

CHAPTER 20A
AGRICULTURAL, AQUACULTURAL, AND
HORTICULTURAL WATER USAGE
CERTIFICATION

Authority

N.J.S.A. 58:1A-1 et seq.

Source and Effective Date

R.1999 d.7, effective December 8, 1998.
 See: 30 N.J.R. 3410(a), 31 N.J.R. 45(a).

Chapter Expiration Date

The expiration date of Chapter 20A, Agricultural, Aquacultural, and Horticultural Water Usage Certification, was extended by gubernatorial directive from December 8, 2005 to June 8, 2006. See: 38 N.J.R. 294(a).

Chapter Historical Note

Chapter 20A, Standards and Procedures for Establishing Privileges to Divert Water and for Obtaining Water Usage Certifications for Agricultural or Horticultural Purposes, was adopted as R.1983 d.562, effective December 19, 1983. See: 14 N.J.R. 1249(a), 15 N.J.R. 2154(b).

Pursuant to Executive Order No. 66(1978), Chapter 20A was readopted 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, Standards and Procedures for Establishing Privileges to Divert Water and for Obtaining Water Usage Certifications for Agricultural or Horticultural Purposes, was readopted as R.1994 d.12, effective December 8, 1993, and Subchapter 3, Water Use Registration Procedure, was adopted by R.1994 d.12, effective January 3, 1994. See: 25 N.J.R. 3956(a), 26 N.J.R. 212(c).

Pursuant to Executive Order No. 66(1978), Chapter 20A, Agricultural, Aquacultural and Horticultural Water Usage Certification, was readopted as R.1999 d.7, effective December 8, 1998, and Subchapter 4, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was adopted by R.1999 d.7, effective January 4, 1999. See: 30 N.J.R. 3410(a), 31 N.J.R. 45(a). See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 20A, Agricultural, Aquacultural and Horticultural Water Usage Certification, expiration date was extended by gubernatorial directive from December 8, 2003 to December 8, 2004. See: 36 N.J.R. 174(a).

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 20A, Agricultural, Aquacultural and Horticultural Water Usage Certification, expiration date was extended by gubernatorial directive from December 8, 2004 to December 8, 2005. See: 37 N.J.R. 52(a).

Cross References

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 7:20A-1.1 Scope and authority
- 7:20A-1.2 Construction
- 7:20A-1.3 Definitions
- 7:20A-1.4 Applicability
- 7:20A-1.5 Uncertified diversions
- 7:20A-1.6 Procedure for transfer of a water usage certification

- 7:20A-1.7 Complaints of interference
- 7:20A-1.8 Program information
- 7:20A-1.9 Severability
- 7:20A-1.10 (Reserved)

SUBCHAPTER 2. WATER USAGE CERTIFICATION PROCEDURE

- 7:20A-2.1 Scope
- 7:20A-2.2 Major and minor certification modifications
- 7:20A-2.3 General application procedures
- 7:20A-2.4 Application requirements and procedures for the renewal with no modification or the renewal with minor modification of an existing water usage certification; extension of certain existing certifications
- 7:20A-2.5 Application requirements and procedures for a new water usage certification, renewal of a certification with major modification, or major modification of a certification
- 7:20A-2.6 Water usage certification conditions
- 7:20A-2.7 Record of decision
- 7:20A-2.8 Appeal procedure
- 7:20A-2.9 Certifications including construction, repair or reconstruction of dams and other related structures
- 7:20A-2.10 through 7:20A-2.22 (Reserved)

SUBCHAPTER 3. WATER USE REGISTRATION PROCEDURE

- 7:20A-3.1 Scope
- 7:20A-3.2 Procedure for obtaining an agricultural water use registration
- 7:20A-3.3 Registration record

SUBCHAPTER 4. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

- 7:20A-4.1 Authority and purpose
- 7:20A-4.2 Procedures for assessment, settlement and payment of civil administrative penalties for violations
- 7:20A-4.3 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings
- 7:20A-4.4 Civil administrative penalty determination

SUBCHAPTER 1. GENERAL PROVISIONS

7:20A-1.1 Scope and authority

This chapter shall constitute rules governing water usage certifications for agricultural, aquacultural, and horticultural purposes pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. This chapter establishes the schedule and reporting procedure that persons having the capability to divert 100,000 or more gallons of water per day for agricultural, aquacultural, 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).

Amended by R.1999 d.7, effective January 4, 1999.

See: 30 N.J.R. 3410(a), 31 N.J.R. 45(a).

Inserted references to aquacultural purposes throughout, and inserted a reference to reporting procedure in the second sentence.

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, aquacultural, 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.

Amended by R.1999 d.7, effective January 4, 1999.

See: 30 N.J.R. 3410(a), 31 N.J.R. 45(a).

In (c), inserted a reference to aquacultural uses.

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.

"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.

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

"Aquaculture" means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but not be limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting and providing for protection from predators.

"Aquatic organism" means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

"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.

"Area of critical water supply concern" or "critical area" means a region of the State, as designated by the Commissioner under N.J.A.C. 7:19-8, 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.

"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 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 of the Department of Agriculture and Resource Management Agents at Cook College, Rutgers the State University, so assigned or designated for each county by the Director of Rutgers Cooperative Extension and/or the Dean of Cook College.

"County agricultural development board" means the public body established by the governing body of a county under the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq.

"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.

"Diversion source" means the structure by 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 water body, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere.