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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

Chapter 19, Water Allocation, expires on February 23, 2005.

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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SUBCHAPTER 1. GENERAL PROVISIONS

7:19-1.1 Scope and authority

(a) This chapter shall constitute the Department's rules governing the establishment of privileges to divert water, the management of water quantity and quality, the issuance of permits, and the handling of drought warnings, water emergencies and water quality emergencies considered severe enough to constitute water emergencies pursuant to N.J.S.A. 58:1A-1 et seq., the Water Supply Management Act; N.J.S.A. 58:2-1 et seq., commonly known as the Excess Diversion Act; N.J.S.A. 58:12A-1 et seq., the Safe Drinking Water Act; N.J.S.A. 58:11-59 et seq., commonly known as the Small Water Company Takeover Act; and N.J.S.A. 58:4A-4.1 et seq., commonly known as the Subsurface and Percolating Waters Act. This chapter establishes the schedule and reporting procedures that persons having the capability to divert more than 100,000 gallons of water per day shall follow in order to establish their privilege to divert water and obtain a Water Supply Allocation Permit, a Temporary Dewatering Permit or a Water Use Registration. In addition, this chapter prescribes the application, review, notification and hearing procedures for establishing those privileges.

(b) This chapter also establishes the procedures for determining, assessing and collecting excess diversion fees; contract review and approval; areas of critical water supply concern; and water emergency allocation.

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

References to Safe Drinking Water Act and Subsurface and Percolating Waters Act added; (b) added.
Amended by R.1995 d.162, effective March 20, 1995.
See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

7:19-1.2 Construction

(a) This chapter shall be liberally construed to permit the Department to discharge its statutory functions under N.J.S.A. 58:1A-1 et seq., the Water Supply Management Act; N.J.S.A. 58:2-1 et seq., commonly known as the Excess Diversion Act; N.J.S.A. 58:12A-1 et seq., the Safe Drinking Water Act; N.J.S.A. 58:11-59 et seq., commonly known as the Small Water Company Takeover Act; and N.J.S.A. 58:4A-4.1 et seq., commonly known as the Subsurface and Percolating Waters Act.

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

Amended by 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).

7:19-1.3 Definitions

The following words and terms, when used in N.J.A.C. 7:19-1 through 4 and 7 through 17, shall have the following

meanings, unless the context clearly indicates otherwise. The definitions applicable to N.J.A.C. 7:19-5 and 6 are set forth at N.J.A.C. 7:19-5.2 and 6.2, respectively.

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

“Adjustable water use ban” means the prohibition or restriction of adjustable water uses.

“Adjustable water uses” means those water uses which may be reduced during times of drought warning or water supply emergency. Various examples of adjustable water uses are contained in N.J.A.C. 7:19-13.3.

“Adverse impact upon wells” means an impaired pumping rate or a required change in the construction of a well affected by lowered water levels or any impairment of water quality.

“Annual fee” means a fee charged each calendar year during the period of validity of a permit, regardless if water is diverted from sources included in that permit.

“Applicable water purveyors” means all public-community water systems serving those areas in which Phase II of a water emergency has been initiated.

“Applicant” means any person filing or required to file an application to establish a privilege to divert water or for a Water Supply Allocation Permit pursuant to this chapter of the Act.

“Aquifer” means any subsurface water-saturated zone which is significantly permeable so that it may yield sufficient quantities of water from wells or springs in order to serve as a practical source of water supply.

“Aquifer storage and recovery well” or “ASR well” means a well which is utilized to store potable water in an aquifer during periods of low water demand and then recover the water for potable purposes during periods of high water demand.

“Area of critical water supply concern” or “critical area” means a region of the State where excessive water usage or diversion presents undue stress, or wherein conditions pose a significant threat to the long-term integrity of a water supply source, including a diminution of surface water due to excess groundwater diversion.

“Base allocation” means the permittee's portion of the safe or dependable yield for the affected water resource within an area of critical water supply concern.

“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 or surface water; for pumping equipment, the hydraulic capacity is equivalent to 70 gallons per minute.

“Certified diversion” means a diversion used for agricultural or horticultural purposes for which a water usage certification has been obtained pursuant to N.J.A.C. 7:20A.

“Chairman” means the Chairman of the Water Emergency Task Force who shall be designated by the Commissioner.

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

“Confined aquifer” means an aquifer which contains groundwater under pressure between or below relatively impermeable or significantly less permeable material so that the water surface rises above the top of the aquifer in a well which derives its water from that aquifer.

“Consumptive use” means any use of water diverted from surface or ground waters other than a nonconsumptive use as defined below in this section.

“Contract” means the document setting out the entire agreement between a Water Supply Allocation Permittee and a purchaser for the bulk sale or purchase of water.

“Customer of record” means any person, corporation, company, partnership, firm, association, political subdivision of the State, and any state or interstate agency or Federal agency receiving water service from an applicable water purveyor.

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

“Decision maker” means the person designated by the Department to make decisions on applications for permits and claims of privileges to divert water.

“Dewatering” means the diversion of ground water on a temporary basis from wells, wellpoints, excavations or sumps in order to facilitate construction.

“Diversion source” means the source from which water is diverted.

“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.

“Drought” means a condition of dryness due to lower than normal precipitation, resulting in reduced stream flows, reduced soil moisture and/or a lowering of the potentiometric surface in wells.

“Drought coordinator” means the individual designated by the Commissioner who is responsible for the administration and enforcement of N.J.A.C. 7:19-9 through 17.

“Drought warning” means the status declared by the Department, pursuant to N.J.A.C. 7:19-9.5, where there exists a relative lack of precipitation or a lower than normal storage of water supplies.

“Emergency response plan” means the document submitted by each water purveyor to the Department outlining the actions it will take to assure water supply during a water emergency.

“Emergency well” means a well which is maintained for an unplanned and/or unexpected use, such as fire protection or failure of another well.

“Excess diversion” means the amount of water diverted from streams and lakes with outlets for the purpose of public water supply in excess of the free allowance.

“Excess diversion fee” means the amount charged each person for its annual excess diversion or for the diversion from subsurface, well or percolating water supplies, where the State’s right of eminent domain was used to condemn the water supply.

“Facility” means a structure or infrastructure designed and built for a specific purpose.

“Free allowance” means, for the purpose of calculating the excess diversion fee, the amount of water diverted from streams and lakes with outlets for the purpose of public water supply in an amount equal to 100 gallons daily for each inhabitant of the municipality or municipalities supplied, as shown by the census of 1905, or equal to such greater amount being legally diverted on June 17, 1907. Free allowances have been established in N.J.A.C. 7:19-4.8.

“Inactive well” means a well which is not presently being used but which is being held in abeyance for future use.

“Industrial users” means those non-residential users excluding multiple dwellings and health care facilities.

“Initial fee” means the fee charged by the Department for the review of an application for a new water supply allocation or temporary dewatering permit.

“Lawful entry” means an entry by the Commissioner into any building, place, or premise pursuant to N.J.S.A. 13:1D-1 et seq. and otherwise provided by law, ordinance, regulation, order, permit, or agreement.

“Local use” means the utilization of the privilege to divert water to supply those areas contained within a purveyor’s franchise area, or supply area, as approved by the Department in accordance with this chapter.

“Local water emergency” means there exists or impends, within a purveyor’s service area, a water supply shortage and/or water quality emergency which significantly impacts the purveyor’s ability to meet water demands.