

CHAPTER 21
WATER RESOURCE MANAGEMENT

Authority

N.J.S.A. 13:10-1 et seq.

Source and Effective Date

R.1981 d. 366, effective September 10, 1981.
See: 13 N.J.R. 705(b).

Chapter Expiration Date

Chapter 21, Water Resource Management, expires on July 1, 2006.

Historical Note

All provisions of this chapter were adopted pursuant to authority delegated at N.J.S.A. 13:10-1. Subchapter 7 was adopted effective March 25, 1977 as R.1977 d.107. See: 8 N.J.R. 507(a), 9 N.J.R. 217(b). Amendments to Subchapter 4 became effective April 11, 1979 as R.1979 d.142. See: 10 N.J.R. 310(a), 11 N.J.R. 230(c). This chapter was amended by organizational amendments effective September 10, 1981 as R.1981 d.366. See: 13 N.J.R. 705(b). Subchapter 4 "Procedures for Public Hearings" expired April 10, 1984 pursuant to Executive Order 66(1978). The Department has found the rules to be obsolete and should be removed from the code. New rules will not be adopted.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 7:21-1.1 Scope
- 7:21-1.2 Construction
- 7:21-1.3 Practice where rules do not govern
- 7:21-1.4 Review and approval of contracts
- 7:21-1.5 Economic feasibility of water supply plans
- 7:21-1.6 Violations

SUBCHAPTER 2. DIVERSION OF WATER

- 7:21-2.1 Financial responsibility
- 7:21-2.2 Diversion of less than 100,000 gallons
- 7:21-2.3 Diversion of surface water for private use

SUBCHAPTER 3. PUBLIC HEARINGS

- 7:21-3.1 Legal representation
- 7:21-3.2 Postponement
- 7:21-3.3 Hearing before quorum
- 7:21-3.4 Quorum of the Department

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. APPLICATIONS

- 7:21-5.1 Farm irrigation
- 7:21-5.2 Water supply approval
- 7:21-5.3 Permit for private subsurface diversion
- 7:21-5.4 Permit to divert surface water
- 7:21-5.5 Stream encroachment permit

**SUBCHAPTER 6. EXTENSION TO NEW SUBDIVISION;
SMALL DRAINAGE AREAS; DOUBLE-CASED
WELLS**

- 7:21-6.1 Extension to new subdivisions
- 7:21-6.2 Small drainage areas
- 7:21-6.3 Double-cased wells through high chloride aquifers

**SUBCHAPTER 7. STREAM ENCROACHMENT
APPLICATIONS IN THE CENTRAL PASSAIC
BASIN**

- 7:21-7.1 Purpose
- 7:21-7.2 Scope
- 7:21-7.3 Definitions
- 7:21-7.4 General standards for review
- 7:21-7.5 Additional factors that may be considered in granting permits

SUBCHAPTER 1. GENERAL PROVISIONS

7:21-1.1 Scope

Unless otherwise provided by rule or statute, the following shall constitute the rules of the Department.

7:21-1.2 Construction

(a) These rules shall be liberally construed to permit the council to discharge its statutory functions.

(b) The Department may, upon notice to all parties, in the public interest relax the application of these rules.

7:21-1.3 Practice where rules do not govern

(a) The Department may rescind, amend or expand these rules from time to time, and such new rules shall be filed with the Secretary of State as provided by law.

(b) The Commissioner shall exercise his discretion in respect of any other matters not governed by these rules.

7:21-1.4 Review and approval of contracts

All contracts for water supply entered into or to be entered into by the public water supply systems of the State, in both public and private ownership, shall be submitted to the Department for review and in the case of existing contracts and for review and approval in the case of pending or future contracts.

7:21-1.5 Economic feasibility of water supply plans

If in the judgment of the Department, the water supply plans submitted are such that a determination of the economic feasibility of the project would be helpful in rendering a decision, the matter shall be discussed at the public hearing held on the application filed for approval of the Department, as provided in subchapter 4 (Procedures for public hearings) of this chapter.

7:21-1.6 Violations

(a) The Department staff shall have power to order that any violations be corrected.

(b) If the respondent wishes to contest the order, a hearing shall be requested and held.

(c) If no hearing is requested, the respondent's failure to comply with the order shall be referred to the Attorney General immediately.

SUBCHAPTER 2. DIVERSION OF WATER

7:21-2.1 Financial responsibility

(a) When approving an application for diversion of water, the Department shall require the applicant to submit a financial responsibility statement showing that he is solvent and, further, that he is able to comply with the conditions set forth in the Department's approval because he has the assets so to do.

(b) In the absence of any showing of financial responsibility, the Department shall require from the applicant a performance bond to insure compliance with the conditions under which the approval was given.

(c) In the event of an undertaking of some magnitude by the applicant, the Department shall demand both a financial responsibility statement and a performance bond.

7:21-2.2 Diversion of less than 100,000 gallons

(a) Where an applicant specifies a diversion of less than 100,000 gallons daily, but proposes to install pumping equipment with capacity to divert in excess of that quantity, a well drilling permit may be issued upon proof satisfactory to the Division that actual diversion will not, in fact, exceed 100,000 gallons daily, subject to the condition that a meter shall be installed by the applicant where such diversion is for commercial or industrial purposes and that reports on the quantity of water diverted shall be submitted to the Division quarter-yearly.

(b) In the case of diversions of agricultural purposes, the method of measuring shall be by a meter or other device satisfactory to the Division.

(c) In all cases no subsequent increase in pumping equipment capacity shall be made without prior approval of the Division.

7:21-2.3 Diversion of surface water for private use

Applications for diversion of surface water for private use shall be advertised in a newspaper for a minimum period of one week, but preferably two weeks wherever possible.

SUBCHAPTER 3. PUBLIC HEARINGS

7:21-3.1 Legal representation

A statement shall be included in notices of hearing and letters of transmittal to the effect that, if the applicant or objector is a corporation, private or governmental, it must be represented by an attorney at law of New Jersey.

7:21-3.2 Postponement

Any requests for postponement received later than ten days before the scheduled date of hearing shall not be considered.

7:21-3.3 Hearing before quorum

(a) When applications are advertised for hearing, the notice should include a statement that the parties at interest must notify the Department in advance if they intend to claim right to hearing before a quorum, of Department.

(b) If no reply is received it will be assumed that the parties at interest are agreeable to hearing before less than a quorum of the Department present.

7:21-3.4 Quorum of the Department

Five members of the Department shall constitute a quorum for the conduct of hearings.

SUBCHAPTER 4. (RESERVED)

Historical Note

This subchapter "Procedure for Public Hearings" was adopted pursuant to authority of N.J.S.A. 13:10-1. Amendments were adopted pursuant to authority of N.J.S.A. 13:1B-3, 13:1D-1 et seq. and 58:1-3 and became effective April 11, 1979 as R.1979 d.142. See: 10 N.J.R. 310(a), 11 N.J.R. 230(c). This subchapter expired April 10, 1984 pursuant to Executive Order 66(1978). The Department found these rules to be obsolete and allowed them to expire without re-adoption.

SUBCHAPTER 5. APPLICATIONS

7:21-5.1 Farm irrigation

(a) Applications for diversion permits for crop irrigation must be accompanied by a recommendation from the Agricultural Extension Service as to the optimum rates of application and total amounts of water required by the crops and soil types to which water is to be supplied.

(b) Unless otherwise directed by the Department, the following procedure shall be used in the processing of applications for permits to divert water from wells or excavated ponds for farm irrigation in areas delineated pursuant to N.J.S.A. 58:4A-1:

1. Notice setting forth the pertinent facts of the application shall be mailed or otherwise given to all persons, municipal or other corporations or civil divisions of the State likely to be affected by the proposed diversion and state that objections, if any, must be filed in writing in the office of the Division within 15 days from date of notice.

2. Such objections must particularly state the ground thereof.

3. The notice shall state that if objections are so filed, a public hearing will thereafter be scheduled in accordance with further notice to be given; otherwise permit may be issued pursuant to N.J.S.A. 58:4A-2.

7:21-5.2 Water supply approval

(a) Application for water supply approval shall be made on forms to be furnished by the Department.

(b) Applications for water supply approval shall be filed with the Department on or before closing date, if applicable.

(c) All applications shall be accompanied by the necessary supporting documentation as required by the Department.

7:21-5.3 Permit for private subsurface diversion

(a) Applications for permit for private subsurface diversion shall be made on forms to be furnished by the Department.

(b) Applications for permit for private subsurface diversion shall be filed with the Department on or before closing date, if applicable.

(c) All applications shall be accompanied by the necessary supporting documentation as required by the Department.

7:21-5.4 Permit to divert surface water

(a) Application for permit to divert surface water shall be made on forms to be furnished by the Department.

(b) Applications for permit to divert surface water shall be filed with the Department on or before closing date, if applicable.

(c) All applications shall be accompanied by the necessary supporting documentation as required by the Department.

7:21-5.5 Stream encroachment permit

(a) Application for stream encroachment permit shall be made on forms to be furnished by the Department.

(b) Applications for stream encroachment permit shall be filed with the Department on or before closing date, if applicable.

(c) All applications shall be accompanied by the necessary supporting documentation as required by the Department.

SUBCHAPTER 6. EXTENSION TO NEW SUBDIVISION; SMALL DRAINAGE AREAS; DOUBLE-CASED WELLS

7:21-6.1 Extension to new subdivisions

(a) Where sewage disposal is to pass through septic systems, the applicant shall submit the following information to the Division of Water Policy and Supply for review prior to submission to the Department:

1. Local permission for installation of such systems supported by percolation data;
2. On-site investigation by the United States Department of Agriculture Soil Conservation Service; and
3. Information on underlying geology.

7:21-6.2 Small drainage areas

No person shall be required to obtain approval under N.J.S.A. 58:1-26, et seq., of structures within the natural or ordinary high water mark on any stream or portion of stream having a drainage area of less than 1/2 square mile, except in those instances where, in the judgment of the Director of the Division of Water Resource Management, the public interest or possible danger from waters so impounded or affected may warrant study and appropriate action by this Department.

7:21-6.3 Double-cased wells through high chloride aquifers

For all wells drilled along the New Jersey coast where there is danger of saltwater intrusion in upper aquifers, an outer casing shall be extended into clay at least 50 feet, and the annular space between the outer casing and the formation shall be sealed in a manner satisfactory to the Division of Water Resource Management.

SUBCHAPTER 7. STREAM ENCROACHMENT APPLICATIONS IN THE CENTRAL PASSAIC BASIN

Historical Note

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 58:1-26 and were filed

and became effective March 25, 1977, as R.1977 d.107. See: 8 N.J.R. 507(a), 9 N.J.R. 217(b).

7:21-7.1 Purpose

These regulations establish the interim policy to be followed by personnel of the Department of Environmental Protection in reviewing applications for stream encroachment permits (N.J.S.A. 58:1-26) in the Central Passaic Basin, pending further State and Federal flood protection programs.

7:21-7.2 Scope

(a) These regulations shall apply to all applications for stream encroachment permits from the area known generally as the Central Passaic Basin, and specifically described as follows:

1. Central Passaic River: Extending from Little Falls at Beatties Dam upstream to Route 202 in Bernards and Harding Townships;
2. Pompton River: Entire river;
3. Ramapo River: Extending from its confluence with the Pompton River upstream to Pompton Lakes Dam;
4. Pequannock and Wanaque Rivers: Extending from their confluence with the Pompton River upstream to Paterson-Hamburg Turnpike;
5. Dead River: Extending from its confluence with the Passaic River upstream to Liberty Corner Road in Bernards Township;
6. Harrison Brook: Extending from its confluence with the Dead River upstream to Lake Road in Bernards Township;
7. Rockaway River: Extending from its confluence with the Passaic River upstream to the Jersey City Reservoir (Boonton Reservoir);
8. Whippany River: Extending from its confluence with the Passaic River upstream to Route 10;
9. Black Brook: Extending from its confluence with the Whippany River upstream to the Exxon Research and Engineering Center in the Borough of Florham Park;
10. Beaver Dam Brook: Including East and West Ditches from Pompton River to Jacksonville Road in Lincoln Park.

(b) A map entitled "State of New Jersey Passaic River Central River Basin Stream Limits for proposed Special Rules and Regulations", which shows the reaches of streams to be regulated within the Passaic Basin, and maps entitled "Passaic River Basin Flood Hazard Area Delineations Based on Historic Data on Aerial Photographic Mosaics", which show the outline of the Central Passaic Basin for the stretches of stream as described herein and regulated hereby, may be obtained from the Division of Water Resources, Bureau of Flood Plain Management, P.O. Box 2809, Trenton, New Jersey 08625, for cost of reproduction.

7:21-7.3 Definitions

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

"Fill" means sand, gravel, earth or other select materials of equal quality placed or deposited so as to form an embankment or raise the elevation of the land surface.

"Stream encroachment permit" means a permit for regulated activity pursuant to N.J.S.A. 58:1-26.

7:21-7.4 General standards for review

(a) Each application for a stream encroachment permit shall be reviewed individually.

(b) Each application for a stream encroachment permit shall be judged on the basis of its potential effect on flood frequency and severity in the Passaic River Basin.

(c) Stream encroachment permits will generally not be granted when the regulated activity involves a net increase in the volume of fill within the Central Passaic Basin described herein.

(d) The site from which fill material is to be obtained should be the nearest feasible location to the project site, normally in or near the same municipality but in all cases within the boundaries of the Central Passaic Basin described herein.

(e) Removal of material is an alteration requiring a stream encroachment permit.

7:21-7.5 Additional factors that may be considered in granting permits

(a) Notwithstanding the provisions of section 4 of this subchapter, the department may, in its discretion, issue a stream encroachment permit where it finds that the particular project, if constructed, would not be detrimental to the public interest. In making this determination the department may consider relevant factors including, but not limited to, the following:

1. Public benefits to be derived from the project;
2. Volume and depth of fill below delineated flood hazard elevation;
3. Distance from channel;
4. Extent to which alternative designs and forms of construction could be substituted;
5. Extent to which alternative uses other than proposed could be substituted;
6. Adequacy of on-site detention as related to rate and velocity of runoff;

- 7. Size of the total project in relation to that part of the property within the flood hazard area;
- 8. Offsetting dedication of land as open space for flood control purposes;
- 9. Extent of surrounding development;

- 10. Degree of obstruction to passage of flood waters;
- 11. Adequacy of soil erosion and sediment control plans in accordance with "Standards for Soil Erosion and Sediment Control in New Jersey".