application fee for a commercial, institutional, industrial, or other non-residential development application submitted pursuant to N.J.A.C. 7:50-4.14, 4.33, 4.52, or 4.66 shall be calculated in accordance with the following, based on typical construction costs, except as provided at (c)1 through 10 below:

Construction Cost	Required Application Fee
\$0 - \$500,000	1.25 percent of construction costs
\$500,001- \$1,000,000	\$6,250 + one percent of construction costs above \$500,000
Greater than \$1,000,000	\$11,250 + 0.75 percent of construction costs above \$1,000,000

Typical construction costs shall include all costs associated with the development for which the application is being submitted, including, but not limited to, site improvement and building improvement costs, but shall not include interior furnishings, atypical features, decorative materials or other similar features. Supporting documentation of the expected construction costs shall be submitted as part of the application for development, unless the maximum fee pursuant to (c)3 below is required, in which case no such documentation shall be necessary.

1.-7. (No change.)

8. For the demolition of a structure 50 years or older, the fee shall be \$250.00;

9. For the development of a solar energy facility, the fee shall be \$1,500 plus \$500.00 per acre of land to be developed, or portion thereof, including any off-site development; and

10. For a well, the application fee shall be:

i. \$6,000 for any well in the Kirkwood-Cohansey aquifer that is required to meet the criteria and standards at N.J.A.C. 7:50-6.86(d); or

ii. Calculated based upon construction costs as set forth in this subsection for wells that are not subject to the criteria and standards at N.J.A.C. 7:50-6.86(d).

(d)-(l) (No change.)

SUBCHAPTER 2. INTERPRETATIONS AND DEFINITIONS

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings ascribed to them.

...
 “Divert” or “Diversion” means the taking of water from a river, stream, lake, pond, aquifer, well, other underground source, or other waterbody, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere.

...
“Nonconsumptive use” means the use of water diverted from surface or ground waters in such a manner that at least 90 percent of the diverted water is returned to the source surface or ground water at or near the point from which it was taken.

...
 “Stream low flow margin” means the difference between a stream’s *[September median flow and its statistical flow, which is the seven-day flow average in the 10-year period for the stream]* ***normal dry-season flow (September Median Flow) and drought flow*** (7Q10) as reported in the New Jersey Statewide Water Supply Plan, New Jersey Department of Environmental Protection, 2017, New Jersey Water Supply Plan 2017-2022: 484p, <http://www.nj.gov/dep/watersupply/wsp.html>, as amended and supplemented.

...
 “Well” means a hole or excavation deeper than it is wide, that is drilled, bored, core driven, jetted, dug, or otherwise constructed for the purpose of the removal of, investigation of, or exploration for water.

...
 “Zone of influence” means the area of ground water that experiences an impact attributable to a pumping well.

SUBCHAPTER 4. DEVELOPMENT REVIEW

7:50-4.2 Pre-application conference; application requirements

(a) (No change.)

(b) Application requirements.

1.-5. (No change.)

6. Application for resource extraction: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for resource extraction shall include at least the following information:

i.-ix. (No change.)

x. A financial surety, guaranteeing performance of the requirements of N.J.A.C. 7:50-6.68 and 7:50-6.69 in the form of a letter of credit, certified check, surety bond or other recognized form of financial surety acceptable to the Commission. The financial surety shall be equal to the cost of restoration of the area to be excavated during the duration of any approval which is granted. The financial surety, which shall name the Commission and the certified municipality, if applicable, as the obligee, shall be posted by the property owner or *[his]* **their** agent with the municipality if the municipality has had its master plan and ordinances certified pursuant to N.J.A.C. 7:50-3 or with the Pinelands Commission if the municipality has not had its master plan and ordinances so certified*[.]*; **and**

xi. **If the application includes a proposed diversion from the Kirkwood-Cohansey aquifer, a hydrogeologic report that identifies the volume of the diversion, the volume of water to be returned to the**

source, a description of the route of return to the source, the methodology used to quantify the volume of water returned to the source, and a description of any other existing or proposed water diversions or discharges on or from the parcel. The report shall also include a map that depicts the location of the diversion, the location of the return to source, the location of all existing or proposed resource extraction operations, and the location of all wetlands on or within 300 feet of the parcel on which the diversion is proposed.*

7.-9. (No change.)

(c) (No change.)

SUBCHAPTER 6. MANAGEMENT PROGRAMS AND MINIMUM STANDARDS

7:50-6.86 Water management

(a) Water shall not be exported from the Pinelands except as otherwise provided at N.J.S.A. 58:1A-7.1.

(b) A diversion that involves the interbasin transfer of water *[in]* ***from sources within*** the Pinelands Area between the Atlantic Basin and the Delaware Basin, as defined at (b)1 and 2 below, or outside of either basin, shall be prohibited.

1. The Atlantic Basin is comprised of Watershed Management Areas 13, 14, 15, and 16, as identified by the New Jersey Department of Environmental Protection at <https://www.state.nj.us/dep/seeds/docs/watersheds.pdf>.

2. The Delaware Basin is comprised of Watershed Management Areas 17, 18, 19, and 20 as identified by the New Jersey Department of Environmental Protection at <https://www.state.nj.us/dep/seeds/docs/watersheds.pdf>.

(c) A diversion involving the intrabasin transfer of water between HUC-11 watersheds in the same basin, Atlantic Basin or Delaware Basin as defined at (b) above, shall be permitted. If such an intrabasin transfer involves water sourced from the Kirkwood-Cohansey aquifer, the diversion shall meet the criteria and standards set forth at (d) below.

(d) A new diversion or an increase in allocation from either a single existing diversion source or from combined existing ***and new*** diversion sources in the same HUC-11 watershed and in the Kirkwood-Cohansey aquifer, that results in a total diversion of 50,000 gallons of water per day or more (hereafter referred to as "proposed diversion") shall meet the criteria and standards set forth at (d)3 through 9 below. "Allocation" shall mean a diversion permitted pursuant to a Water Allocation Permit or Water Use Registration Number issued by the New Jersey Department of Environmental Protection pursuant to N.J.A.C. 7:19.

1. When evaluating whether the proposed diversion meets the criteria set forth at (d)3 through 9 below, all of the applicant's allocations in an HUC-11 watershed, in addition to the proposed diversion, shall be included in the evaluation.

2. The standards set forth at (d)3 through 9 below shall not apply to:

i. A new well that is to replace an existing well, provided the existing well is ***[sealed]* *decommissioned*** in accordance with N.J.A.C. ***[7:9-9]* *7:9D-3*** and the new replacement well will:

- (1) Be approximately the same depth as the existing well;
- (2) Divert from the same aquifer as the existing well;
- (3) Have the same or lesser pump capacity as the existing well; and
- (4) Be located within 100 feet of, and in the same HUC-11 watershed as, the existing well; ***[or]***

ii. Any ***proposed*** diversion that is exclusively for agricultural or horticultural use^[.]******; **or**

iii. Any **proposed diversion for a resource extraction operation that constitutes a nonconsumptive use, provided the water returned to the source is not discharged to a stream or waterbody or otherwise results in offsite flow, and the diversion and return are located on the same parcel.***

3. A proposed diversion shall be permitted only in the following Pinelands Management Areas:

- i. Regional Growth Area;
- ii. Pinelands Towns;
- iii. Rural Development Area;
- iv. Agricultural Production Area;
- v. Military and Federal Installation Area; and

vi. The following Pinelands Villages: Milmay; Newtonville; Richland; Folsom; Cologne-Germania; Pomona; Mizpah; Nesco-Westcoatville; Port Republic; New Gretna; New Lisbon; Indian Mills; Tabernacle; Blue Anchor; Elm; Tansboro; Waterford Works; Winslow; Dennisville; Petersburg; Tuckahoe; Delmont; Dorchester; and Port Elizabeth-Bricksboro.

4. A proposed diversion shall only be permitted if the applicant demonstrates that no alternative water supply source is available or viable. Alternative water supply sources include, but are not limited to, groundwater and surface water sources that are not part of the Kirkwood-Cohansey aquifer, and public water purveyors and suppliers, as defined at N.J.A.C. 7:19-1.3. A list of alternative water supply sources is available at the offices of the Pinelands Commission and at <https://www.nj.gov/pinelands/>.

5. A proposed diversion shall not have an adverse ecological impact on the Kirkwood-Cohansey aquifer. Adverse ecological impact means an adverse regional impact and/or an adverse local impact, as described at (d)6 and 7 below.

6. A proposed diversion shall be deemed to have an adverse regional impact if it, combined with all ***[existing permitted allocations]* *current depletive-consumptive net use*** in the same HUC-11 watershed, exceeds 20 percent of the stream low flow margin for the year of peak use ***[established in]* ***. **For this analysis, applicants shall use Appendix A of* the New Jersey Statewide Water Supply Plan at ^{[https://www.nj.gov/dep/watersupply/pdf/wsp.pdf} for]* ^{[https://www.state.nj.us/dep/watersupply/pdf/wsp-appendix-a.pdf}, as amended and supplemented, and refer to* the HUC-11 watershed where the proposed diversion will be located (hereafter referred to as "the affected HUC-11 watershed"). ***Applicants shall use the tables in Appendix A entitled "Summary of HUC-11 area, Low Flow Margin and Remaining Water" and specifically, the values for the HUC-11 Low Flow Margin in the column labeled LFM (mgd) and the values for current depletive-consumptive net use in the column labeled "Current Net Dep-Con (mgd)."*****

i. If a proposed diversion is deemed to have an adverse regional impact, it shall be permitted only if an applicant permanently offsets the diversion on a gallon-for-gallon basis in accordance with the following:

(1) Offsets shall be implemented in the affected HUC-11 watershed and include, but are not limited to:

(A) The recharge of previously non-infiltrated stormwater runoff in the Pinelands Area;

(B) The recharge of treated wastewater that is currently discharged by a regional sewage treatment plant that discharges treated wastewater into the Delaware River or Atlantic Ocean;

(C) Development of a desalinization facility; and

(D) Sewerage system inflow and infiltration abatement and/or water distribution infrastructure leak auditing and correction.

ii. A proposed diversion in an HUC-11 watershed where water withdrawals already exceed 20 percent of the stream low flow margin established in the New Jersey Statewide Water Supply Plan shall be deemed to have an adverse regional impact unless an applicant can permanently offset the entire diversion in accordance with (d)6i(1) above.

iii. Unless the submission requirements are modified or waived pursuant to N.J.A.C. 7:50-4.2(b)3, all applications shall include the information required at N.J.A.C. 7:50-4.2(b)4 or 5, as well as the following:

(1) Using data on low flow margins in the New Jersey Statewide Water Supply Plan in effect at the time of application, the applicant shall calculate the sum of the proposed diversion and all existing permitted allocations in the affected HUC-11 watershed, and show whether that sum exceeds 20 percent of the stream low flow margin for the year of peak use established in the New Jersey Statewide Water Supply Plan. The applicant shall submit a report that includes all required calculations and a summary of the impact of the proposed diversion on the available portion of the 20 percent stream low flow margin in the affected HUC-11.

(2) The applicant shall identify all offset measures and provide to the Commission a detailed description of the measures, including the volume of water that will be offset, timeframes for implementing the offsets, a description of the entity that will be implementing the offset measures, and an explanation of the entity's authority to implement the measures.

7. A proposed diversion shall be deemed to have an adverse local impact in the Pinelands Area if it results in the drawdown of the water table as defined at N.J.A.C. 7:19-6.2 of any portion of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed, or of more than four inches of the wetlands nearest to the estimated zone of influence in the affected HUC-11 watershed.

i. Application requirements:

(1) The applicant shall submit an analysis of potential drawdown impacts using the Thiem method in accordance with the New Jersey Geological & Water Survey Technical Memorandum 12-2, Hydrogeologic Testing and Reporting Procedures in Support of New Jersey Water Allocation Permit in effect at the time of application (hereafter referred to as "TM 12-2").

(2) Upon completion of the Thiem analysis, the applicant shall submit a proposed hydrogeologic test procedure, developed in accordance with TM 12-2, which shall include, at a minimum, the installation of:

(A) A single pumping well;

(B) Observation wells to sufficiently monitor water levels while the test well is pumped at a constant rate;

(C) Observation wells to collect time-drawdown data for aquifer characterization; and

(D) At least one piezometer to measure surface water and water table decline at: the nearest boundaries of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed found in any direction from the proposed well location; and the wetlands nearest to the estimated zone of influence in the affected HUC-11 watershed.

I. If the applicant cannot gain access to the parcels at the locations listed at (d)7i(2)(D) above for placement of piezometer(s), the applicant may propose to install piezometers at comparable locations if the alternate placement will adequately measure surface water and water table decline at the locations listed at (d)7i(2)(D) above.

II. Piezometers shall be tested to ensure hydraulic responsiveness and the results of such testing shall be included in the report submitted pursuant to (d)7i(3) below;

(3) Following the Commission's review of the hydrogeologic test procedure, the applicant shall complete the test and submit a final hydrogeologic report prepared in accordance with the "Hydrogeological Report" section of TM 12-2, which shall describe the field procedures used, all data gathered, analysis of the data, and evaluation of the effect of the proposed diversion on the Kirkwood-Cohansey aquifer.

(4) Using the results of the hydrogeologic testing performed in accordance with (d)7i(3) above, the applicant shall calculate an estimated zone of influence created by the proposed diversion and submit a groundwater flow model using the modular hydrologic model of the United States Geological Survey, (MODFLOW) in use at the time of the application. The MODFLOW model shall calculate the zone of influence of the water table at: the nearest boundaries of the Preservation Area District, Forest Area, or Special Agricultural Production Area in the affected HUC-11 watershed; and the boundary of the wetland nearest to the proposed diversion in the same HUC-11 watershed.

8. An applicant for a proposed diversion shall provide written documentation of water conservation measures that have been implemented, or that are planned for implementation, for all areas to be served by the proposed diversion. Water conservation measures are measurable efforts by public and private water system operators and local agencies to reduce water demand by users and reduce losses in the water distribution system.

9. The following notice requirements shall apply to the proposed diversions:

i. For applications submitted pursuant to N.J.A.C. 7:50-4.31 through 4.50, the applicant shall provide notice of the application to the municipality and county in which the proposed diversion will be located, as well as all other municipalities and counties in the affected HUC-11 watershed. The notice shall state:

(1) The nature of the application submitted to the Pinelands Commission and a detailed description of the proposed diversion, including the source, location, quantity, and/or allocation of water to be diverted;

(2) The potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions;

(3) That written comments on the application may be submitted to the Pinelands Commission;

(4) That the application is available for inspection at the office of the Pinelands Commission; and

(5) The address and phone number of the Pinelands Commission.

ii. For applications submitted pursuant to N.J.A.C. 7:50-4.51 through 4.60, the applicant shall provide notice of the application for public development pursuant to N.J.A.C. 7:50-4.53. In addition, the applicant shall provide notice of the application to all municipalities and counties in the affected HUC-11 watershed. The notice shall include the information required at N.J.A.C. 7:50-4.53(e), as well as the following:

(1) A detailed description of the proposed diversion, including the source, location, quantity and/or allocation of water to be diverted; and

(2) A statement of the potential impact of the proposed diversion on the volume of water in the affected HUC-11 watershed that will be available for future diversions.

iii. No application for which notice pursuant to (d)9i or ii above is required shall be deemed complete until proof that the requisite notice that has been given is received.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

Notice of Readoption

Telemarketing: Do Not Call

Readoption: N.J.A.C. 13:45D

Authority: N.J.S.A. 56:8-1 et seq., 56:8-130, and 56:8-134; and P.L. 2015, c. 2.

Authorized By: Cari Fais, Acting Director, Division of Consumer Affairs.

Effective Date: October 27, 2023.

New Expiration Date: October 27, 2030.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 13:45D were scheduled to expire on January 10, 2024. The rules provide procedures for the regulation of telemarketers and facilitate enforcement of New Jersey's Telemarketing Do Not Call Law (Act), N.J.S.A. 56:8-119 et seq.

Subchapter 1 sets forth the purpose and scope of the rules, relevant definitions, and registration fees for telemarketers. Subchapter 2 provides that the New Jersey no telemarketing call list will contain the telephone numbers of New Jersey customers on the Federal Do-Not-Call Registry. Subchapter 3 sets forth the registration requirements for telemarketers. Subchapter 4 addresses prohibited activities and the penalties that may be assessed for a violation of the provisions of N.J.A.C. 13:45D. Subchapter 5 provides the manner by which customers may register for the no telemarketing call list and how a customer may have their telephone number removed from the list.

The Director of the Division of Consumer Affairs has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required pursuant to Executive Order No. 66 (1978). Therefore, pursuant to N.J.S.A. 45:914B-13, and in accordance with N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.