

CHAPTER 20A

STANDARDS AND PROCEDURES FOR ESTABLISHING PRIVILEGES TO DIVERT WATER AND FOR OBTAINING WATER USAGE CERTIFICATIONS FOR AGRICULTURAL OR HORTICULTURAL PURPOSES

Authority

N.J.S.A. 13:1B-3, 13:1D-9 and 58:1A-1 et seq.

Source and Effective Date

R.1994 d.12, effective December 8, 1993.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

Executive Order No. 66(1978) Expiration Date

Chapter 20A expires on December 8, 1998.

Chapter Historical Note

All provisions of Chapter 20A became effective December 19, 1983 as R.1983 d.562. See: 14 N.J.R. 1249(a), 15 N.J.R. 2154(b).

1984 Revisions: New rules 2.2, 2.7 through 2.9 and amendments to sections 2.10, 2.19, 2.21 and 2.22 became effective April 2, 1984 as R.1984 d.107. See: 15 N.J.R. 2122(a), 16 N.J.R. 719(a).

Pursuant to Executive Order No. 66(1978), Chapter 20A was re-adopted as R.1989 d.36, effective December 16, 1988. See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).

Pursuant to Executive Order No. 66(1978), Chapter 20A was re-adopted as R.1994 d.12. See: Source and Effective Date. Subchapter 3, Water Use Registration Procedure, was adopted as a part of R.1994 d.12, effective January 3, 1994. See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c). See, also, section annotations for specific rulemaking activity.

Cross References

Flood control, irrigation head gates along watercourse banks, see N.J.A.C. § 7:13-1.3.

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SUBCHAPTER 1. GENERAL PROVISIONS

7:20A-1.1 Scope and authority

This chapter shall constitute rules governing water usage certifications for agricultural and horticultural purposes pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. This chapter establishes the schedule that persons having the capability to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes shall follow to establish their privilege to divert water and prescribes the application, review, notification and hearing procedures for establishing privileges to divert water and to obtain water usage certifications and/or registrations.

Amended by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-1.2 Construction

(a) This chapter shall be liberally construed to implement the statutory functions pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

(b) This chapter may be amended, repealed, or rescinded from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as amended and supplemented, and the Office of Administrative Law's Rules for Agency Rulemaking, N.J.A.C. 1:30.

(c) Any agricultural or horticultural uses of water in the State of New Jersey will be presumed to be in the public interest for the purpose of this chapter.

7:20A-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Act” means the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

“Agricultural or horticultural purposes” means the commercial activity of producing principally for sale crops, plants, animals or their products for the use or consumption by man including in a primary sense the growing, harvesting, storage and the on-farm preparation for use and marketing of crops, plants, animals or their products.

“Agricultural water use registration” or “water use registration” means the document submitted to and processed by the county agricultural agent by persons having the capability to divert more than 100,000 gallons of water per day but using less than said quantity for agricultural or horticultural purposes.

“Applicant” means any person filing or required to file an application for a water usage certification or water use registration to establish a privilege to divert water pursuant to this chapter or the Act. An applicant may be the owner or operator of property or a person leasing property for agricultural or horticultural purposes.

“Aquifer” means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

“Capability to divert 100,000 gallons of water per day” means having the equipment or diversion structure with the hydraulic capacity to pump or divert 100,000 gallons per day of ground and/or surface water; for pumping equipment, the hydraulic capacity is equivalent to 70 gallons per minute.

“Commissioner” means the Commissioner of the Department of Environmental Protection and Energy or his or her designated representative.

“Cone of depression” means an area where the groundwater has been drawn down to the point where the aquifer to be utilized is overstressed, threatened by saline intrusion or in a critical water supply area.

“County agricultural agent” or “appropriate county agricultural agent” or “agent” means the faculty member so designated by the Rutgers Cooperative Extension at the New Jersey Agricultural Experiment Station in each of the respective counties.

“Decision maker” means the person designated by the Department to make recommendations to the appropriate county agricultural agent on applications for water usage certifications and claims of privileges to divert water.

“Department” means the New Jersey Department of Environmental Protection and Energy.

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

“Modification” means a change to a certification including, but not limited to, an increase in certification amount, the addition of a new source, or an increase in pump capacity of an existing source.

“Person” means any individual, corporation, company, partnership, firm, association, owner or operator of an enterprise engaged in agricultural or horticultural purposes;

“Replacement well” means a new well that is to replace an existing well which will be sealed in accordance with N.J.A.C. 7:9-9 and where the proposed well will be approximately the same depth as the existing well and diverting from the same aquifer; have the same or lesser pump capacity; and be within 100 feet of the existing well.

“Water” means any surface water or groundwater in the State.

“Water supply allocation permit” means the permit issued by the Department to a person granting that person the privilege, so long as the person complies with the conditions of the permit, to divert 100,000 or more gallons of water per day for any purpose other than agricultural or horticultural purposes.

“Water supply critical aquifer” means an aquifer within a water supply critical area where there may be either insufficient water supply, shortage of groundwater by overdraft, threat of saltwater intrusion or contamination, or where other circumstances exist requiring the Department to impose special water supply management provisions by rule under N.J.A.C. 7:19-6.10.

“Water supply critical area” or “critical area” means a water supply area in which it is determined by the Department, after public notice and a public hearing, that adverse conditions exist, related to the ground or surface water, which require special measures in order to achieve the objectives of the Act.

“Water usage certification” or “Certification” means the document issued by a county agricultural agent pursuant to this chapter to a person granting that person the privilege to divert 100,000 gallons or more of water per day from ground and surface water sources for agricultural or horticultural purposes for a five-year period.

Amended by R.1984 d.107, effective April 2, 1984.

See: 15 N.J.R. 2122(a), 16 N.J.R. 719(a).

“Coastal Plain”, “Critical water supply usage area”, and “Pinelands area” defined.

Amended by R.1989 d.36, effective January 17, 1989.

See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).

Added “Aquifer”, “Critical aquifer”, “Modification”; deleted “Coastal Plain”.

Amended by R.1994 d.12, effective January 3, 1994.

See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-1.4 Applicability

(a) This chapter applies to all persons who have been issued a water usage certification, or to other persons who are diverting, have the ability to divert or claim the right to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes, and to all persons who in the future wish to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes except as specified below:

1. This chapter does not apply to persons who divert salt water except where the Department determines that salt water diversion and usage may affect the utilization of fresh water.

2. Water usage certifications shall not be required for a person diverting water from a purveyor or for transfers from a water purveyor within the scope of an existing water usage certification. Modification of a certification shall be required for diversions or transfers of water from certified or permitted usage to another use not within the scope of an existing water usage certification regardless of the same or different ownership of the property.

3. This chapter does not apply to persons who make emergency diversions of water for periods of less than 31 days. An emergency diversion includes the taking of water for the purpose of fire fighting, flood prevention, hazardous substance and/or waste spill response, or for other emergency purposes as determined by the Department. In all cases of emergency diversion, the person responsible for the diversion shall contact the Department within 48 hours of initiation of the emergency diversion. If the emergency diversion is expected to continue for 31 days or more, then the person initiating the emergency diversion shall apply for a water supply allocation permit or water usage certification, as appropriate, within 30 days after initiating the emergency diversion.

4. An applicant with a total demand of 100,000 or more gallons of water per day may be issued a water diversion allocation from ground or surface water sources by a single water usage certification in cases where:

i. The agricultural or horticultural site or group of properties under common ownership or management are contiguous to each other;

ii. The non-contiguous agricultural or horticultural site or group of properties under common ownership or management are all located within the same municipality; or

iii. The non-contiguous agricultural or horticultural site or group of properties under common ownership or management lie within an area of a square two miles on a side.

5. An application for a modification of a water usage certification, as provided for under N.J.A.C. 7:20-2.5(b), is not required for the installation of a replacement well included in an existing water usage certification.

i. Prior to the installation of the replacement well, the holder of the existing water usage certification shall provide the following information to the appropriate county agricultural agent for the replacement well and the existing well:

(1) Location;

(2) Pump capacity and depth; and

(3) Well permit number and local name or number.

ii. The holder of the water usage certification shall submit a copy of the well abandonment report for the existing well to the county agricultural agent within 30 days of installation of the replacement well. The existing well shall be sealed in accordance with N.J.A.C. 7:9-9.

iii. The county agricultural agent shall submit to the Department the information required under (a)5i and ii above within 60 days after the installation of the replacement well.

Amended by R.1989 d.36, effective January 17, 1989.

See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).

Deleted “Water Policy and Supply Council permits”.

Amended by R.1994 d.12, effective January 3, 1994.

See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-1.5 Schedule for applying for water usage certifications and establishing privileges to divert water

(a) Any person who intends to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes shall apply for a water usage certification by following the application procedures set forth in N.J.A.C. 7:20A-2.

(b) Any person who intends to divert less than 100,000 gallons of water per day for agricultural or horticultural purposes, but who has the capability to divert 100,000 gallons of water per day or more, shall register the diversion

source in accordance with the procedures set forth in N.J.A.C. 7:20A-3.3.

Amended by R.1989 d.36, effective January 17, 1989.
See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).

Deleted (a) and (b); recodified (c) to (a).
Amended by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-1.6 Calculation of gallons of water per day used for agricultural or horticultural purposes; penalty provision

(a) For the purpose of this chapter, the applicant shall be considered to have diverted 100,000 or more gallons of water per day for agricultural or horticultural purposes if the applicant proposes to divert or existing documentation establishes that the applicant's proposed or actual total gallons of water diverted for agricultural or horticultural uses during the maximum month for usage in the most recent calendar year, when divided by the total number of days in the measuring month produces a figure of 100,000 or more gallons of water per day.

(b) Any person who fails to comply with this chapter or the Act shall be subject to the penalty provisions set forth in N.J.S.A. 58:1A-16 and N.J.A.C. 7:14-8.

Amended by R.1989 d.36, effective January 17, 1989.
See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).
Substituted "N.J.S.A. 58:1A-16" for "Section 16 of the Act".

7:20A-1.7 Procedure after transfer of ownership or operation of agricultural or horticultural property with existing water usage certification

(a) A certification for any property utilized for agricultural or horticultural purposes under an existing water usage certification, which has been transferred in ownership or operation without any change or modification in the specified conditions of water usage for agricultural or horticultural purposes, may be transferred upon application by the new owner or operator to the appropriate county agricultural agent for such a transfer of the existing water usage certification except that:

1. If any change in the specified conditions of water usage or property utilization for agricultural or horticultural purposes occurs prior to or subsequent to the transfer of ownership or operation, then the application process for new water usage certifications outlined in N.J.A.C. 7:20A-2 shall be followed by the new owner or operator of the property.

2. If the new owner or operator of the property does not apply for the privilege to transfer the existing water usage certification within 180 days after the transfer of ownership or operation, then the privilege of the new owner or operator to divert water under the existing water usage certification shall cease and will have to follow the procedures set forth in N.J.A.C. 7:20A-2 to establish their privilege to divert water.

7:20A-1.8 Complaints of interference

(a) The appropriate county agricultural agent shall refer to the Department all complaints received from persons alleging that their diversion source is being adversely impacted by an existing diversion source which is included within a water usage certification.

(b) All complaints shall be made in writing and shall include:

1. The location of the involved wells or intakes;
2. The nature and frequency of interference; and
3. The well drilling permit number, well depth and capacity for each of the complainant's wells.

(c) The Department shall investigate and determine the validity of all such complaints.

New Rule, R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-1.9 Program information

Unless otherwise specified, any questions concerning the requirements of N.J.A.C. 7:20A-1 and 2 shall be directed to the appropriate county agricultural agent, or to the Bureau of Water Allocation, Water Supply Element, New Jersey Department of Environmental Protection and Energy, CN 426, Trenton, New Jersey 08625.

Amended by R.1989 d.36, effective January 17, 1989.
See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).

Changed title to Bureau of Water Allocation, Water Supply Element.
Recodified from 7:20A-1.8 and amended by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-1.10 Severability

If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Recodified from 7:20A-1.9 by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

SUBCHAPTER 2. WATER USAGE CERTIFICATION PROCEDURE

7:20A-2.1 Scope

This subchapter prescribes the procedures which shall be followed by applicants, county agricultural agents, and the Department when applying for and in the processing of applications for water usage certifications to establish a privilege to divert water.

7:20A-2.2 Information and reports

(a) The Department and the appropriate county agriculture agent shall maintain a record of all existing water usage certifications for agricultural or horticultural purposes.

(b) The record required pursuant to (a) above shall include the following information:

1. Name and address of existing certification holders;
2. Amount of water permitted to be diverted;
3. Dates for the term of the certification;
4. Whether location of the existing certification is within a water supply critical area; and
5. Other information deemed necessary by the Department.

(c) Copies of the existing certification documents will be provided to the appropriate county agricultural agent upon a request to the Department.

(d) The appropriate county agricultural agent shall concurrently upon issuance of any water usage certification issued pursuant to this chapter provide the Bureau of Water Allocation of the Department with a copy of the water usage certification.

(e) The appropriate county agricultural agent shall include as standard conditions in all water usage certifications issued pursuant to this chapter the following information to be annually prepared and submitted to the appropriate county agricultural agent:

1. An accounting of monthly water usage for each calendar year by February 28 of the following year; and
2. All other information deemed necessary by the appropriate county agricultural agent.

R.1984 d.107, effective April 2, 1984.

See: 15 N.J.R. 2122(a), 16 N.J.R. 719(a).

Section was "Reserved".

Amended by R.1989 d.36, effective January 17, 1989.

See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).

Substantially amended.

Amended by R.1994 d.12, effective January 3, 1994.

See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.3 General application procedures

(a) The Department will provide the current application forms required for water usage certification to all county agricultural agents.

(b) An applicant for a water usage certification to establish a privilege to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes shall contact the appropriate county agricultural agent to obtain application forms and other instructions needed to file a complete application.

(c) The applicant shall follow all the instructions to complete the application forms, and shall obtain and prepare all other documents required by the instructions and submit the completed applications and other documents to the appropriate county agricultural agent.

(d) All applications shall be signed by the applicant if an individual, or a duly authorized representative of the applicant if the applicant is an entity other than an individual. If the applicant is not an individual, a certified copy of the document authorizing the representative to sign for the applicant shall be attached to the application.

Amended by R.1989 d.36, effective January 17, 1989.

See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).

Repealed old (a) and inserted new.

7:20A-2.4 Standards and procedures for approval of water usage certifications

(a) In general, an applicant for a water usage certification shall provide all information reasonably available which establishes that the application complies with the standards and procedures as follows:

1. The plans proposed are in the public interest, and provide for the proper and safe construction of structures connected therewith;
2. Diversion of the quantity of water requested shall not unduly interfere with other existing or proposed diversions;
3. Diversion normally shall not exceed the natural replenishment or safe yield of the water resources or threaten to exhaust such waters or to render them unfit for use, for any cause;
4. The plans for the proposed diversion are just and equitable to the other known water users affected thereby, and the withdrawal from the aquifer does not adversely affect other permitted withdrawals. Such known water users shall be identified and located on a United States Geological Survey Quadrangle Map; and
5. The proposed diversion will not reduce the dry season flow of any stream so as to adversely affect sanitary conditions downstream or otherwise unduly injure public or private interests; or
6. In the case of groundwater only, the proposed diversion does not lie within a cone of depression where the aquifer to be utilized is overstressed or threatened by saline intrusion, the location of the proposed diversion relative to hazardous waste disposal sites or other major sources of pollution is not likely to cause or spread groundwater contamination, and the diversion will not interfere with any groundwater contamination clean-up plans or activity.

(b) Applications for renewal of existing certifications shall supply information not previously established in the existing certification, any information relevant to proposed changes

in certification conditions, and other information as requested by the appropriate county agricultural agent or the Department for the proper implementation of the Act and this chapter.

(c) The appropriate county agricultural agent shall review the application and make a determination concerning the accuracy of information submitted pursuant to (a) and (b) above, and based on the appropriate county agricultural agent's actual knowledge of the agriculture and horticulture in the area of the proposed diversion.

(d) If based upon the appropriate county agricultural agent's actual knowledge, the information submitted is insufficient to indicate compliance with (a) and (b) above, the appropriate agricultural agent in consultation with the Department shall request additional information or consideration by the applicant of some more suitable alternative source of water.

Amended by R.1989 d.36, effective January 17, 1989.
See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).

(a)5 added "downstream"; in (b) deleted "permit".
Amended by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.5 Applications for renewal or modification of existing water usage certifications

(a) An application for renewal of an existing water usage certification shall be filed at least three months prior to the expiration date in accordance with the procedures set forth in N.J.A.C. 7:20A-2.3.

(b) All applications for modification to an existing water usage certification shall be processed in accordance with the procedures set forth in this subchapter.

Amended by R.1989 d.36, effective January 17, 1989.
See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).
Repealed old text and substituted new.

7:20A-2.6 Preliminary application review

(a) (Reserved)

(b) If the application is insufficient, incomplete, or prepared improperly, the applicant shall be so advised and instructed by the appropriate county agricultural agent as to what steps must be taken to make the application acceptable.

7:20A-2.7 Extension of existing certification: privileges allowed pursuant to other lawful legislative or administrative actions by county agricultural agent

(a) The appropriate county agricultural agent shall consult the record established pursuant to N.J.A.C. 7:20A-2.2(a) above to determine if an application requests an extension of an existing certification or privileges previously allowed pursuant to other lawful legislative or administrative actions under the same conditions as previously allowed.

(b) If an application requests an extension of the existing certification or privileges previously allowed pursuant to other lawful legislative or administrative actions under the same conditions as previously allowed and the applicant does not request an increase in the amount of water diverted or any modification of the existing certification, the appropriate county agricultural agent may directly issue a new five year certification under the previous conditions plus any additional conditions deemed necessary by the appropriate county agricultural agent or the Department without public notice as set forth in N.J.A.C. 7:20A-2.8(b) below.

(c) N.J.A.C. 7:20A-2.7(a) and (b) shall not apply to diversions located within any designated water supply critical area.

(d) Any certification which has an approved diversion amount of less than 15.5 million gallons per month and which expires in 1994 or 1995 is extended for a period of two years to 1996 or 1997, respectively.

R.1984 d.107, effective April 2, 1984.
See: 15 N.J.R. 2122(a), 16 N.J.R. 719(a).
Section was "Reserved".
Amended by R.1989 d.36, effective January 17, 1989.
See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).
Deleted "Water Policy and Supply Council permits".
Amended by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.8 Opportunity to review application by interested parties

(a) Copies of the application may be reviewed by interested parties at the offices of the county agricultural agent.

(b) The applicant, with assistance from the county agricultural agent, shall have a notice of the application published in a newspaper circulating in the area affected by the application within 30 days of the application being deemed complete. A notice is not required for a renewal without modification.

1. The notice shall be published for one day per week for two weeks and shall summarize the application, including the diversion sources and location.

2. The cost of publishing the notice of the application shall be paid by the applicant.

R.1984 d.107, effective April 2, 1984.
See: 15 N.J.R. 2122(a), 16 N.J.R. 719(a).
Section was "Reserved".
Amended by R.1989 d.36, effective January 17, 1989.
See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).
(b) substantially amended and (b)3 repealed.
Amended by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.9 Verification of agricultural water need and determination of appropriate processing for application

(a) The county agricultural agent shall verify the need for the water usage requested for any application submitted and make a determination whether the application for a water usage certification describes and includes the proposed diversion as follows:

1. Within a water supply critical aquifer in a water supply critical area; or
2. When objections have been filed concerning an application with the appropriate county agricultural agent.

(b) If the application for a water usage certification concerns (a)1 or 2 above, the application shall be processed pursuant to N.J.A.C. 7:20A-2.8 and 2.10.

(c) An application not governed by (a)1 or 2 above, or an application for renewal of an existing water usage certification may be directly approved or disapproved by the appropriate county agricultural agent without any further processing, pursuant to the standards and procedures for approval of certifications set forth at N.J.A.C. 7:20A-2.4 and subject to the public notice provisions of N.J.A.C. 7:20A-2.8, and shall include conditions deemed necessary by the appropriate county agricultural agent or the Department.

(d) All other applications for a water usage certification not governed by this section shall be processed pursuant to N.J.A.C. 7:20A-2.8 and 2.10.

R.1984 d.107, effective April 2, 1984.

See: 15 N.J.R. 2122(a), 16 N.J.R. 719(a).

Section was "Reserved".

Amended by R.1989 d.36, effective January 17, 1989.

See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).

Substantially amended.

Amended by R.1994 d.12, effective January 3, 1994.

See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.10 Applications referred to the Department

(a) The appropriate county agricultural agent shall forward verification of an applicant's need for the water usage requested and the following information to the Bureau of Water Allocation in the Department for any application governed by N.J.A.C. 7:20A-2.9(b), and (d) above:

1. The county agricultural agent shall also promptly forward to the Department copies of any written objections to the application from any interested parties.
2. The appropriate county agricultural agent shall forward the application and all other relevant data to the Department's Bureau of Water Allocation for evaluation and review of the application's compliance with the standards and procedures set forth in N.J.A.C. 7:20A-2.4.

(b) The Department's Bureau of Water Allocation shall review and evaluate the application and verification of the

need for the water usage and complete the following activities:

1. Enter information concerning the application into official Department records;
2. Review the application and all other relevant data;
3. Check relationship to sources of possible pollution of the proposed water usage certification;
4. Check relationship to nearby wells, ponds and other water supplies for possible interference; and
5. Prepare a written analysis that all plans and specifications have been recommended for approval or disapproval.

(c) If no written objection from any interested parties concerning the application for a water usage certification has been received by the county agricultural agent and no written objections are made during the Department's Bureau of Water Allocation review process, and the application complies with the standards and procedures set forth in this chapter, then the Department's Bureau of Water Allocation shall:

1. Draft the necessary water usage certification, including any conditions it deems necessary, and obtain approval of the Department's designated decision maker; and
2. Recommend that the appropriate county agricultural agent issue the water usage certification drafted by the Department's Bureau of Water Allocation and based upon the standards and procedures set forth in this chapter.

(d) If objections exist to the application from any source, the procedures outlined in N.J.A.C. 7:20A-2.11 shall be followed.

Amended by R.1984 d.107, effective April 2, 1984.

See: 15 N.J.R. 2122(a), 16 N.J.R. 719(a).

(a) only added: (a)1 and 2 were adopted previously.

See: 15 N.J.R. 2154(b).

Amended by R.1989 d.36, effective January 17, 1989.

See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).

Added "Bureau" and deleted "Office".

Amended by R.1994 d.12, effective January 3, 1994.

See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.11 Advisory Panel

(a) If objections are made concerning an application for a water usage certification by the Department or any interested parties, then the appropriate county agricultural agent shall convene an informal Advisory Panel which shall consist of the designated representative of the Commissioner of the Department of Environmental Protection and Energy, the designated representative of the Secretary of Agriculture, and the designated representative of the Dean of Cook College. The Advisory Panel shall have the following duties:

1. Schedule an informal meeting with the applicant, the Department, the appropriate county agricultural agent, and interested parties who have submitted written objections to the application to the agricultural agent or the Department.

2. Attempt to settle the dispute by encouraging communications, negotiation and agreement between the parties involved to encourage resolution of the issues relating to the various objections.

3. If an agreement satisfactory to all parties can be made through the good offices of the Advisory Panel, the Advisory Panel shall prepare a report outlining the suggested settlement to the Department, recommending approval of the suggested settlement by the appropriate county agricultural agent.

i. The appropriate county agricultural agent may then issue a water usage certification, drafted by the Department, based upon the recommendation of the Advisory Panel and including any other conditions deemed necessary by the Department.

4. If the Advisory Panel determines that the objections concerning an application for a water usage certification are without merit or frivolous in nature or are not related to the use of water or the impacts of the use of water, the Advisory Panel shall include in its report that the application for a water usage certification be approved or disapproved without utilization of the public hearing process set forth at N.J.A.C. 7:20A-2.12. If the Department concurs with this recommendation of the Advisory Panel, the Department shall recommend that the appropriate county agricultural agent issue either a water usage certification, drafted by the Department, or a letter of denial for the application for a water usage certification. All persons presenting objections before the Advisory Panel shall receive from the county agricultural agent a copy of either the water usage certification or the letter of denial for the purposes of future actions pursuant to N.J.A.C. 7:20A-2.20.

(b) If no resolution can be achieved by the Advisory Panel or if the Advisory Panel determines that the objections have merit and are not frivolous in nature pursuant to (a)4 above, then the public hearing process outlined in this subchapter shall be followed.

Amended by R.1984 d.107, effective April 2, 1984.

See: 15 N.J.R. 2122(a), 16 N.J.R. 719(a).

(a)4 and (b) added.

Amended by R.1994 d.12, effective January 3, 1994.

See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.12 Notice of public hearing requirements

(a) When a public hearing on a water usage certification is required pursuant to N.J.A.C. 7:20A-2.11(b), or the appropriate county agricultural agent or the Department determines that a public hearing is required in the public interest, the Department shall:

1. Set a date for a public hearing;

2. Have a notice of the public hearing published one time in a newspaper circulating in the area affected by the application at least 30 days prior to the scheduled hearing.

i. If the Department determines that an emergency or other similar circumstance requires an expedited hearing, the notice of the hearing need only be published in a local newspaper at least 14 days prior to the scheduled hearing.

3. Notify, in writing, the applicant, the governing bodies of municipalities and counties and the water supply allocation permit and water usage certification holders within a one-mile radius of the diversion, and the officials of existing public water systems within a five-mile radius of the proposed diversion.

(b) The notice for the public hearing shall contain:

1. A description of the application;

2. A date for the public hearing; and

3. A statement that written comments, arguments or objections to the application may be submitted until the end of the scheduled hearing date.

(c) The public hearing shall be before a hearing officer designated by the Department.

(d) Between the time the notice is published and the scheduled date for the public hearing, the Department shall review the application and develop staff recommendations concerning the disposition of the application and any conditions that should be included in the water usage certification if issued.

1. The staff recommendations shall include and consider the application, the water usage verification by the appropriate county agricultural agent, the Advisory Panel's report, written comments of interested parties, and all other relevant information pertaining to the application. These staff recommendations shall be:

i. Made available to interested parties upon written request five working days prior to the scheduled hearing date;

ii. Presented at the hearing to be commented upon or objected to; and

iii. If there is no hearing, upon timely written request by the applicant or any interested person to the Department, the staff recommendations shall be made available to the applicant or any interested person within seven days of the rendering of a decision to approve or deny the application.

Amended by R.1989 d.36, effective January 17, 1989.

See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).

Added text in (a)3 "and all water . . ."; deleted title "Division's Office of Water Allocations recommendation".

Amended by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.13 Expenses of hearing

The cost of advertisement and other expenses of the hearing, including stenographic record, but excluding expenses for Department hearing staff, will be certified to the applicant who shall pay the bill within 30 days thereafter. Payment in full of the bill shall be a condition of final water usage certification issuance.

Amended by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.14 Public hearing

(a) The hearing officer shall have reasonable discretion in the conduct of the public hearing and shall give:

1. The applicant opportunity to submit his or her information to meet the requirements of this chapter;
2. Other persons opportunity to comment in favor of or in opposition to the application; and
3. The applicant opportunity to respond to the comments, including written comments received by the Department.

(b) The hearing officer shall give the applicant reasonable time after the hearing to correct deficiencies in the application and respond to comments received at the hearing.

Amended by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.15 Public hearing report

The hearing officer shall review the application, the water usage verification by the appropriate county agricultural agent, the Department's Bureau of Water Allocation recommendation, the Advisory Panel's report, written comments of interested parties, the transcripts from the public hearing, and all other relevant information pertaining to the application, and shall prepare and submit written findings and recommendations to the decision maker for a final recommendation for approval or disapproval of the application for a water usage certification by the appropriate county agricultural agent.

Amended by R.1989 d.36, effective January 17, 1989.
See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).
Substituted Bureau for Office.
Amended by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.16 Decision maker's recommendation

(a) Where a hearing has been held, the decision maker shall review the hearing report and the entire record of the application before making a final recommendation to the appropriate county agricultural agent for the approval, with necessary conditions, or denial of the application.

(b) In addition the decision maker shall review any other documents submitted during the review process and use his professional judgment when making his recommendation.

7:20A-2.17 Notification of recommendation

The appropriate county agricultural agent shall be notified of the Department's recommendation by either the drafting of a water usage certification with any conditions deemed appropriate, or by a draft letter of denial of the application for signature of the appropriate county agricultural agent stating reasons for the denial.

Amended by R.1989 d.36, effective January 17, 1989.
See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).
Deleted "from" and added "for signature of".

7:20A-2.18 Approval by county agricultural agent

(a) The appropriate county agricultural agent shall approve or disapprove of water usage certification applications in accordance with the final recommendations of the Department as provided in this chapter.

(b) The appropriate county agricultural agent shall then notify the applicant by the issuance of a water usage certification or by letter of denial of the application, stating reasons for the denial and setting forth rights of appeal.

(c) In addition, the county agricultural agent shall notify by letter all persons testifying at the public hearing or who have provided written comments of the decision of the appropriate county agricultural agent.

Amended by R.1994 d.12, effective January 3, 1994.
See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.19 Record of decision

(a) There shall be maintained by the Department for each application reviewed a record consisting of copies of:

1. The application documents;
2. Water usage verification by appropriate county agricultural agent;
3. Staff recommendations;
4. Advisory Panel recommendations;
5. The public hearing report and transcript;
6. Comments received;
7. The water usage certification or letter of denial; and
8. All other relevant information.

(b) This record may be reviewed by interested parties at the Department and copies of it may be obtained upon payment of the fee for duplication.

Amended by R.1984 d.107, effective April 2, 1984.
See: 15 N.J.R. 2122(a), 16 N.J.R. 719(a).

(b) added.
 Amended by R.1989 d.36, effective January 17, 1989.
 See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).
 Deleted text in (b) "The applicable water ...".
 Amended by R.1994 d.12, effective January 3, 1994.
 See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.20 Appeal procedure

(a) An applicant who believes himself or herself to be aggrieved by a decision of the Department regarding any water usage certification may contest the decision and request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the Department:

1. Approves or denies an application for a water usage certification, or any part thereof; or
2. Revokes, withdraws or modifies a previously issued approval.

(b) Requests for a contested case hearing shall be submitted to:

Office of Legal Affairs
 Attn: Adjudicatory Hearing Requests
 Department of Environmental Protection and Energy
 CN 402
 401 East State Street
 Trenton, New Jersey 08625-0402

(c) All requests for a contested case hearing shall be submitted to the Department within 20 calendar days after the date upon which the applicant received the notice of Department's decision.

(d) All requests for a contested case hearing shall be submitted in writing to the Department and shall contain:

1. The name, address and telephone number of the person making the request;
2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;
3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in the decision; and
4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested, as well as any legal issues associated with the alleged facts at issue.

(e) A hearing request not submitted within 20 days after the applicant received notice of Department's decision shall be denied by the Department.

(f) If the applicant fails to include any of the information required under (d) above, the Department may deny the hearing request.

(g) The Department will determine whether any request for a contested case hearing shall be granted. In making such determination, the Department will evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised in a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

(h) The hearing, if granted, shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rules promulgated thereunder.

Administrative change in (a).
 See: 23 N.J.R. 3325(b).
 Repeal and New Rule, R.1994 d.12, effective January 3, 1994.
 See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

7:20A-2.21 Validity of water usage certifications issued

(a) Water usage certifications of any nature shall not be valid unless issued in compliance with and pursuant to this chapter.

(b) The conditions and provisions of previously issued water usage certifications and privileges previously allowed pursuant to other lawful legislative or administrative actions shall remain in effect pending approval or disapproval of an application submitted pursuant to this chapter.

Amended by R.1984 d.107, effective April 2, 1984.
 See: 15 N.J.R. 2122(a), 16 N.J.R. 719(a).

(b) added.
 Amended by R.1989 d.36, effective January 17, 1989.
 See: 20 N.J.R. 2663(a), 21 N.J.R. 176(a).
 Deleted "Water Policy and Supply Council permits".

7:20A-2.22 Certification programs including construction, repair or reconstruction of dams and other related structures

(a) A water usage certification program issued by an appropriate county agricultural agent may include the right to construct, repair or reconstruct dams or other related structures provided that any proposed work to construct, repair or reconstruct dams or other related structures shall comply with N.J.S.A. 58:4-1 et seq. and all other applicable laws and regulations.

(b) In the case of a water usage certification program issued pursuant to (a) above, a stream encroachment permit for irrigation headgates and tidegates along the banks of a stream shall not be required by the Department.

R.1984 d.107, effective April 2, 1984.
 See: 15 N.J.R. 2122(a), 16 N.J.R. 719(a).
 Section was "Reserved".

**SUBCHAPTER 3. WATER USE REGISTRATION
PROCEDURE****7:20A-3.1 Scope**

This subchapter prescribes the procedures which shall be followed by applicants, county agricultural agents, and the Department when applying for and in the processing of applications for water use registrations.

7:20A-3.2 Information

(a) The Department and the appropriate county agricultural agent shall maintain a record of all water use registrations for agricultural or horticultural purposes.

(b) The record required pursuant to (a) above shall include the following information:

1. The name and address of existing registration holders;
2. The diversion source and location; and
3. Other information deemed necessary by the Department.

(c) Copies of the existing water use registration documents will be provided to the appropriate county agricultural agent upon a request to the Department.

7:20A-3.3 Procedure for obtaining an agricultural water use registration

(a) The Department will provide the current application form for agricultural water use registrations to all county agricultural agents.

(b) An applicant for a water use registration for the diversion of less than 100,000 gallons of water per day for agricultural or horticultural purposes shall contact the appropriate county agricultural agent to obtain an application form and other instructions needed to file a complete application.

(c) Any person who presently has the capability to divert 100,000 or more gallons of water per day, but who diverts less than that quantity for agricultural or horticultural purposes, shall apply for a water use registration by July 2, 1994.

(d) The applicant shall follow all the instructions to complete the application form, and shall submit the completed application form to the appropriate county agricultural agent.

1. The following items will be required as part of the application form:

- i. The name and address of applicant;
- ii. The type and a description of each diversion source;
- iii. The location of each diversion source; and
- iv. The maximum quantity of water to be diverted from each source on a monthly basis.

(e) A water use registration number shall be assigned to the applicant by the county agricultural agent, upon his or her determination that the water needs are less than 100,000 gallons of water per day.

(f) The county agricultural agent shall forward to the Department a copy of the water use registration when approved.