

CHAPTER 19

WATER SUPPLY ALLOCATION PERMITS

Authority

N.J.S.A. 58:1A-1 et seq., 58:2-1 et seq., 58:4A-4 et seq., 58:11-59 et seq., and 58:12A-1 et seq.

Source and Effective Date

R.2000 d.105, effective February 23, 2000.
See: 31 N.J.R. 3893(a), 32 N.J.R. 1013(a).

Executive Order No. 66(1978) Expiration Date

The expiration date of Chapter 19, Water Supply Allocation Permits, was extended by gubernatorial directive from February 23, 2005 to February 23, 2006. See: 37 N.J.R. 589(b).

Chapter Historical Note

Chapter 19, Water Supply Allocation Permits, was adopted as R.1981 d.488, effective January 4, 1982. See: 13 N.J.R. 639(a), 14 N.J.R. 42(a).

Subchapter 3, Fee Schedule for Water Supply Allocation Permits, was adopted as R.1982 d.239, effective August 2, 1982. See: 14 N.J.R. 459(a), 14 N.J.R. 834(f). Pursuant to Executive Order No. 66 (1978), Subchapter 3 expired on August 1, 1985.

Subchapter 4, Procedures for Determining, Assessing and Collecting Payments for Water Diversion, was adopted as R.1983 d.400, effective September 19, 1983. See: 15 N.J.R. 276(a), 15 N.J.R. 1577(a).

Subchapter 6, Water Supply Management Act Rules, was adopted as R.1985 d.133, effective March 18, 1985. See: 16 N.J.R. 2399(a), 17 N.J.R. 687(c).

Subchapter 5, Small Water Company Takeover Act Regulations, was adopted as R.1985 d.182, effective April 15, 1985. See: 16 N.J.R. 3380(a), 17 N.J.R. 910(a).

Subchapter 3, Permit Fees, was adopted as new rules by R.1986 d.263, effective July 7, 1986. See: 18 N.J.R. 789(a), 18 N.J.R. 1376(a).

Pursuant to Executive Order No. 66 (1978), Chapter 19, Water Supply Allocation Permits, was readopted as R.1990 d.180, effective February 26, 1990. See: 21 N.J.R. 3594(a), 22 N.J.R. 932(a).

Pursuant to Executive Order No. 66 (1978), Chapter 19, Water Supply Allocation Permits, was readopted as R.1995 d.162, effective February 24, 1994, and Subchapter 8, Areas of Critical Water Supply Concern, was adopted, Subchapter 9, Establishment of Water Surcharge Schedule, was recodified from N.J.A.C. 7:19B-1, Subchapter 10, Powers of the Commissioner During a Water Emergency, was recodified from N.J.A.C. 7:19A-2, Subchapter 11, General Powers of the Department, was recodified from N.J.A.C. 7:19A-3, Subchapter 12, Water Emergency Task Force, was recodified from N.J.A.C. 7:19A-4, Subchapter 13, The Priority-Based Phase System of Water Restrictions, was recodified from N.J.A.C. 7:19A-5, Subchapter 14, Industrial Curtailment Strategy, was recodified from N.J.A.C. 7:19A-6, Subchapter 15, Emergency Water Transfer Pricing, was recodified from N.J.A.C. 7:19A-8, Subchapter 16, Hardship Exemption Procedures, was recodified from N.J.A.C. 7:19A-9, Subchapter 17, Department Orders, was recodified from N.J.A.C. 7:19A-10, and Subchapter 18, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was adopted by R.1995 d.162, effective March 20, 1995. See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

Pursuant to Executive Order No. 66(1978), Chapter 19, Water Supply Allocation Permits, was readopted as R.2000 d.105, effective February 23, 2000. See: Source and Effective Date.

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16. That, where a diversion may exceed the natural replenishment, the permittee may be required to install a monitoring well to document the impacts of the diversion upon the aquifer; and

17. That the Department may require a hydrogeologic test if the new diversion causes impacts which contradict the hydrogeologic information submitted with the permit application.

(b) The permittee shall allow the Department and/or its designated representative to:

1. Enter and inspect any site, building or equipment, or any portion thereof, owned or operated by the permittee, at any time, in order to ascertain compliance or non-compliance with N.J.S.A. 58:1A-1 et seq., 58:4A-4.1 et seq., 58:12A-1 et seq., these rules, or any other agreement or order issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to require the testing of any equipment at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or applicant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

2. The permittee, and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and/or its designated representative in the performance of all aspects of any inspection. This assistance includes allowing the Department and/or its designated representative to accompany the permittee while performing any regulated activity at a particular building or property for the purpose of inspection of those activities. During such inspection by the Department and/or its designated representative, the permittee shall operate equipment under normal routine operating conditions or under such other conditions as may be requested by the Department. The permittee shall, upon request, make available such sampling and measurement equipment to the Department as needed for the purpose of making comparative measurements.

(c) The permittee shall protect each diversion source from vandalism, tampering, and contamination at all times. Department approved protection methods include:

1. Locked well/pump house;
2. Location within a locked, secure fenced area;
3. A locked, secure hatch or cover; and/or
4. 24 hour security at the diversion.

New Rule R.1990 d.180, effective March 19, 1990.
See: 21 N.J.R. 3594(a), 22 N.J.R. 932(a).

Recodified from 7:19-2.16 and amended by R.1995 d.162, effective March 20, 1995.
See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

7:19-2.15 Procedures for the recalling of a permit for modification or revocation

(a) Upon a determination that the permittee has failed to comply with N.J.S.A. 58:1A-1 et seq., 58:4A-4.1 et seq., 58:12A-1 et seq., rules promulgated pursuant to those acts or its permit conditions and/or if there is substantiated evidence that the permittee is adversely affecting others and/or when in the public interest, the Department may recall the permit to determine if revocation or modification is necessary.

(b) Prior to revoking or modifying the permit, the Department shall provide the permittee with notice and a public hearing, if requested, in accordance with the procedure set forth at N.J.A.C. 7:19-2.8.

(c) Between the time the notice of the hearing is published and the hearing is held, the Department shall prepare a fact finding report which details all permit deficiencies and provides recommended solutions. This report shall be presented for comment at the public hearing.

(d) The costs of the hearing shall be paid in accordance with N.J.A.C. 7:19-2.8(f).

(e) The hearing officer shall issue a Hearing Officer's Report in accordance with the procedures set forth at N.J.A.C. 7:19-2.9, and the decision maker shall render a decision in accordance with the procedure set forth at N.J.A.C. 7:19-2.10.

(f) The permittee shall be notified of the Department's decision in accordance with the procedure set forth at N.J.A.C. 7:19-2.11.

(g) A permittee whose permit has been revoked or modified by the Department pursuant to this section may request an adjudicatory hearing in accordance with N.J.A.C. 7:19-2.13.

New Rule R.1990 d.180, effective March 19, 1990.
See: 21 N.J.R. 3594(a), 22 N.J.R. 932(a).
Recodified from 7:19-2.17 and amended by R.1995 d.162, effective March 20, 1995.
See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

7:19-2.16 Permit cancellation

(a) A permittee may request the cancellation of its water supply allocation or temporary dewatering permit as follows:

1. If the permittee's water usage has declined below 100,000 gallons of water per day for more than 30 days in a consecutive 365 day period, the permittee shall submit to the Department a written request for the cancellation of the permit and assignment of a water use registration number in accordance with N.J.A.C. 7:19-2.18.

2. If the permittee does not intend to use a well or wells, the permittee shall submit to the Department a written request for the cancellation of the permit and shall seal any such well in accordance with N.J.A.C. 7:9-9.

3. If the permittee has no current water demand but may use its well in the future, the permittee shall submit to the Department a written request for cancellation of the permit and placement of the well on the Department's list of inactive wells.

New Rule, R.1995 d.162, effective March 20, 1995.
See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

7:19-2.17 Short term water use and dewatering permits-by-rule

(a) Any person intending to divert more than 100,000 gallons of water per day for less than 31 days within a consecutive 365 day period may be authorized for such a diversion under a short term water use permit-by-rule, provided such person:

1. Completes and submits a short term water use permit-by-rule notification on a form provided by the Department, at least 30 days prior to the initiation of the diversion. This form is included in the 1993 Technical Manual for Water Allocation Permits, prepared by and available from the Department in accordance with P.L. 1991, c. 422 (N.J.S.A. 13:1D-111 et seq.), as updated or revised.

2. Repairs or replaces, as necessary, any well or surface water supply system which is damaged or goes dry, has reduced capacity or reduced water quality, or is otherwise rendered unusable as a result of the diversion authorized pursuant to this subsection; and

3. Submits a short term water use report on a form provided by the Department specifying the amount of water diverted each day during the duration of the diversion authorized pursuant to this subsection.

(b) Any person intending to divert more than 100,000 gallons of water per day for construction related dewatering may be authorized for such diversion under a dewatering permit-by-rule if the diversion is from a coffer dam or a confined area where the impacts of dewatering are contained, provided such person:

1. Submits a letter describing the proposed dewatering, its location, and the dewatering methods to be used to the Department at least 30 days prior to the initiation of the diversion; and

2. Repairs or replaces, as necessary, any well or surface water supply system which is damaged or goes dry, has reduced capacity or reduced water quality, or is otherwise rendered unusable as a result of the diversion authorized pursuant to this subsection.

New Rule, R.1995 d.162, effective March 20, 1995.
See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

7:19-2.18 Water use registration requirements

(a) Any person who presently has the capability to divert more than 100,000 gallons of water per day who diverts less than that quantity and who does not have current registration, shall immediately register with the Department on forms provided by the Department. The forms shall be completed in its entirety or the application for registration will be returned so that the applicant can provide any missing information. A site map indicating the location of each diversion source shall also be submitted. Each person who applies for registration shall list in the application the State-assigned well permit numbers pursuant to N.J.S.A. 58:4A-14. Within 20 working days following receipt of the application for registration by the Department, the Department will assign a water use registration number.

(b) Each person with a water use registration shall submit an annual report by January 31 of each year detailing metered monthly water usage for the preceding calendar year on forms provided by the Department.

(c) All diversion sources shall be equipped with totalizing flow meters, which shall be calibrated at least once every five years, within 60 days of assignment of a water use registration number by the Department or within 60 days of completion of a well, whichever occurs last. If the diversion source is used solely for the purpose of fire protection or if the registrant demonstrates to the satisfaction of the Department that the installation of a totalizing flow meter is impractical or unreasonable, the registrant may estimate diversion quantities using an accurate and reasonable method approved by the Department.

New Rule R.1990 d.180, effective March 19, 1990.
See: 21 N.J.R. 3594(a), 22 N.J.R. 932(a).
Amended by R.1995 d.162, effective March 20, 1995.
See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

7:19-2.19 (Reserved)

New Rule R.1990 d.180, effective March 19, 1990.
See: 21 N.J.R. 3594(a), 22 N.J.R. 932(a).
Repealed by R.1995 d.162, effective March 20, 1995.
See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).
Formerly "Inactive wells".

7:19-2.20 (Reserved)

New Rule R.1990 d.180, effective March 19, 1990.
See: 21 N.J.R. 3594(a), 22 N.J.R. 932(a).
Repealed by R.1995 d.162, effective March 20, 1995.
See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).
Formerly "Signatories".

SUBCHAPTER 3. FEE SCHEDULE FOR WATER SUPPLY ALLOCATION PERMITS

7:19-3.1 Scope and authority

This subchapter shall constitute the rules governing the establishment of a water allocation permit fee schedule as mandated by Section 11 of the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

7:19-3.2 Purpose

The purpose of this subchapter is to establish fees for the water allocation program set forth in N.J.A.C. 7:19-1 and 2 based upon and not to exceed the estimated cost of processing, monitoring, administering and enforcing water supply allocation and temporary dewatering permits. The fee schedule shall be annually reviewed with respect to any changes in the costs of processing, monitoring, administering and enforcing water supply allocation and temporary dewatering permits. The expenses of public hearings to be charged to applicants by the Department pursuant to N.J.A.C. 7:19-2.8(f) shall not be included in the calculations of the fee schedule set forth in this subchapter.

Amended by R.1990 d.180, effective March 19, 1990.

See: 21 N.J.R. 3594(a), 22 N.J.R. 932(a).

Stylistic changes.

Amended by R.1995 d.162, effective March 20, 1995.

See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

7:19-3.3 Applicability

This subchapter shall be applicable to all those persons as set forth in N.J.A.C. 7:19-1.4.

Recodified from 7:19-3.4 by R.1995 d.162, effective March 20, 1995.

See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

Prior text at 7:19-3.3, Definitions, repealed.

7:19-3.4 Establishment of fee schedule

The Department shall review the fee schedules set forth in this subchapter prior to September 1 of each year. The figures will be adjusted up or down annually by the previous 12 month inflation factor. The inflation factor is based upon the United States Department of Labor, Bureau of Labor Statistics data published in the monthly CPI Detailed Report. The data will be taken from the most recent report available on July 1 of each year and the actual percentage used will be the past year percent change for the U.S. city average, all items, all urban consumers.

Amended by R.1990 d.180, effective March 19, 1990.

See: 21 N.J.R. 3594(a), 22 N.J.R. 932(a).

Method of adjustment of fee schedule specified.

Recodified from 7:19-3.5 by R.1995 d.162, effective March 20, 1995.

See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

7:19-3.5 Fees for Water Allocation Permits

(a) All applicable fees shall be paid in accordance with the fee schedule established in N.J.A.C. 7:19-3.6. Any person who applies for a new permit or to modify an existing permit shall submit along with the application, the applicable initial or modification fee set forth in N.J.A.C. 7:19-3.6 based on the class of the allocation, listed in (d) below.

(b) Each applicant for a new permit or a major modification of a permit shall pay the appropriate annual fee upon issuance of the permit or modification as follows:

1. The total annual fee, if the application is approved during the first quarter of the calendar year;

2. Three-quarters of the annual fee, if the application is approved during the second quarter of the calendar year;

3. One-half of the annual fee, if the application is approved during the third quarter of the calendar year;

4. One-quarter of the annual fee, if the application is approved during the fourth quarter of the calendar year.

(c) Any applicant who fails to complete necessary forms, fails to comply with other permit application requirements or who fails to provide information within the time frame(s) established by the Department, shall pay the annual fees which would have been due if the forms, information and application had been completed in a timely manner, except where the Department grants an extension of time prior to an associated due date.

(d) An applicant for a permit shall be placed in the appropriate class below based on the size of the allocation approved in terms of a daily average, based upon a 31 day month:

1. Class 1: 0.1 mgd to less than 0.5 mgd;
2. Class 2: 0.5 mgd to less than 1.0 mgd;
3. Class 3: 1.0 mgd to less than 2.0 mgd;
4. Class 4: 2.0 mgd to less than 5.0 mgd;
5. Class 5: 5.0 mgd to less than 10.0 mgd; and
6. Class 6: 10.0 mgd and above.

(e) For the purpose of assessing fees under this subchapter, if any ground water diversion in excess of 100,000 gallons per day is included in a permit, the fee for the permit shall be computed using the ground water schedule for the total monthly allocation for all sources within the scope of the permit. A diversion from a pond fed primarily by ground water is considered a ground water diversion.

(f) Any hearing costs shall be paid in full upon issuance of the permit. If the application has been withdrawn after the public hearing or if the application is denied, the hearing costs shall be paid by the specified due date of the bill.

(g) If a water supply allocation permit application is withdrawn after the notice of application has been published, the applicant shall be responsible for payment of the cost of publication of the notice.

(h) Any fee under this subchapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

Amended by R.1990 d.180, effective March 19, 1990.

See: 21 N.J.R. 3594(a), 22 N.J.R. 932(a), N.J.R.

Fee due at time application is submitted; refund provision added. Recodified from 7:19-3.8 and amended by R.1995 d.162, effective March 20, 1995.

See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).
Amended by R.1995 d. 205, effective April 17, 1995.
See: 26 N.J.R. 3922(a), 27 N.J.R. 1576(b).

7:19-3.6 Fee schedule

(a) Fees shall be charged for permits, as applicable, pursuant to the following schedules:

Water Allocation Permit Fee Schedule

	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6
1. Initial fees:						
i. Surface water diversions	\$2220	\$2500	\$3225	\$5560	\$6075	\$6590
ii. Ground water diversions	\$2780	\$3120	\$4030	\$6950	\$7570	\$8085
iii. Ground and surface water diversions in which waters are returned undiminished to the source	\$1325	\$1775	\$2220	\$2670	\$3080	\$3495
iv. Dewatering diversions	\$2700	\$2700	\$2700	\$6900	\$6900	\$6900
2. Modification fees:						
i. Surface water diversions	\$1030	\$1165	\$1505	\$2595	\$3110	\$3625
ii. Ground water diversions	\$1295	\$1455	\$1875	\$3240	\$3755	\$4270
iii. Ground and surface water diversions in which waters are returned undiminished to the source	\$ 615	\$ 825	\$1140	\$1245	\$1345	\$1450
iv. Dewatering diversions	\$1200	\$1200	\$1200	\$3200	\$3200	\$3200
3. Annual fees:						
i. Surface water diversions	\$1070	\$1255	\$2150	\$3705	\$4735	\$5765
ii. Ground water diversions	\$1440	\$1665	\$2685	\$4635	\$5665	\$6695
iii. Ground and surface water diversions in which waters are returned undiminished to the source	\$ 470	\$ 770	\$1480	\$1780	\$2080	\$2375
iv. Dewatering diversions	\$1400	\$1400	\$1400	\$4600	\$4600	\$4600

Amended by R.1990 d.180, effective March 19, 1990.

See: 21 N.J.R. 3594(a), 22 N.J.R. 932(a).

Fee schedule changed; (c) and (e) deleted; (f), (g) and (h) added.
Public Notice: Revision to the fee schedule for water supply allocation permits.

See: 24 N.J.R. 4121(a).

Recodified from 7:19-3.9 and amended by R.1995 d.162, effective March 20, 1995.

See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

Prior text at 7:19-3.6, Payment of annual permit fee, repealed.

7:19-3.7 Payment of annual fee

(a) The Department will send to each permittee an invoice for the next subsequent calendar year's annual fee by December 31 of each calendar year.

(b) Each permittee shall remit the annual fee by March 1 of the calendar year for which the fee is due.

(c) Payments shall be by check or money order made payable to "Treasurer, State of New Jersey," and mailed, with the invoice, by the due date set forth in (a) above to:

Bureau of Revenue
CN 417
Trenton, New Jersey 08625

(d) For each permit issued, the Department will send the permittee an invoice for the applicable annual fee for the remainder of the year in which the permit is issued pursuant to N.J.A.C. 7:19-3.5(b). Payment shall be made by the due date specified in the invoice.

Repeal and New Rule, R.1995 d.162, effective March 20, 1995.
See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

Formerly "Failure to submit the annual permit fee payment in a timely manner".

7:19-3.8 Failure to timely submit the annual fee payment

Failure to pay the annual fee by the due date established pursuant to N.J.A.C. 7:19-3.7 shall be considered a violation of the Act subject to the penalty provisions of N.J.A.C. 7:19-18. The Department shall deem such failure to pay the annual fee a voluntary termination and surrender of the permit by the permittee. Any permittee who fails to pay their annual fee by the established due date shall terminate all diversion activity as of the established due date.

New Rule, R.1995 d.162, effective March 20, 1995.

See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

SUBCHAPTER 4. PROCEDURES FOR DETERMINING, ASSESSING AND COLLECTING PAYMENTS FOR EXCESS WATER DIVERSION

7:19-4.1 Scope and authority

This subchapter shall constitute the Department's procedural rules for determining, assessing and collecting the payments required by N.J.S.A. 58:2-1 et seq. for the diversion of waters of streams or lakes for the purpose of public water supply and the procedures for payment for subsurface, well or percolating water supplies obtained by use of the State's right of eminent domain.

7:19-4.2 Construction

(a) These rules shall be liberally construed to permit the Department to discharge its statutory functions pursuant to N.J.S.A. 58:2-1 et seq.

(b) The Commissioner may amend, repeal or rescind this subchapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:19-4.3 Applicability

(a) These rules apply to all persons who divert waters of streams or lakes with outlets for the purpose of public water supply and who divert a total amount in excess of 100 gallons of water daily for each inhabitant of the municipality or municipalities supplied, as shown by the census of 1905, or in excess of such greater amount legally diverted on June 17, 1907.

(b) These rules apply to diversions from wells or ponds fed mostly from percolating groundwaters, where those waters are diverted from sources of supply which were obtained by exercising the State's right of eminent domain.