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N.J.A.C. 7:19

Water Supply Allocation Permits rules

Statutory authority: N.J.S.A. 58:1A-1 et seq.; N.J.S.A. 58:2-1 et seq.; N.J.S.A. 58:4A-4.1 et seq.; N.J.S.A. 58:11-59 et seq.; and N.J.S.A. 58:12A-1 et seq.

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Table of Contents

SUBCHAPTER 1. GENERAL PROVISIONS

7:19-1.1	Scope and authority
7:19-1.2	Construction
7:19-1.3	Definitions
7:19-1.4	Applicability
7:19-1.5	Major and minor permit modifications
7:19-1.6	Diversion source categories and requirements
7:19-1.7	Unpermitted diversions
7:19-1.8	Penalties
7:19-1.9	Program Information
7:19-1.10	General prohibition
7:19-1.11	Severability

SUBCHAPTER 2. PERMIT AND WATER USE REGISTRATION PROCEDURES; PERMITS-BY-RULE

7:19-2.1	Scope
7:19-2.2	Application requirements for water supply allocation permits
7:19-2.3	Application requirements for temporary dewatering permits
7:19-2.4	Application requirements for renewal of permits
7:19-2.5	Application review
7:19-2.6	Opportunity to review application by interested parties
7:19-2.7	Public notice and preliminary decision
7:19-2.8	The public hearing
7:19-2.9	Final staff review and Hearing Officer's Report
7:19-2.10	Decision making
7:19-2.11	Notification of decision
7:19-2.12	Record of decision
7:19-2.13	Request for adjudicatory hearing
7:19-2.14	Permit conditions

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- 7:19-2.15 Procedures for the recalling of a permit for modification or revocation
- 7:19-2.16 Permit cancellation
- 7:19-2.17 Short term water use and dewatering permits-by-rule
- 7:19-2.18 Water use registration requirements
- 7:19-2.19 through 7:19-2.20 (Reserved)

SUBCHAPTER 3. FEE SCHEDULE FOR WATER SUPPLY ALLOCATION PERMITS AND WATER USE REGISTRATIONS

- 7:19-3.1 Scope and authority
- 7:19-3.2 Purpose
- 7:19-3.3 Applicability
- 7:19-3.4 Establishment of fee schedule
- 7:19-3.5 Fees for Water Allocation Permits
- 7:19-3.6 Fee schedule
- 7:19-3.7 Payment of annual fee
- 7:19-3.8 Failure to timely submit the annual fee payment

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

- 7:19-4.1 Scope and authority
- 7:19-4.2 Construction
- 7:19-4.3 Applicability
- 7:19-4.4 Diversion reporting requirements
- 7:19-4.5 Schedule for calculating and making payment of the amount due pursuant to N.J.S.A. 58:2-1 et seq.
- 7:19-4.6 Calculation of fees
- 7:19-4.7 Payment for diversions from wells or percolating water supplies
- 7:19-4.8 Fee allowance determination
- 7:19-4.9 Changes in procedure for determining excess diversions
- 7:19-4.10 Appeal procedure
- 7:19-4.11 Procedure on nonpayment of fee

SUBCHAPTER 5. SMALL WATER COMPANY TAKEOVER ACT REGULATIONS

- 7:19-5.1 Purpose
- 7:19-5.2 Definitions
- 7:19-5.3 Construction
- 7:19-5.4 Applicability
- 7:19-5.5 Severability
- 7:19-5.6 Scope
- 7:19-5.7 Departmental action
- 7:19-5.8 Joint public hearing
- 7:19-5.9 Contested case
- 7:19-5.10 Joint takeover order by the Department and BPU

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- 7:19-5.11 Acquisition costs
- 7:19-5.12 Compliance with joint order
- 7:19-5.13 Differential rate for customers of small water company for use of service of acquiring entity's system or facilities.

SUBCHAPTER 6. WATER SUPPLY MANAGEMENT ACT RULES

- 7:19-6.1 Scope and authority
- 7:19-6.2 Definitions
- 7:19-6.3 Determination of safe or dependable yield
- 7:19-6.4 Unaccounted-for-water
- 7:19-6.5 Water conservation
- 7:19-6.6 Rehabilitation
- 7:19-6.7 System pressure and storage
- 7:19-6.8 Interconnections
- 7:19-6.9 Operation of interconnections
- 7:19-6.10 Administrative hearings
- 7:19-6.11 through 7:19-6.14 (Reserved)

SUBCHAPTER 7. PROCEDURES FOR CONTRACT REVIEW AND APPROVAL

- 7:19-7.1 Purpose and scope
- 7:19-7.2 Applicability
- 7:19-7.3 Procedures for contract approval
- 7:19-7.4 Appeal procedure

SUBCHAPTER 8. AREAS OF CRITICAL WATER SUPPLY CONCERN

- 7:19-8.1 Scope and Authority
- 7:19-8.2 Designation of areas of critical water supply concern
- 7:19-8.3 Management of water allocations within areas of critical water supply concern
- 7:19-8.4 Water Supply Critical Area I
- 7:19-8.5 Water Supply Critical Area II
- 7:19-8.6 Base allocation transfers
- 7:19-8.7 Base allocation and water supply allocation credit transfer procedure
- 7:19-8.8 Adjudicatory hearings

SUBCHAPTER 9. ESTABLISHMENT OF WATER SURCHARGE SCHEDULE

- 7:19-9.1 Scope and authority
- 7:19-9.2 Purpose
- 7:19-9.3 Establishment of the water emergency surcharge schedule
- 7:19-9.4 Submission of the water emergency surcharge schedule; quarterly report
- 7:19-9.5 Collection of the emergency water surcharge; water emergency fund
- 7:19-9.6 Exemption from the water emergency surcharge schedule

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SUBCHAPTER 10. POWERS OF THE COMMISSIONER DURING A WATER EMERGENCY

- 7:19-10.1 Scope
- 7:19-10.2 Restrictions and requirements placed on water purveyors
- 7:19-10.3 Requirements placed on departments and agencies within State government

SUBCHAPTER 11. GENERAL POWERS OF THE DEPARTMENT

- 7:19-11.1 Scope
- 7:19-11.2 Water purveyor emergency response plans and teams
- 7:19-11.3 Interconnections tests
- 7:19-11.4 Large user contingency plans
- 7:19-11.5 Other water use information
- 7:19-11.6 Drought warning requirements

SUBCHAPTER 12. WATER EMERGENCY TASK FORCE

- 7:19-12.1 Scope
- 7:19-12.2 Membership; meetings

SUBCHAPTER 13. THE PRIORITY-BASED PHASE SYSTEM OF WATER RESTRICTIONS

- 7:19-13.1 Scope
- 7:19-13.2 Agricultural activities
- 7:19-13.3 Phase I: Available water supply levels determined to be below normal
- 7:19-13.4 Phase II: Severity; substantial threat to the public health and welfare
- 7:19-13.5 Phase III: Further rationing required
- 7:19-13.6 Phase IV: Disaster stage

SUBCHAPTER 14. INDUSTRIAL CURTAILMENT STRATEGY

- 7:19-14.1 Scope
- 7:19-14.2 Procedure for the selective curtailment during a water emergency situation
- 7:19-14.3 Basis of selective curtailment
- 7:19-14.4 Submission of water supply information

SUBCHAPTER 15. EMERGENCY WATER TRANSFER PRICING

- 7:19-15.1 General pricing procedures
- 7:19-15.2 Criteria for pricing
- 7:19-15.3 Price resolution process

SUBCHAPTER 16. HARDSHIP EXEMPTION PROCEDURES

- 7:19-16.1 Application procedures for hardship exemption from the ban on adjustable water uses

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7:19-16.2 Application procedures for hardship exemption from the requirements of water rationing

SUBCHAPTER 17. DEPARTMENT ORDERS

7:19-17.1 Requirements for Departmental orders issued during a water emergency

7:19-17.2 Appeal procedure

SUBCHAPTER 18. CIVIL ADMINISTRATIVE PENALTIES AND REQUEST FOR ADJUDICATORY HEARINGS

7:19-18.1 Authority and purpose

7:19-18.2 Procedures for assessment, settlement and payment of civil administrative penalties for violations

7:19-18.3 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.

7:19-18.4 Civil administrative penalty determination; general

7:19-18.5 Civil administrative penalties for failure to allow lawful entry and inspection

7:19-18.6 Civil administrative penalties for submitting inaccurate or false information

CHAPTER 19

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.

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 Procedures Act, N.J.S.A. 52:14B-1 et seq.

7:19-1.3 Definitions

The following words and terms, when used in subchapters 1 through 4 and 7 through 17, shall have the following meanings, unless the context clearly indicates otherwise. The definitions applicable to subchapters 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.

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"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 or 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.

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"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.

"Contract" means the document setting out the entire agreement between a Water 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.

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

"Department" means the New Jersey Department of Environmental Protection.

"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.

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"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.

"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.

"Modification fee" means the fee charged by the Department for the review of an application for a major modification of a permit.

"Nonconsumptive use" means the use of water diverted from surface or ground waters in such a manner that it is returned to the surface or ground water at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality.

"Non-residential users" means all water users other than residential users.

"Normal water rates" means the prevailing retail rates which were charged by the applicable water purveyors and which were in effect immediately preceding the declaration of a water emergency.

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"Operating order" means structurally competent and equipped with a functioning pump or surface water intake.

"Passing flow requirement" means the volume of water required to be maintained at a selected point in the stream to promote water quality conditions after consideration of the needs of downstream users.

"Permit" means a water supply allocation permit or temporary dewatering permit.

"Person" means any individual, corporation, company, partnership, firm, association, owner or operator of a water supply facility, political subdivision of the State and any state, or interstate agency or Federal agency.

"Phase" means the particular level of water emergency severity.

"Phase I" means the first stage of a water emergency during which available water supply levels are determined to be below normal and bans on adjustable water uses may be instituted.

"Phase II" means the second stage of a water emergency during which a more substantial threat to the public health and welfare exists and a specified reduction in water use may be mandated.

"Potentiometric surface" means an imaginary surface which represents the static head of water, relative to sea level, in a well constructed in an aquifer.

"Public Water Supply" means a water supply providing piped water to the public for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals.

"Purveyor" or "water purveyor" means any person who owns or operates a public water supply.

"Recall" is the process by which the Department reexamines an existing water supply allocation permit to determine the need for modification or revocation.

"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.

"Residential users" means all users of water who reside in a single family home serviced with one meter, or in a multiple unit dwelling with no more than four units serviced with one meter. Where residential and non-residential users are serviced with the same meter, the users shall be classified as non-residential users.

"Safe or dependable yield" or "safe yield" or "dependable yield" means that maintainable yield

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of water from a surface or ground water source or sources which is available continuously during projected future conditions, including a repetition of the most severe drought of record, without creating undesirable effects, as determined by the Department.

"Saline water" means water containing a chloride concentration in excess of 250 mg/L.

"Salt water" means water containing a chloride concentration in excess of 10,000 mg/L.

"Temporary dewatering permit" means a document issued by the Department to those persons intending to divert, for construction purposes, 100,000 or more gallons of water per day for more than 30 days in a consecutive 365 day period which allows the permittee to temporarily divert water at a rate which may exceed the natural replenishment of the water resource.

"Unconfined or semi-confined aquifer" means an aquifer that is either exposed to atmospheric pressure or bounded by layers of materials which do not serve as an effective barrier to water migration.

"Undiminished return" means, for the purpose of determining fees, the return of diverted surface or ground water to or near the point from which it was taken without substantial diminution in quantity.

"Violator" means any person whom the Department asserts has violated the Act or any rules issued pursuant to the Act.

"Water" or "waters of the State" means all surface water or ground water in the State.

"Water Conservation and Drought Management Plan" means the plan governing actions to be taken by a permittee under a drought warning or in a water emergency, and the permittee's ongoing effort to conserve water.

"Water emergency" means a declaration by the Governor, upon a finding by the Commissioner, that there exists or impends a water supply shortage and/or water quality emergency of a dimension which significantly impacts water supply and, thereby, endangers the public health, safety or welfare in all or part of the State.

"Water emergency fund" means that repository of all sums collected by the applicable water purveyors pursuant to the water emergency surcharge schedule which are in excess of the amounts which would have been collected under normal water rates.

"Water emergency surcharge schedule" means the rate schedule for the retail costs of water supplies which shall be utilized by applicable water purveyors, as provided by rule, in the event of a water emergency.

"Water Emergency Task Force" or "Task Force" means that State body consisting of inter-agency representatives whose purpose is to assist the Commissioner in the formulation of policy and make recommendations to the Commissioner during a water emergency. The Task Force shall be

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composed of representatives of the following agencies: the Department of Environmental Protection, the Department of Commerce and Economic Development, the Department of Education, the Department of Labor, the Department of Law and Public Safety, the Department of Community Affairs, the Board of Public Utilities, the Department of Agriculture, the Department of Health, the Department of Treasury, and other agencies as designated by the Commissioner.

"Water resource" means any river, stream, lake, pond, aquifer, other underground source, or other water body which may be diverted.

"Water supply allocation permit" means the document issued by the Department to a person granting that person the privilege, so long as the person complies with the conditions of the document, to divert 100,000 or more gallons of water per day for more than 30 days in a consecutive 365 day period, for any purpose other than agricultural or horticultural purposes.

"Water supply critical aquifer" means an aquifer within an area of critical water supply concern where there may be either insufficient water supply, shortage of ground water by overdraft, threat of salt water 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. 7:19-8.

"Water supply system" means a physical infrastructure operated and maintained to deliver water on either a retail or wholesale basis to customers.

"Water table aquifer" means a geological formation which carries water at atmospheric pressure at the top of the saturated zone.

"Water usage certification" or "certification" means the document issued by a county agricultural agent pursuant to N.J.A.C. 7:20A 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.

"Well" means a hole or excavation deeper than it is wide, that is drilled, bored, core driven, jetted, dug or otherwise constructed for the purpose of the removal of, investigation of, or exploration for water.

"Well sealing" means the permanent closure of a well in accordance with the procedures set forth in N.J.A.C. 7:9-9.

"Zone of influence" is the area of ground water which experiences an impact attributable to a pumping well.

7:19-1.4 Applicability

(a) This chapter applies to all persons holding existing permits, or diverting, having the capability to divert, or claiming the right to divert more than 100,000 gallons of water per day either from a single source or a combination of sources, and to all persons intending to divert more than

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100,000 gallons of water per day except as specified below:

1. Except for N.J.A.C. 7:19-8, and as noted in N.J.A.C. 7:19-9 through 17 this chapter does not apply to diversions for agricultural or horticultural purposes as defined in N.J.A.C. 7:20A-1.3.

2. This chapter does not apply to diversions of salt water except where the Department determines that the diversion and resultant usage may affect utilization of fresh water.

3. A permit shall not be required for a person receiving water from a water purveyor or for transfers of water from a permittee within the scope of an existing permit.

4. 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 within 30 days after initiating the emergency diversion.

(b) N.J.A.C. 7:19-9 applies to applicable water purveyors and their customers during a water emergency. N.J.A.C. 7:19-10 through 17 are applicable to water users during a water emergency and to water purveyors when the Department has identified an area of the State or the entire State as being in a drought warning condition.

(c) A temporary dewatering permit is required for the diversion of 100,000 gallons of water per day or more for more than 30 days in a consecutive 365 day period for construction purposes when the rate of diversion may exceed natural replenishment of the water resource. Temporary dewatering permit application requirements are set forth at N.J.A.C. 7:19-2.3.

(d) A short term water use permit-by-rule is required for the diversion of 100,000 gallons of water per day or more for less than 31 days in a consecutive 365 day period. The requirements for a short term water use permit-by-rule are set forth at N.J.A.C. 7:19-2.17(a).

(e) A dewatering permit-by-rule may be applicable in place of a temporary dewatering permit if any person intends to divert more than 100,000 gallons of water per day for construction related dewatering from coffer dams or a confined area where the impacts of the dewatering are contained. The requirements for a dewatering permit-by-rule are set forth at N.J.A.C. 7:19-2.17(b).

7:19-1.5 Major and minor permit modifications

(a) A major modification of a permit shall be obtained pursuant to N.J.A.C. 7:19-2.2 for the following:

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1. A change in water use from that specified in the permit, or permit application, including any increase in the amount of consumptive use of ten percent or greater.
2. A change in the location of the wastewater discharge of the water withdrawn pursuant to the permit, if the change in location of the wastewater discharge reduces the safe or dependable yield of the water resource or affects downstream permittees.
3. The relocation of an intake or well to a site more than 100 feet from the site specified pursuant to the permit;
4. The addition of a diversion source;
5. An increase in diversion capacity which results in an increased yield from the currently permitted diversion source;
6. An increase in daily or monthly or annual allocation; and/or
7. Any other requested modification to an existing permit condition which has the potential to cause an adverse impact either upon the water resource or upon other users of that resource.

(b) A minor modification of a water supply allocation permit or temporary dewatering permit may be effected pursuant to the following:

1. A permittee shall notify the Department in writing within 30 days of any change in the permittee's name and/or mailing address. The notification shall identify the permittee's current name, permit number, and address.
2. A permittee who enters into an agreement to sell a facility for which a permit has been issued shall notify the purchaser of the facility that the purchaser must obtain prior approval of the transfer of the permit from the Department. The permittee shall provide the Department with written documentation of this notification.
 - i. The purchaser of the facility shall submit a request for approval of the transfer of the permit in writing to the Department, 30 days prior to the purchase. The request shall include the permit number, the seller's name and mailing address, the effective date of transfer, the purchaser's name and mailing address and telephone number of the person responsible for communicating with the Department regarding the permit, and a statement that the purchaser has reviewed the permit and agrees to comply with its terms.
3. A permittee who installs a replacement well shall notify the Department in writing within 30 days of installation. The notification shall identify the location of the existing and the replacement well, the pump capacity and depth of the existing and the replacement well, and the well permit number and local name or identifier for the existing and replacement well. The permittee shall submit to the Department a copy of the well abandonment report pursuant to N.J.A.C. 7:9-9.1 for the replaced well within 30 days of placing the replacement well into operation.

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4. A permittee seeking a minor modification other than a minor modification specified in (b)1 through 3 above shall submit written information to the Department which demonstrates to the satisfaction of the Department that the proposed modification is not a major modification pursuant to (a)1 through 7 above. The Department will either modify the permit accordingly or notify the permittee that the proposed modification is subject to the requirements of N.J.A.C. 7:19-1.5(a) and 2.2.

7:19-1.6 Diversion source categories and requirements

(a) A permittee with an inactive well who intends to use the well in the future shall request in writing that the Department place the well on inactive status within the scope of the permit and shall:

1. Submit an initial inactive well inspection report on a form provided by the Department;
2. Submit a certification form, provided by the Department, by January 31 of each year thereafter. The permittee shall certify that the well is structurally sound, is protected from vandalism and contamination, and is not a threat to public health. If the permittee operated the inactive well during the year, the total number of hours and gallons pumped shall be reported on the certification form.
3. If the Department determines pursuant to N.J.S.A. 58:4A-4.1 et seq. that the inactive well has not been in operation for three or more years or is improperly maintained so as to pose a threat to the public health or the water resource, the Department will order the permittee to have the well sealed, by a New Jersey licensed well driller who is certified to seal wells, in accordance with N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:9-9.

(b) A permittee shall maintain each active well in operating order, protect the well from vandalism and contamination, have the well accessible for inspection, operate the well at least once a year and report the amount of water diverted to the Department pursuant to N.J.A.C. 7:19-2.14(a)3. Any well not maintained in accordance with this subsection shall be considered inactive and subject to the requirements in (a) above. Each active well shall be contained within the scope of the permit with an associated allocation.

(c) A permittee shall maintain each emergency well in operating order, protect the well from vandalism and contamination, have the well accessible for inspection, operate the well at least once a year and report the amount of water diverted to the Department pursuant to N.J.A.C. 7:19-2.14(a)3. Each emergency well shall be contained within the scope of the permit but without an associated allocation.

(d) A permittee shall maintain each aquifer storage and recovery well in operating order, protect the well from vandalism and contamination, have the well accessible for inspection, operate the well at least once a year and report the amount of water diverted to the Department pursuant to N.J.A.C. 7:19-2.14(a)3. Each aquifer storage and recovery well is considered an active diversion

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source and shall be contained within the scope of the permit with an associated allocation.

(e) A permittee shall maintain each inactive, active, or emergency surface water diversion source pursuant to the requirements of (a), (b), or (c) above, as appropriate. The Department will establish a passing flow requirement for each surface water diversion source or ground water diversion that impacts a surface water source as follows:

1. In the case of a diversion source used for public water supply, the Department will establish the passing flow requirement in accordance with the criteria set forth in N.J.A.C. 7:19-4.6(f).

2. In the case of a diversion source used for a purpose other than public water supply, the Department will establish the passing flow requirement at a level that will not reduce the passing flow below the 7 day, 10 year low flow as established by the United States Geological Survey.

3. If an applicant proposes a lower passing flow requirement than that established pursuant to (e)1 or 2 above, the applicant shall submit with the permit application, pursuant to N.J.A.C. 7:19-2.2, a detailed environmental impact study which demonstrates to the satisfaction of the Department that no adverse environmental impact will occur as a result of the proposed lower passing flow requirement.

4. The Department will temporarily increase the passing flow requirement established pursuant to (e)1 or 2 above if the Department determines such an increase is warranted to preserve the water quality of the diversion source.

5. The Department will not establish a passing flow requirement for a surface water diversion source if the 7 day, 10 year low flow is zero; the stream flow is intermittent; or the size or nature of the watershed is such that a passing flow requirement is impractical.

6. The permittee shall ensure that the intake structure for the surface water diversion source is designed to maintain the passing flow requirement.

(f) A person with multiple diversion sources shall obtain a permit or registration, as applicable, for:

1. A facility or group of contiguous properties under common ownership which have a combined diversion capacity of more than 100,000 gallons of water per day;

2. All diversion sources under common ownership within a single municipality or within an area two miles square which have a combined diversion capacity of more than 100,000 gallons of water per day;

3. Up to 25 wells under common ownership which are part of an interconnected system which lie within an area comprised of a square three miles on each side;

4. Water supply systems which are interconnected, jointly used and jointly operated which have a combined diversion capacity of more than 100,000 gallons of water per day and which

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meet the criteria of (f)2 and/or 3 above; and

5. If the combined capacity of diversions pursuant to (f)1 through 4 above is less than 100,000 gallons per day the diversions shall be combined with other diversions under common ownership so that the combined diversion capacity is more than 100,000 gallons of water per day.

7:19-1.7 Unpermitted Diversions

(a) Any person presently diverting or claiming the right to divert more than 100,000 gallons of water per day and who does not hold a valid permit is subject to penalties provided for under N.J.A.C. 7:19-1.8 and shall apply for a permit immediately.

(b) Any person who intends to divert more than 100,000 gallons of water per day shall apply for a permit by following the application procedures set forth in N.J.A.C. 7:19-2.

(c) Any person who holds a Water Policy and Supply Council permit that was valid prior to February 10, 1982, but who did not reestablish that privilege to divert water as of February 10, 1982, shall apply for a permit immediately in accordance with N.J.A.C. 7:19-2.2.

(d) Any purveyor who, because of a local water emergency, needs to divert water from a diversion source for which the purveyor does not have diversion privileges under a permit pursuant to this chapter shall submit a written request for approval of such diversion to the Administrator of the Water Supply Element, CN-426, Trenton, New Jersey 08625. The purveyor shall be eligible for such an approval only if the following requirements are met:

1. The purveyor and/or the local governing body, as appropriate, shall give public notice a local water emergency exists.

2. The purveyor and/or the local governing body, as appropriate, shall impose mandatory water use restrictions and properly notify its water users.

3. The purveyor shall obtain the certification of a professional engineer or the licensed operator of the public water supply that the water from the unapproved diversion source meets the primary drinking water quality standards of N.J.A.C. 7:10. The certification of the water quality test results shall be submitted to the Department's Bureau of Safe Drinking Water for review and approval.

4. The purveyor shall apply for a major modification of its permit in accordance with N.J.A.C. 7:19-2.2 within thirty calendar days of the initiation of the diversion approved pursuant to this subsection.

5. The purveyor shall apply to the Bureau of Safe Drinking Water for a water works facilities approval in accordance with N.J.A.C. 7:10-11 within thirty calendar days of the initiation of the diversion approved pursuant to this subsection.

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6. The purveyor shall use the diversion approved pursuant to this subsection only on a last on, first off basis until the permit modification pursuant to (d)4 above and water works approval pursuant to (d)5 above are granted.

7:19-1.8 Penalties

Failure by any person to comply with any requirement of the Act including, but not limited to, a violation of any rule, license, permit, administrative order or this chapter may result in a penalty in accordance with N.J.A.C. 7:19-18.

7:19-1.9 Program information

Unless otherwise specified, any questions concerning the requirements of subchapters 1 through 4 and 7 through 18 of this chapter shall be directed to the Bureau of Water Allocation, Water Supply Element, New Jersey Department of Environmental Protection, CN 426, Trenton, New Jersey 08625. Questions concerning the requirements of subchapters 5 and 6 of this chapter shall be directed to the Bureau of Safe Drinking Water, Water Supply Element, New Jersey Department of Environmental Protection, CN 426, Trenton, New Jersey 08625. A Technical Manual for each of these programs is available from Maps and Publications, Bureau of Revenue, CN-417, Trenton, New Jersey 08625.

7:19-1.10 General prohibition

No person shall divert water either from a single diversion source or from combined diversion sources at a rate in excess of 100,000 gallons of water per day without obtaining a Water Supply Allocation Permit or a Temporary Dewatering Permit, a Water Use Registration, or complying with the requirements for a Short Term Water Use Permit-by-Rule or Dewatering Permit-by Rule in accordance with this chapter or a water usage certification in accordance with N.J.A.C. 7:20A.

7:19-1.11 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.

SUBCHAPTER 2. PERMIT AND WATER USE REGISTRATION PROCEDURES; PERMITS-BY-RULE

7:19-2.1 Scope

This subchapter prescribes the procedures which shall be followed by applicants when

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applying for and the Department when processing applications for water supply allocation permits and temporary dewatering permits. This chapter also prescribes the requirements for short term water use and dewatering permits-by-rule and water use registrations.

7:19-2.2 Application Requirements for Water Supply Allocation Permits

(a) An applicant for a water supply allocation permit or a major modification of a water supply allocation permit shall contact the Department in accordance with N.J.A.C. 7:19-1.9 to obtain current application forms and other instructions and information necessary to file a complete application.

(b) The applicant shall follow all the instructions, complete the application forms, obtain and prepare all other documents required by the instructions, and submit the completed application other required information, and any applicable fees required pursuant to N.J.A.C. 7:19-3 to the Department.

(c) The applicant for the diversion of ground water shall provide a discussion of the geology, hydrogeology, and the expected impacts of the diversion both on the resource and on other users of that resource. An applicant whose application includes a new well, an increase in diversion capacity, and/or an increase in monthly or yearly allocation shall conduct a hydrogeologic test in accordance with New Jersey Geological Survey Geological Survey Report GSR 29, Guidelines for Preparing Hydrogeological Reports for Water-Allocation Permit Applications, with an Appendix on Aquifer-Test Analysis Procedures (GSR 29). These guidelines can be obtained by contacting the Department in accordance with N.J.A.C. 7:19-1.9. The Department may waive this requirement if sufficient recent hydrogeologic information is obtained by the applicant to allow a comprehensive hydrological evaluation of the impacts of the proposed diversion in accordance with N.J.A.C. 7:19-2.2(d)5. In either case, a final hydrogeologic report completed in accordance with GSR 29 is required to be submitted with the application.

(d) The applicant for the diversion of surface water shall provide information on the watershed, including:

1. Size of drainage area to the diversion point;
2. Stream water quality classification;
3. Stream flow records, including flow duration curves and hydrographs. If there are no stream flow records the applicant shall contact the Department in accordance with N.J.A.C. 7:19-1.9 to determine the procedures to be followed for obtaining stream flow records for a similar stream and adapting those records for use;
4. Upstream and downstream diversions, and discharges including the volumes and locations thereof, and any information necessary for the applicant to determine impacts; and
5. A comprehensive hydrological evaluation of the proposed diversion and a discussion of

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the expected impacts of the proposed diversion both on the water resource and on upstream and downstream diversions and discharges.

(e) The applicant for the diversion of water shall provide a list of the following items, along with a United States Geological Survey topographical quadrangle map with the locations of the items identified thereon:

1. All permitted or certified diversions within a one mile radius, when diversions from a water table aquifer or a pond fed primarily by ground water are proposed;

2. All permitted and certified diversions within a five mile radius when a diversion from a confined or semi-confined aquifer is proposed;

3. The proposed withdrawal site, including latitude and longitude;

4. All water supply wells not listed pursuant to (e)1 and 2 above within the zone of influence of the proposed diversion source;

5. All landfills and ground water contamination sites within twice the estimated zone of influence of the proposed diversion up to one mile; and

6. Delineated freshwater wetlands within the zone of influence for proposed diversions from a water table aquifer.

(f) An applicant for a permit shall provide all information which may establish:

1. That the proposed diversion is in the public interest;

2. That the diversion 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;

3. That the plans for the proposed diversion are just and equitable to the other water users affected thereby, and that the withdrawal does not adversely affect other existing withdrawals, either ground or surface;

4. That, in the case of a ground water diversion, the proposed diversion will not cause an increase in saline intrusion that renders the water resource unfit for use; will not spread ground water contamination; and will not interfere with any ground water remediation plan or activity;

5. If permit application is made for a period longer than that listed in N.J.A.C. 7:19-2.14(a)1, reasons why a permit of such duration is required by economic considerations, including, for example, necessity of amortizing a new investment over an extended period of time, and the public interest; and

6. That any structures required for a proposed diversion are not located within a State-designated freshwater wetland or transition area. If this is not shown by submission of a map showing

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those wetlands or a written statement which identifies those wetland areas, the applicant shall comply with N.J.S.A. 13:9-1 et seq. and N.J.A.C. 7:7A.

(g) The applicant shall submit any other information which substantiates the need for the proposed allocation and supports the designated choice of water resource for the allocation. For diversions for nonpotable purposes the applicant shall analyze the availability and utilization of lower quality water and provide documentation that the diversion is of the lowest acceptable quality water considering the intended use.

(h) If the applicant fails to establish any of the items required pursuant to (f) and (g) above, or if the Department determines that a more viable alternative source of water is available, or if the proposed diversion is not in accordance with the New Jersey Statewide Water Supply Plan, the Department will deny the application.

(i) The applicant shall submit a Water Conservation and Drought Management Plan on forms provided by the Department, unless the diversion for which the applicant seeks a permit will be used for one of the following activities:

1. Ground water remediation;
2. Sand and gravel mining; or
3. Water which is returned to its source without a substantial diminution in quantity.

(j) The applicant shall submit a summary sheet which identifies all contracts which have been entered into for the bulk sale or purchase of water in accordance with N.J.A.C. 7:19-7.3.

(k) The applicant for a water supply allocation permit shall, upon submission of an initial, renewal or modification application, sign the following certifications on the application forms:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and or imprisonment." This certification shall be signed by the highest ranking individual at the facility with overall responsibility for that facility.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fine and/or imprisonment." This certification shall be signed as follows:

- i. For a corporation, by a principal executive officer of at least the level of vice president;
- ii. For a partnership or sole proprietorship, by a general partner or the proprietor,

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respectively; or

iii. For a municipality, State, Federal or other public agency, by either the principal executive officer or ranking elected official.

3. Where the highest ranking corporate, partnership, or governmental officer or official at the facility required to certify pursuant to (k)1 above is the same person as the official required to certify pursuant to (k)2, only the certification in (k)1 shall be made. In all other cases, the certifications required pursuant to both (k)1 and 2 shall be made.

(l) The applicant shall submit evidence that the flow meters on all existing diversion sources have been calibrated to within five percent accuracy in the five years prior to the date of application, unless exempted under N.J.A.C. 7:19-2.14(a)4.

7:19-2.3 Application requirements for Temporary Dewatering Permits

(a) An applicant for a temporary dewatering permit shall contact the Department in accordance with N.J.A.C. 7:19-1.9 to obtain current application forms and other instructions and information necessary to file a complete application. The applicant for the temporary dewatering permit shall be the project owner or utility responsible for the construction and not the contractor.

(b) The applicant shall follow all the instructions, complete the application forms, obtain and prepare all other documents required by the instructions, and submit the completed application, other documents, required information and any applicable fees required pursuant to N.J.A.C. 7:19-3 to the Department.

(c) The applicant shall list the depth to water, the corresponding surface elevations, and the projected depths of excavations and dewatering over the work site.

(d) The applicant shall discuss the geology, hydrogeology, and the expected impacts of the proposed diversion both on the resource and other users of the water resource.

(e) The applicant shall provide a list of the following items, along with a United States Geological Survey topographic quadrangle map with the locations of the items identified thereon:

1. The proposed withdrawal site, including latitude and longitude;
2. All water supply wells within a one-quarter-mile radius; and
3. All landfills and ground water contamination sites within a one-quarter-mile radius.

(f) If dewatering will occur at a depth of greater than 50 feet, the Department may require the applicant to identify the items required pursuant to (e)2 and 3 above at a radius greater than one-quarter-mile.

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(g) The applicant shall provide all information which establishes:

1. That the proposed diversion is in the public interest;
2. That the plans for the proposed diversion are just and equitable to the other water users affected thereby, and that the withdrawal does not adversely affect other existing withdrawals, either ground or surface; and
3. That the proposed diversion will not reduce the dry season flow of any river or stream so as to adversely affect the river or stream.

(h) Each applicant for a temporary dewatering permit shall, upon submission of an initial, modification or renewal application sign the certifications on the application forms in accordance with N.J.A.C. 7:19-2.2(k).

7:19-2.4 Application requirements for renewal of permits

(a) Applications for renewal of current permits shall be submitted three months prior to expiration of the current permit.

(b) Applicants for renewal of current permits shall submit appropriate application forms and other information as requested by the Department for the proper implementation of the Act and this chapter.

(c) If the permittee does not comply with (a) and (b) above, the Department may:

1. Notify the permittee by certified mail that the permit has expired.
2. Take appropriate enforcement action including the assessment of penalties under N.J.A.C. 7:19-18.
3. Require the permittee to file an application as a new applicant in accordance with N.J.A.C. 7:19-2.2 or 2.3 and pay the initial fee and annual fee as set forth in N.J.A.C. 7:19-3.

(d) The Department may, in its discretion, grant a one-time extension of a permit for a period not to exceed one year.

(e) A current permit for which a complete renewal application package is submitted to the Department 3 months prior to the expiration date shall remain in effect until the Department grants or denies the renewal application.

7:19-2.5 Application Review

(a) The Department will make a preliminary review of each application as follows:

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1. If the application does not contain all documents and information required pursuant to N.J.A.C. 7:19-2.2 through 2.4, the Department may, at its discretion, within 20 working days of receipt of the application, return the application or advise the applicant in writing as to the additional information required to make the application administratively complete and the date by which the additional information must be received by the Department.

2. If the application contains all documents and information required pursuant to N.J.A.C. 7:19-2.2 through 2.4 and is determined to be administratively complete, the Department, within 20 working days of receipt of the application, will so advise the applicant in writing.

(b) The Department will make a technical review of each application within 20 working days after it declares the application administratively complete as follows:

1. If the application does not contain sufficient technical information as required pursuant to N.J.A.C. 7:19-2.2 through 2.4 or if the technical information requires clarification, the Department will so advise the applicant in writing and establish a date by which additional or clarifying information must be received by the Department. If additional or clarifying information is not received by the specified date, the Department may:

- i. Return the application; or
- ii. Extend the date by which the applicant must provide the additional or clarifying information; or
- iii. Deny the application.

(c) The Department will perform a detailed analysis of the technically complete application and will develop a staff recommendation to issue the permit or deny the application. The staff recommendation will include any conditions to be attached to the permit if the recommendation is to issue the permit or an explanation of the reasons for denial if the recommendation is to deny the application.

(d) The Department will issue a permit renewal, with any conditions deemed appropriate by the Department, for the same allocation, except that the Department may, after notice and public hearing, if requested by the applicant, pursuant to N.J.A.C. 7:19-2.7 through 2.11, reduce the allocation to that quantity currently diverted, subject to contract, or reasonably required for a demonstrated future need.

7:19-2.6 Opportunity to review application by interested parties

Once the Department determines that an application is administratively complete in accordance with N.J.A.C. 7:19-2.5(a), the application may be reviewed in person at the Department by any interested parties and copies may be obtained from the Department upon payment of the fee for duplication prescribed by law.

7:19-2.7 Public notice and preliminary decision

(a) The Department, following its determination that the application for a new permit or major modification of a permit is technically complete pursuant to N.J.A.C. 7:19-2.5(b), will:

1. Publish a notice of application for a water supply allocation permit or temporary dewatering permit in a newspaper of general circulation in the area affected by the proposed diversion. The notice shall contain:

i. A description of the proposed diversion, including but not limited to the source, location, quantity and/or allocation of water to be diverted.

ii. The date of the close of the public comment period on the application, which shall be at least 30 days from the date of publication of the notice of application for a water supply allocation permit, or at least 14 days from the date of publication of the notice of application in the case of a temporary dewatering permit or a local water emergency.

iii. A statement that written comments, arguments or objections to the application may be submitted until the end of the public comment period;

iv. A statement that a hearing shall be scheduled if any interested party, including the applicant or the Department, so requests in writing, before the end of the comment period. The Department will provide notice of the hearing date in accordance with (d) below;

2. Once the notice of application is published pursuant to (a)1 above, the applicant shall not make any changes to its application, which would be considered a major modification pursuant to N.J.A.C. 7:19-1.5.

3. Notify, in writing, the applicant, the governing bodies of municipalities and counties and water allocation permittees, certification holders, and water use registrants within a one mile radius of the diversion and officials of existing public water systems within a five mile radius of the proposed diversion. If a proposed diversion might impact upstream or downstream diversions, the Department will notify all affected governing bodies and permittees in the watershed that may be affected by the proposed diversion.

(b) Between the date of publication of the notice of application and the scheduled date for the close of the public comment period, the Department will review the application and any written comments received. The Department will develop a staff recommendation to either grant or deny the application. The staff recommendation will include any conditions to be attached to the permit if the recommendation is to issue the permit or an explanation of the reasons for denial if the recommendation is to deny the application. The staff recommendation will be mailed to the applicant to be commented on or objected to approximately 14 days prior to the close of the public comment period, and will be available at the Department for public review during this period.

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(c) If the Department does not receive a request for a hearing on the application pursuant to (a) above, the Department will issue a permit or deny the application.

(d) If the Department does receive a request for a hearing on the application pursuant to (a) above, the Department will:

1. Schedule a public hearing, publish a notice of hearing on the application in a newspaper of general circulation in the area affected by the proposed diversion that is the subject of the application at least 30 days prior to the hearing on an application for a water supply allocation permit or 14 days prior to the hearing in the case of an application for a temporary dewatering permit or local water emergency.

2. Notify, in writing, the applicant, governing bodies of municipalities and counties and water allocation permittees, certification holders and water use registrants within a one mile radius of the diversion and officials of existing public water systems within a five mile radius of the proposed diversion. If a proposed diversion might impact upstream or downstream diversions, the Department will notify all affected governing bodies and permittees in the watershed.

3. The notice of hearing shall contain:

i. A description of the application;

ii. The hearing date and location; and

iii. A statement that written comments, arguments or objections to the application may be submitted to the Department until the close of business on the day on which the hearing is held or to the hearing officer at the public hearing.

7:19-2.8 The Public hearing

(a) The Department shall hold a public hearing on the date specified in the notice or on the day or days to which it has been adjourned when:

1. A timely request has been filed; or

2. It has been determined that a hearing would be in the public interest.

(b) The Department will designate a hearing officer to preside at the public hearing.

(c) At the public hearing, the Department will present the staff recommendation to issue a permit or deny the application.

(d) At the public hearing, the applicant shall make an oral presentation justifying the application. Any other written or oral comments from interested parties relevant to the application may be presented at this time.

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(e) The hearing officer shall provide the applicant with reasonable time following the hearing to correct deficiencies in its application and/or respond to comments received at the public hearing and to allow any other interested party time for additional comments relevant to the application.

(f) The Department will certify the costs of publication of the notice of application and notice of hearing, and all costs of the stenographic record to the applicant. The applicant shall pay the costs as billed by the Department by the specified due date. Payment in full of these costs shall be a condition of the final permit.

7:19-2.9 Final staff review and Hearing Officer's Report

(a) The Department will review the hearing transcript in conjunction with the application and written comments timely received and will develop, if necessary, an addendum to the staff recommendation prepared pursuant to N.J.A.C. 7:19-2.7(b). The Department will forward the addendum to the hearing officer.

(b) The hearing officer shall review the application, comments received, the hearing transcript, the staff recommendation, and addendum, if any. The hearing officer shall prepare and submit written findings and recommendations in the form of a Hearing Officer's Report to the decision maker for a final decision on the application for a permit.

7:19-2.10 Decision making

(a) The decision maker shall review the staff recommendation and addendum, if any, and the Hearing Officer's Report and set forth in the Decision Maker's Statement the decision to issue a permit or deny the application. If the decision is to issue a permit, the Decision Maker's Statement shall include any conditions to be attached to the permit.

(b) The decision maker may review any other documents submitted during the review process and will use his or her professional judgment when making a decision.

(c) The permit shall be issued or denied after the Decision Maker's Statement has been issued and all applicable fees have been paid.

7:19-2.11 Notification of decision

The applicant shall be notified in writing of the Department's decision to issue a permit or deny the application. In addition, all persons who testified at the public hearing, or who provided written comments or requested notification of the decision on the permit application, shall be notified by letter of the decision.

7:19-2.12 Record of decision

(a) The Department shall maintain for each application a record that consists of the following:

1. The application documents;
2. Staff recommendation and addendum, if any;
3. The Hearing Officer's Report and hearing transcript;
4. The Decision Maker's Statement;
5. Written comments received;
6. The permit or letter of denial.

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

7:19-2.13 Request for adjudicatory hearing

(a) An applicant or any person, subject to the limitation on third party appeal rights set forth in P.L. 1993, c.359 (N.J.S.A. 52:14B-3.1 through 3.3.), who believes himself or herself to be aggrieved, with respect to decisions made by the Department regarding any permit, permit condition, or application denial 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. Denies an application for a water supply allocation permit, or any part thereof;
2. Revokes, withdrawals or modifies a previously issued approval; or
3. Denies a contract for the sale of water under N.J.A.C. 7:19-7.
4. Issues a permit with conditions that the applicant considers unreasonable.

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

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625-0402

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(c) All request for a contested case hearing must be received by the Department within 20 calendar days after the date upon which the notice of decision was received.

(d) All request 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 such 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 such decision;
4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issued must also be included; and
5. In the case of a person who believes himself or herself to be aggrieved, the constitutional and statutory grounds entitling the person to a hearing and all documents supporting such assertions.

(e) A hearing request not received within 20 days after receipt of the notification by the applicant shall be denied by the Department.

(f) A hearing request based upon a permit condition which was contained in a prior permit held by the applicant and not objected to previously or on an issue not raised by the applicant during the public comment period shall be denied by the Department.

(g) A hearing request based upon a permit condition that the applicant requested in its application shall be denied by the Department.

(h) If the applicant or any person requesting a hearing pursuant to (a) above fails to include all the information required by (d) above, the Department may deny the hearing request.

(i) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall 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 by 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.

(j) 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 and regulations promulgated thereto.

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(k) If a permittee pursues a judicial appeal of the Department's final decision on the permit, the permit as issued shall remain in effect pending a decision on said appeal.

7:19-2.14 Permit conditions

(a) Each permit shall contain specific and general conditions including but, not limited to, the following:

1. The term of the permit. The maximum term of a permit shall not exceed 10 years.
2. The maximum allowable diversion, expressed in terms of a daily, monthly and/or annual allocation;
3. That the monthly diversion amount be reported on a quarterly basis on forms provided by the Department. The quarters shall end on March 31, June 30, September 30, and December 31. The reports shall be submitted within 30 days after the close of the quarter.
4. That all diversion sources equipped with totalizing flow meters which shall be calibrated at least every five years with the following exceptions:
 - i. Sources whose sole use is to supply water for purposes of fire protection.
 - ii. Sand and gravel operations using water for media transport.
 - iii. Sources for which the permittee demonstrates that the installation of a totalizing flow meter is impractical or unreasonable.
5. Any permittee with a diversion source that meets the requirements of (a)4i, ii, or iii above may estimate the diversion quantity using an accurate and reasonable method approved by the Department. The permittee shall verify the method for accuracy every five years.
6. Passing flow requirements for surface water sources or ground water sources that influence surface water sources.
7. That the static water levels for ground water sources be determined and reported on the quarterly diversion report pursuant to (a)3 above;
8. Allow the transfer of a permit, with the consent of the Department, but only for the identical use of the waters by the transferee;
9. That, in areas of potential for salt water intrusion, a raw water sample be tested for chloride and/or sodium concentration and the result be reported on the quarterly diversion report pursuant to (a)3 above;

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10. That the permittee adopt and implement, to the satisfaction of the Department, a Water Conservation and Drought Management Plan. A Water Conservation and Drought Management Plan status report on all measures that have been implemented shall be submitted by the date specified in the permit. Any permittee not required to submit such a plan pursuant to N.J.A.C. 7:19-2.2(i) is exempt from this requirement;

11. That the permittee is responsible for mitigating adverse impacts on ground or surface waters or the users thereof caused as a direct result of their diversion;

12. That the Department may modify or revoke the permit, after notice and after hearing, if requested, for violations of permit conditions, rules adopted or orders issued by the Department, and when deemed necessary for the public interest;

13. That, if the water diverted is used for non-potable purposes, the permittee investigate the feasibility of water reuse;

14. That the water diverted be used for approved purposes;

15. That, if the authorized diversion privileges are not currently diverted, subject to contract, or reasonably required for a demonstrated future need, they shall revert back to the State upon renewal or modification of the permit; and

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.

17. 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

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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.

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.

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.

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;

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

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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.

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 a 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.

SUBCHAPTER 3. FEE SCHEDULE FOR WATER SUPPLY ALLOCATION AND TEMPORARY DEWATERING PERMITS

7:19-3.1 Scope and Authority

(a) 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.

(b) This subchapter also establishes fees applicable to the issuance of water use registrations.

7:19-3.2 Purpose

The purpose of this subchapter is to establish fees for the water allocation program set forth in

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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, and water use registrations. 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 and water use registrations. 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.

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.

7:19-3.4 Establishment of fee schedule

(a) 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.

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, and as specified below:

1. Any person who applies for a new permit or a major modification of 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(a)1, based on the class of the allocation listed in (d)1 below.

2. Each permittee shall pay the appropriate annual fee set forth in N.J.A.C. 7:19-3.6(a)2, based on the allocation class listed in (d)1 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

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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 or permittee shall be placed in the appropriate class below based on the total amount of the approved monthly allocation, based upon a 31-day month:

1. Initial Application, Major Modification, and Annual Permit Fee Classes:

i. Class 1: 3.1 million gallons per month (mgm) to less than 15.5 mgm;

ii. Class 2: 15.5 mgm to less than 31.0 mgm;

iii. Class 3: 31.0 mgm to less than 62.0 mgm;

iv. Class 4: 62.0 mgm to less than 155.0 mgm;

v. Class 5: 155.0 mgm to less than 310.0 mgm; and

vi. Class 6: 310.0 mgm and above.

(e) For the purpose of assessing the fees under this subchapter, the following shall apply:

1. If any ground water diversion in excess of 3.1 million gallons per month is included in a permit, the initial application or major modification fee for the permit shall be computed using the ground water schedule set forth in N.J.A.C. 7:19-3.6(a)1, accounting for the total monthly allocation from all sources within the scope of the permit. The annual fee shall be computed using the ground water schedule set forth in N.J.A.C. 7:19-3.6(a)2; and

2. A diversion from a pond fed primarily by ground water is considered a ground water diversion.

(f) Any hearing costs shall be paid by the applicant 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 applicant on or before the specified due date of the invoice.

(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) In accordance with N.J.S.A. 13:1D-120 through 124, an applicant for a new or modified permit for which the application fee exceeds \$1000 may pay such fee in three equal installments. The first installment is due at the time the applicant submits the application for the

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permit. The second installment is due when the Department notifies the applicant that the permit application is administratively complete. The last installment is due when the Department takes final action on the application.

**7:19-3.6 Fee Schedule
(Effective January 1, 2009)**

(a) Fees shall be charged for water supply allocation permits and dewatering permits issued under this chapter pursuant to the following schedule:

1. Initial application and permit modification fees(\$):

	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6
i. Surface water diversions	5985	6740	8695	14985	16375	17765
ii. Ground water diversions	7490	8405	10860	18735	20405	21790
iii. Ground and surface water diversions in which waters are returned undiminished to the source	3570	4780	5985	7195	8300	9415
iv. Dewatering diversions	7275	7275	7275	18595	18595	18595

2. Annual fees (\$):

i. Surface water diversions	2885	3380	5790	9985	12760	15540
ii. Ground water diversions	3880	4485	7235	12490	15270	18045
iii. Ground and surface water diversions in which waters are returned undiminished to the source	1265	2070	3990	4795	5605	6400
iv. Dewatering diversions	3770	3770	3770	12395	12395	12395

(b) Fees for water use registrations issued under this chapter shall be charged as follows:

1. Any person who is required to apply for a water use registration pursuant to N.J.A.C. 7:19-2.18 shall, along with a completed registration form, submit an initial registration fee of \$415.00.

2. Each person who holds a valid water use registration shall pay an annual fee of \$205.00.

7:19-3.7 Payment of annual fee

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

(b) Each permittee or water use registrant 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:

NJ Department of Treasury
Division of Revenue
PO Box 417
Trenton, New Jersey 08046-0417

(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.

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 or the water use registration by the registrant. Any permittee or registrant who fails to pay their annual fee by the established due date shall terminate all diversion activity as of the established due date.

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.

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(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.

(c) These rules shall not apply to water diverted within the corporate limits of a municipality for manufacturing and fire purposes only, and returned without pollution to the stream from which it was taken within said corporate limits.

7:19-4.4 Diversion reporting requirements

(a) All persons diverting water shall report the quantity diverted each month to the:

Bureau of Water Allocation
CN 426
Trenton, New Jersey 08625

(b) These reports shall be submitted in accordance with N.J.A.C. 7:19-2.14(a)3.

7:19-4.5 Schedule for calculating and making payment of the amount due pursuant to N.J.S.A. 58:2.1 et seq.

(a) The Department shall calculate each diverter's excess diversion fee in accordance with the methodology set forth in N.J.A.C. 7:19-4.6 and certify the amount due from each diverter to the State Comptroller of New Jersey each year.

(b) The State Comptroller, through the Bureau of Revenue, shall notify each diverter of the amount it owes the State and the date on which payment is due.

(c) Payments shall be payable to the Treasurer, State of New Jersey and mailed by the due date to:

Bureau of Revenue
CN 417

Trenton, New Jersey 08625

7:19-4.6 Calculation of fees

(a) The Department shall segregate from the quarterly diversion reports those portions of the total diversion from surface water for the purpose of public water supplies subject to the charges authorized by N.J.S.A. 58:2-1 et seq.

1. The Department shall use the diversion reports of the supplier of water in cases where there is a difference between the supplier's and recipient's report on the quantity of water diverted.

(b) The Department shall obtain from the United States Geological Survey the daily stream flow records for the applicable year for those gaging stations downstream of the surface water diversion points for public water supplies.

(c) The Department shall determine for each purveyor the amount of water diverted in excess of the free allowance set forth in N.J.A.C. 7:19-4.8.

1. Where more than one purveyor serves a municipality entitled to a free allowance, the free allowance shall be allocated in proportion to each purveyors' share of the total diversion going to that municipality during the year.

(d) The total diversion by each purveyor less the free allowance, and adjustments thereto, shall be subject to the excess diversion fee.

1. The excess diversion fee shall be fixed at not less than \$1.00 nor more than \$10.00 per million gallons in excess of the free allowance.

2. The minimum charge of \$1.00 per million gallons of water shall apply on those days when the passing flow requirement below the point of diversion is maintained.

3. The maximum charge of \$10.00 per million gallons of water shall apply on those days when the passing flow below the point of diversion is zero.

4. The rate of charge for any day in which the passing flow requirement is not maintained shall be computed in accordance with the following formula:

$$\text{Charge for period} = \left\{ 1.00 + 9.00 \left(1 - \frac{\text{ADF}}{\text{PFR}} \right) \right\} \times (\text{TF})$$

ADF = average daily passing flow in stream

PFR = passing flow requirement

TF = total diversion in millions of gallons subject to the excess diversion fee.

(e) The passing flow requirements which apply in these calculations include but are not

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limited to the following:

Purveyor	Gaging Station	Passing Flow (cubic feet per second)
Brick Township M.U.A. Elizabethtown Water Company	Metedeconk River near Lakewood	13.0
Raritan River N.J. Water Supply Authority	Passing flows maintained by	
Hackensack Water Company		
Hackensack River	Hackensack River at New Milford	12.9
Saddle River	Saddle River at Lodi	13.9
Two Bridges	Passaic River	143.3
(except when Passaic Valley Water Commission is diverting at Two Bridges, in which case passing flow will be 27.2 cfs).		
City of Jersey City	To be released from Boonton	10.83 ¹
Dam to the Rockaway River Middlesex Water Company		
Robinson's Branch of Rahway River	Rahway River at Rahway	4.2
Raritan River N.J. Water Supply Authority	Passing flow maintained by	
New Jersey-American Water Company		
Passaic River	Passaic River at Chatham	116
Canoe Brook	Canoe Brook near Summit	2.12
Passaic River at Madisonville	Passaic River near Millington	10.7
Swimming River	Swimming River near Red Bank	9.4
Jumping Brook	Jumping Brook near Neptune	1.16
Shark River	Shark River near Neptune	1.9
Newark Water Department	Pequannock River at Macopin	12.3
City of New Brunswick	Lawrence Brook at Westons Mill	8.7
North Jersey District Water Supply Commission	Wanaque River at Wanaque	15.5 ²
	Ramapo River at Pompton Lakes	61.9
Two Bridges	Passaic River	143.3
(except when Passaic Valley Water Commission is diverting at Two Bridges, in which case passing flow will be 27.2 cfs).		
Passaic Valley Water Commission		
Pompton River	at Pompton Plains	92.8
Passaic River	at Little Falls	89.0
Passaic River	at Two Bridges	27.2
Rahway Water Department		
Rahway River	at Rahway	7.9

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Sayreville Borough	at Duhernal Dam Dec.-April	61.88
	May-Nov.	123.78
City of Trenton		
Delaware River	at Trenton	1,131.1

¹ Subject to adjustment when flows in Beaver Brook at the outlet of Split Rock Pond are less than 1.5 cfs.

² Subject to reduction by the amount of flows into reservoir at Awosting less than 4.6 cfs

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(f) Where the passing flow is not specified above, it shall be fixed by the Department based on an amount equal to the average daily flow for the driest month, as shown on existing records or in lieu thereof, 125,000 gallons for each square mile of unappropriated watershed above the point of diversion. The flows computed on the basis of 125,000 gallons per day per square mile shall be in addition to flows from any appropriated watershed above the point of diversion.

7:19-4.7 Payment for diversions from wells or percolating water supplies

In cases where the State's right of eminent domain is exercised for the condemnation of well or percolating water supplies, the purveyor shall be charged a fee of \$1.00 per million gallons of water diverted from such sources.

7:19-4.8 Free allowance determination

(a) The Department shall determine the free allowance each purveyor is entitled to in accordance with the following:

1. Each purveyor shall be granted an allowance of 100 gallons daily for each inhabitant of the municipality or municipalities supplied, as shown by the census of 1905 or

2. The amount, in excess of the amount specified in 1. above, that the purveyor was legally diverting on June 17, 1907.

(b) Where any purveyor diverts from more than one source at the same time, for the purpose of computing the excess diversion fee, the free allowance shall be allocated proportionately to each source.

(c) The free allowance for each purveyor listed in (d) below shall be changed in the event the sources of the supply for a community are changed.

(d) The Department has determined the following free allowances, in accordance with (a) above, for the following purveyors:

Purveyor/Division	Points of Diversion	Free Allowances (million gallons) ³
Atlantic City Water Dept.	Absecon Creek	1,649.070
Bloomsbury Water Dept.	Musconetcong River	29.200
Branchville Water Dept.	Dry Brook	21.571
Brick Township M.U.A.	Metedeconk River	77.453
Burlington City Water Co.	Delaware River	293.387
Butler Water Co.	Apshawa Brook	139.175

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Elizabethtown Water Co.	Millstone River and Raritan River	1479.137
City of Elizabeth		2,208.579 ¹
Franklin Water Dept.	Franklin Pond	58.400 ¹
Hackensack Water Co.	Hackensack River	9,153.470 ²
Saddle River		
Hirschfield Brook		
Sparkill Brook		
Hackettstown M.U.A.	Mine Brook	94.681
Haledon Water Dept.	Oldam Brook	108.551
Jersey City Water Dept.	Rockaway River	16,542.946
Lambertville Water Co.	Tributary of Delaware River	183.084
Matchaponix Water Supply Co.	Matchaponix Brook	0
Middlesex Water Co.	Robinson's Branch	639.006
	Rahway River	
	Raritan River	
New Jersey-American Water Company		
	Buckhorn Creek Tributary	68.219
	Canoe Brook/Passaic River	782.889
	Delaware River	0
	Madisonville	64.423
	India Brook	62.926
	Swimming River	1,090.946
	Jumping River	16.813
	Shark River	140.615
Southeast Morris County M.U.A.	Harmony Creek	627.253
Newark Water Department	Pequannock River	
Newark and Belleville		13,228.208 ¹
Bloomfield		425.882
North Jersey District Water Supply Comm. Including Montclair, Kearny, Glen Ridge, Bayonne and East Newark	Wanaque River	
	Ramapo River	
	Two Bridges	2,825.940
City of Newark		10,340.048
City of New Brunswick	Lawrence Brook	957.445
New Brunswick and Milltown		
Newton Water Co.	Tributary of Paulinskull River	161.403
Passaic Valley Water	Passaic River at	6,542.735 ¹

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Commission	Little Falls, or Passaic River at Two Bridges	
Rahway Water Dept.	Rahway River	555.397
Salem Water Dept.	Alloway Creek	235.170
Sayreville Borough	South River	174.434
Sussex Water Dept.	Lake Rutherford	48.107
City of Trenton	Delaware River	4,923.850
United States Army-Fort Dix	Rancocas Creek	0
Naval Air Propulsion Center	Delaware River	0

¹ Subject to allocation.

² May include credits for releases from DeForest Reservoir.

³ For leap year, multiply these quantities by the fraction 366/365.

7:19-4.9 Changes in procedure for determining excess diversions

During an emergency declared by the Governor pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Department may amend the above procedures with public notice, in accordance with the emergency powers set forth in the Water Supply Management Act.

7:19-4.10 Appeal procedure

Any party aggrieved by the Department's determination of its excess diversion fee may appeal the determination by submitting a letter requesting an adjudicatory hearing, pursuant to N.J.A.C. 7:19-2.13, to the Department before March 20 or 30 days after receipt of the bill whichever is later.

7:19-4.11 Procedure on nonpayment of fee

The State Comptroller shall certify the names of and amounts due from delinquent diverters as of July 1 each year to the Attorney General for collection of the amount due, except for those fees stayed on an appeal.

SUBCHAPTER 5. SMALL WATER COMPANY TAKEOVER ACT REGULATIONS

7:19-5.1 Purpose

This subchapter implements the provisions of N.J.S.A. 58:11-59 et seq., commonly known as the "Small Water Company Takeover Act". This subchapter establishes procedures by which a small water company that does not comply with appropriate statutory and regulatory standards concerning actual or imminent public health problems may be acquired or "taken over" by the most suitable

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public or private entity pursuant to a joint order issued by the New Jersey Department of Environmental Protection and the New Jersey Board of Public Utilities.

7:19-5.2 Definitions

Unless the context clearly indicates otherwise, the following terms, when used in this subchapter, shall have the following meanings:

"Act" means the "Small Water Company Takeover Act", N.J.S.A. 58:11-59 et seq.

"Actual or imminent public health problems" means any violations by a small water company of appropriate statutory and regulatory standards, including but not limited to the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10-1 through 13, which adversely affects the quality, pressure or volume of water delivered as determined by the Department. Violations by a small water company of appropriate statutory and regulatory standards that do not adversely affect the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent public health problems for the purposes of this subchapter, including, but not limited to, aesthetic water quality problems or minor design deficiencies.

"BPU" means the New Jersey Board of Public Utilities.

"Capable" means financially and operationally able to provide safe, adequate and proper water service for the customers of the small water company to be acquired currently or in the foreseeable future. BPU shall be consulted by the Department concerning any public or private water systems' financial status.

"Commissioner" means the Commissioner of the Environmental Protection or his designated representative.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Water Resources of the Department of Environmental Protection.

"Proximate" means and includes all public or private water companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., municipalities or any other suitable governmental entities wherein the small water company provides service regardless of their ability to reasonably physically interconnect with the small water company to be acquired.

"Public Advocate" means the Department of the Public Advocate.

"Small water company" means any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections.

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7:19-5.3 Construction

(a) This subchapter shall be liberally construed to permit the Department and BPU to discharge their statutory functions.

(b) The Department and BPU may jointly 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., and any regulations promulgated pursuant thereto.

7:19-5.4 Applicability

This subchapter shall apply to all small water companies within the State of New Jersey.

7:19-5.5 Severability

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

7:19-5.6 Scope

(a) Any small water company not in compliance with appropriate statutory and regulatory standards, including but not limited to the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10-1 through 13, concerning actual or imminent public health problems as determined by the Department may be subject to the provisions of this subchapter.

(b) Violations by a small water company of appropriate statutory and regulatory standards not adversely affecting the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent public health problems for the purpose of this subchapter.

7:19-5.7 Departmental action

(a) Prior to the implementation of procedures under the Act, the Department shall actively pursue appropriate and available enforcement options to bring a small water company into compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems including but not limited to:

1. Issuance of directive letters;
2. Issuance of administrative orders;

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3. Direct negotiation;
4. Appropriate legal proceedings; or
5. All other enforcement options deemed reasonable and appropriate by the Department consistent with its statutory mandate.

(b) A Departmental order issued on a case-by-case basis to a small water company concerning the availability of water, the potability of water and the provision of water at adequate volume and pressure may initiate the proceedings under the Act and this subchapter.

1. A Departmental order shall specify on a case-by-case basis a reasonable time period in which the small water company must comply with the appropriate statutory and regulatory standards concerning actual or imminent public health problems as determined by the Department and shall provide the public health problems as determined by the Department and shall provide the small water company with the opportunity for an evidentiary hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F et seq. to determine whether there has been compliance with appropriate statutory and regulatory standards.

2. If administrative hearing procedures have been initiated by a small water company concerning any outstanding Departmental order, the Department shall move to join any new order issued with the ongoing administrative hearing procedures.

3. The Department may issue another order concerning any small water company if the outstanding Departmental order remains over one year old or administrative hearing procedures have commenced.

(c) Should the Department conclude, following the expiration of the times for compliance or following an evidentiary hearing if one has been requested, that the small water company has not complied with the Department's order, the Department may invoke and initiate the provisions as set forth in N.J.A.C. 7:19-5.8.

1. The Department shall provide BPU with immediate notice of the small water company's noncompliance and the decision to invoke and initiate the provisions as set forth in N.J.A.C. 7:19-5.8.

7:19-5.8 Joint public hearing

(a) Designated hearing officers from the Department and BPU or an Administrative Law Judge shall conduct a joint information public hearing in the proximate area of the non-complying small water company, preferably in the evening, concerning the non-complying small water company after 30 days notice pursuant to (b) below.

(b) Notice of the time, place and subject matter of the joint public hearing shall be given at

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least 30 days prior to the scheduled hearing date by the Department and BPU as follows:

1. Publication of a display advertisement in a newspaper circulating within the proximate area of the small water company for a minimum of one day per week for two weeks prior to the scheduled date of the joint public hearing;
2. Issuance of press releases and utilization of other appropriate methods of notice;
3. Written notice by certified or registered mail sent to the following parties:
 - i. The non-complying small water company;
 - ii. The Public Advocate;
 - iii. Capable proximate public and private water companies; and
 - iv. Capable proximate municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., municipalities and any other suitable governmental entities wherein the non-complying small water company provides water service.

(c) The joint public hearing shall be conducted to receive public comments regarding the possible options available to bring the non-complying small water company into compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems. The acquisition of the non-complying small water company by the most suitable public or private entity shall be discussed. Information should be required from participants at the joint public hearing concerning any estimates of expenditures, including acquisition and improvement costs, that may be required to:

1. Assure the availability of water;
2. Assure the potability of water; and
3. Assure the provision of water at adequate volume and pressure.

(d) The Department shall make a technical presentation at the joint public hearing of the non-complying small water company's deficiencies, indicate necessary improvements and discuss, after consultation with BPU, possible options and preliminary improvement costs.

1. The Department's presentation shall be based on information reasonably available to the Department and be intended to focus attention on the relevant issues concerning the non-complying small water company.

2. Written summaries of the Department's presentation required by (d) above shall be mailed to the parties set forth in (a)3 above at least five days before the scheduled joint public hearing date.

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3. Copies of the written summaries required by (d)2 above shall be made available to other interested persons at the joint public hearing.

(e) The non-complying small water company shall be ordered to appear at the joint public hearing and provide all available information pertaining to the value of its water supply facilities and the cost of correcting deficiencies.

(f) Public comments shall be solicited at the joint public hearing and transcribed for the record at the expense of the non-complying small water company.

(g) The designated Department and BPU hearing officers, or an Administrative Law Judge shall require answers from any appropriate interested parties attending the joint public hearing, if possible, to all reasonable questions put forward at the joint public hearing.

(h) Cross-examination shall not be permitted by any interested parties at the joint public hearing.

(i) All participants at the joint public hearing shall be afforded the opportunity to testify under oath.

(j) Within 60 days after the joint public hearing held pursuant to this section, the designated Department and BPU hearing officers or an Administrative Law Judge shall review the record and prepare a joint report detailing no more than three options and their estimated costs, including the rationale for selection of each option in order of priority, for utilization by the Department and BPU in selecting an option.

(k) The joint report required by (j) above shall be mailed to all those noticed by certified or registered mail of the joint public hearing and shall be made available for public review. The Department and BPU shall undertake reasonable efforts to make copies of the joint report available to all other interested persons.

1. All interested persons shall be allowed to file comments concerning the report within 30 days of its issuance.

i. Failure to file any comments concerning the joint report by the small water company, capable proximate public or private water companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1, municipalities or any other suitable governmental entities wherein the non-complying small water company provides service shall create a rebuttable presumption that no objections to the joint report exist.

2. If the joint report required by (j) above recommends acquisition as an option, the Department and BPU may forward a copy of the joint report to the Office of Administrative Law to provide notice that the Department and BPU may request the services of an administrative law judge on an expedited scheduling basis to conduct the contested case hearing required by N.J.A.C. 7:19-5.9.

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7:19-5.9 Contested case

(a) A contested case hearing(s) shall be held before the Commissioner, the BPU Commissioner, or an Administrative Law Judge concerning the non-complying small water company to determine through a fact-finding adversarial hearing the expenditures that may be necessary to make improvements necessary to the non-complying small water company to insure compliance with the appropriate statutory and regulatory standards concerning actual or potential public health problems. Also to be considered at this contested case hearing(s) shall be the issue of acquisition costs and the most suitable public or private entity to acquire the non-complying small water company.

(b) At the contested case hearing(s) opportunity shall be afforded the parties to respond, appear and present evidence and argument on all issues involved pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the "New Jersey Uniform Administrative Procedure Rules of Practice", N.J.A.C. 1:1.

(c) The entire record addressed pursuant to this subchapter shall be considered by the Commissioner, BPU Commissioner or Administrative Law Judge in deciding the issues set forth in (a) above. All portions of this record considered admissible pursuant to the "New Jersey Uniform Administrative Procedure Rules of Practice", N.J.A.C. 1:1, shall be exhibits in the contested case hearing.

(d) In addition to any notice requirements required pursuant to (b) above, notice of time, place and subject matter of the contested case hearing shall be given by certified or registered mail to the following parties:

1. The non-complying small water company;
2. The Public Advocate;
3. Capable proximate public and private water companies; and
4. Capable proximate municipalities, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq. and any other suitable governmental entities wherein the small water company provides water service.

(e) The contested case hearing(s) shall be transcribed for the record at the expense of the non-complying small water company.

7:19-5.10 Joint takeover by the Department and BPU

(a) Upon receipt of the entire record of the joint public hearing and the contested case hearing(s), the Department and BPU shall jointly determine in a written order the appropriate actions to be taken on the basis of the entire record. If the acquisition option is not selected, then procedures under the Act terminate.

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(b) If the Department and BPU have determined that the costs of improvements to and the acquisition of the non-complying small water company are necessary and reasonable, the Department and BPU shall jointly order the acquisition of the non-complying small water company by the most suitable entity.

1. The Department has responsibility for technical determinations and BPU has responsibility for the rate making function.

2. The Department will consult with BPU technical staff prior to making any technical determinations with regard to this joint order.

3. This order shall include an action by BPU subject to refund which provides for the immediate inclusion in the rates of the acquiring entity of the anticipated costs of necessary improvements, or, if the determination of acquisition costs have been deferred, as soon as possible thereafter as may be practicable and feasible consistent with N.J.A.C. 7:19-5.11. The order shall also include the approved tariffs.

(c) If anticipated improvement costs are customer provided, the improvements shall be considered contributions in all future rate cases. Separate records shall be maintained as to contributions occurring under this process.

(d) The BPU shall extend or transfer the franchise area of the acquiring public or private entity to the extent necessary to cover the service area of the non-complying small water company taken over pursuant to the Act and this subchapter.

(e) If this joint order results in an increase in the rates, this process shall be considered a proceeding initiated by the application of a utility for an increase in rates for the purposes of N.J.S.A. 52:27E-19.

(f) Any acquisition costs which are deemed necessary and reasonable, based on evidence from the contested case hearing(s), and agreed to by the small water company and the acquiring entity and approved by BPU, after consultation with the Department and the Public Advocate, may be included in the rates.

7:19-5.11 Acquisition costs

(a) If the parties have not agreed to acquisition costs, BPU'S and the Department's designated representatives shall convene at least one meeting within 60 days of the issuance of the joint hearing report pursuant to N.J.A.C. 7:19-5.8(j) and again within 15 days after issuance of the joint order prepared pursuant to N.J.A.C. 7:19-5.10. Representatives of the Public Advocate, non-complying small water company and acquiring entity shall be notified of each meeting which will concern the possibility of mutual agreement on compensation for the acquisition and the other details pertaining to takeover of the non-complying small water company by the acquiring entity.

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1. Meetings shall be continued if the Department and BPU determine in writing that a reasonably possibility of success for an agreement exists.

2. BPU and Departmental representatives shall certify in writing to the Department and BPU the status of these meetings every three months.

(b) If no agreement between parties exist, compensation for the acquisition of the non-complying small water company shall be determined through the use of the eminent domain procedures pursuant to the "Eminent Domain Act of 1971", N.J.S.A. 20:3-1.

7:19-5.12 Compliance with joint order

(a) The acquiring entity which receives a joint order pursuant to N.J.A.C. 7:19-5.10 shall acquire the non-complying small water company and make necessary improvements to assure the availability of water, the potability of water and the provision of water at adequate volume and pressure as mandated by N.J.S.A. 58:11-62.

(b) The non-complying small water company shall immediately comply with the joint order and facilitate its sale to the acquiring entity as mandated by N.J.S.A. 58:11-62.

(c) The failure of any utility to comply with a joint order pursuant to N.J.A.C. 7:19-5.10 shall permit the BPU and the Department to proceed to enforce the joint order consistent with their statutory mandate.

7:19-5.13 Differential rate for customers of small water company for use of service of acquiring entity's system or facilities

If the joint order pursuant to N.J.A.C. 7:19-5.10 has been issued BPU may, in its discretion, allow the acquiring entity to charge and collect a differential rate from the customers of the non-complying small water company for the use or service of the acquiring entity's water supply system or facilities pursuant to N.J.S.A. 58:11-63.

SUBCHAPTER 6. WATER SUPPLY MANAGEMENT ACT RULES

7:19-6.1 Scope and Authority

(a) The Statewide Water Supply Master Plan represents the planning mechanism by which the State approaches its water needs. Inclusion of a project in the Master Plan is a prerequisite for the expenditure of funds under the Water Supply Bond Act of 1981.

(b) This subchapter is intended to provide administrative mechanisms through which some of the objectives of the Water Supply Management Act and more specific goals of the Water Supply Master Plan may be accomplished.

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(c) The specific provisions mandated by this subchapter are subject to modification by administrative order by the Department. The provisions of this subchapter shall not supersede the provisions of administrative orders issued by the Department prior to the effective date of this subchapter.

(d) This subchapter includes administrative procedures and policies to carry out specified management responsibilities of the Department. These requirements supplement other rules adopted by the Department, such as the water allocation procedures for agricultural and non-agricultural uses of water (see N.J.A.C. 7:19-1 et seq.).

(e) To avoid the imposition of needless administrative burdens on water purveyors and users, only a limited number of specified requirements in this subchapter apply throughout New Jersey. Other requirements are only applicable within designated water supply critical areas of critical water supply concern, where special situations require a greater degree of control to be exercised by the Department.

7:19-6.2 Definitions

The following words and terms shall have the following meanings unless the context indicates otherwise:

"Act" means the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., P.L. 1981, C.262.

"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.

"Allocation permit" means the document 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 water for any purpose other than agricultural or horticultural use.

"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 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 supply due to excess groundwater diversion.

"Class A standard" means the capacity of one or more interconnections with an adjacent water system, having the combined capacity to supply 75 percent of the average water usage of the receiving system, while relying on no more than one adjacent system for more than 25 percent of the average water supply of that adjacent system.

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"Class B standard" means the capacity of one or more interconnections with an adjacent water system, having the combined capacity to supply 50 percent of the average water usage of the receiving system, while relying on one adjacent system for no more than 35 percent of the average water supply of that adjacent system.

"Class 1 purveyor" means a water purveyor which serves a population of up to 10,000 persons.

"Class 2 purveyor" means a water purveyor which serves a population of 10,001 to 50,000 persons.

"Class 3 purveyor" means a water purveyor which serves a population of over 50,000 persons.

"Confined aquifer" means an aquifer which contains groundwater confined 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.

"Dependable yield of subsurface sources" means that yield of water from a subsurface source or sources available continuously during projected future conditions, including a repetition of the most severe drought or record, without creating undesirable effects. Undesirable effects may include adverse impact upon other wells of a depth of 50 feet or more, increased risk of introducing or spreading saline water or polluted water in the aquifer or unacceptable reduction of surface flow of streams.

"Dependable yield of combined surface/ground water sources" means the yield of water by a water system which is available continuously throughout a repetition of the most severe drought of record, without causing undesirable effects, as described in the definition of "Dependable yield of subsurface sources" above.

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

"Interconnection" means a water supply connection with another water supply system or systems.

"Multiple sources" means one or more production wells, surface water intakes, or interconnections or a combination of wells, surface water intakes or interconnections utilized to meet the demands of a public community water system.

"Normal demand" means the annual average daily demand during the three preceding non-drought years, including normally occurring peaks.

"Purveyor" or "water purveyor" means any person who owns or operates a public water supply.

"Public community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

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"Safe yield from surface sources" means the yield maintainable by a water system continuously throughout a repetition of the most severe drought of record, after compliance with requirements for maintaining minimum passing flows.

"Single prime source" means a single diversion of surface or groundwater, including an interconnection, capable of providing the peak water demand of a public community water supply system.

"Unaccounted-for water" means water withdrawn by a purveyor from a source and not accounted for as being delivered to customers in measured amounts.

"Unconfined" or "semi-confined" means an aquifer that is either exposed to atmospheric pressure or bounded by layers of materials which do not serve as an effective barrier to water migration.

"User" means any person or other entity which utilizes water.

"Water allocation" or "certification" means the authority to withdraw surface or groundwater for use, pursuant to a permit issued under N.J.A.C. 7:19-1 et seq. or 7:20A-1.1 et seq.

"Water supply system" means a physical infrastructure operated and maintained to deliver water on either a retail or wholesale basis to customers.

"Water table" means the water surface in the uppermost part of the water-saturated zone which is at atmospheric pressure.

"Water table aquifer" means a geological formation which carries water at atmospheric pressure at the top of the saturated zone.

"Yield of a water resource system" means the output of water from a system, available with monthly variations corresponding to the needs of the system.

7:19-6.3 Determination of safe or dependable yield

(a) Each purveyor shall either accept an estimate of safe yield from surface supplies or of dependable yield of subsurface sources previously made by the Department or submit its own evaluation and estimate for the approval of the Department within one year after a written request for such an estimate by the Department.

(b) A purveyor is required to provide a safe or dependable yield of water from its own sources, which, when added to water supplies available by contract and after subtraction of water obliged to be delivered by the purveyor by contract, shall be sufficient to provide for the normal demand of its own customers.

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1. A progressive reduction in the potentiometric surface of an aquifer will be considered presumptive evidence that dependable yield of a subsurface source is less than current withdrawals, subject to acceptable evidence to the contrary.

2. Water supplies available by contract may be relied upon only if the contract is not subject to cancellation or suspension and the safe or dependable yield of the source of supply is not exceeded. Water obtainable through interconnections shall not be included unless reliable delivery is assured by contract.

3. All contracts relied upon to meet the requirement of this subsection (b) shall be subject to review and approval by the Department, in accordance with N.J.A.C. 7:19-7, to determine their compliance with the rules in this Chapter and the Act.

4. Increased safe yield or dependable yield of individual water supply systems may be allowed, to take advantage of system diversity and interconnections, but only in conformance with regional arrangements approved by the Department, under which coordinated systems of operation will assure system-safe yields greater than that which could be provided by the individual water systems.

(c) If a determination of yield in accordance with (a) above shows that a purveyor has insufficient capacity to meet the normal demands of its customers, the purveyor shall revise existing contract arrangements to reduce system demands, as necessary, or shall immediately obtain additional water supply to increase its safe or dependable yield.

(d) If the purveyor does not comply with (c) above, the Department may order a ban on further extensions of service to new customers or expansions of service to existing customers, or the Department may order the acquisition of additional water supply capability, or both. The Department will allow reasonable time for acquisition of additional water supply.

7:19-6.4 Unaccounted-for water

(a) For each of the water purveyor size classes (see N.J.A.C. 7:19-6.2, Definitions), an annual enumeration will be made by the Department of all purveyors, serving a population of over 500 persons, with unaccounted-for water in excess of 15 percent. The Department may, at a later date, increase this percentage, if experience indicates that the 15 per cent figure is low.

(b) For each purveyor size class, the Department shall determine the percentage of purveyors having the highest proportion of unaccounted-for water, and these purveyors will be determined by the Department to be provisionally delinquent. This determination may not include more than 35 per cent of the total number of purveyors each year. These purveyors will be notified of their provisionally delinquent status.

(c) Purveyors found provisionally delinquent will be allowed one year in which to take appropriate corrective action, including elimination of leaks, establishment of records of use of previously unaccounted-for water and submission of a schedule for further corrective action. After

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consideration of supplementary information and the schedule submitted by the purveyor, an annual review of each provisionally delinquent purveyor will be conducted by the Department.

1. If the review establishes that the percentage of unaccounted-for water has been reduced to the median percentage for purveyors of that class, the provisionally delinquent status of the purveyor will be terminated.

2. If the provisionally delinquent status is reaffirmed and unless the purveyor submits a schedule for corrective action which is approved by the Department, an order will be issued by the Department, requiring the elimination of all undue losses in the system in accordance with a specified compliance schedule.

3. If the purveyor does not accept the findings of the annual review, it may request that the Department hold an informal, public fact-finding meeting, the findings of which must be approved by the Department.

4. Purveyors whose systems draw from and are laid in water table aquifers may be exempted from the requirements of this section 6.4, provided that circumstances are such that leakage losses will not contribute to water shortage and that this is adequately documented by the purveyor.

5. The fee for conducting this delinquent status review will be \$300.00 for Class 1 and \$1,000 for classes 2 and 3. After two years from the effective date of this subchapter, if it is determined that the average cost of conducting such reviews had decreased, the fees will be adjusted downward accordingly.

7:19-6.5 Water conservation

(a) Unless more stringent water conservation measures are required by the Department, all public community water systems shall:

1. Proceed expeditiously to correct leakage in the total distribution system, as detected through a systematic program to monitor leakage. Program results may be required to be submitted to the Department at least once every three years;

2. Adopt and implement, to the satisfaction of the Department, an on-going program to encourage water conservation for all types of use within the area served by the system. This does not preclude other water conservation requirements imposed by the Board of Public Utilities;

3. Submit a Water Conservation and Drought Management Plan on forms provided by the Department with each initial, modification, or renewal application for a water supply allocation permit or major modification thereof, or contract approval. The Water Conservation and Drought Management Plan shall include:

i. A description of water conservation components;

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- ii. Interim, voluntary water use restrictions for implementation during corresponding stages of drought warning, drought emergency, precipitation deficits or reservoir storage deficits;
 - iii. Voluntary transfers of water via interconnections between water supply systems for use when prescribed reservoir storage level thresholds are reached;
 - iv. Other measures designed to reduce demand, consumption or water usage or loss, or which otherwise have the effect of maximizing water supplies during periods in which precipitation is lower than average and/or water supply storage is less than normal; and
 - v. For purveyors with water supply reservoirs, rule curves for reservoirs that can be used to establish storage level thresholds.
4. File water rate structures which provide incentives for water conservation; with the Department and the Board of Public Utilities, as appropriate; and
 5. Require installation of water meters for all service connections. This shall not apply to fire emergency uses. Water systems with fewer than 500 service connections or systems where it is demonstrated to the satisfaction of the Department that metering is not practical may be exempted from metering if it is shown that the annual average daily water use by the system does not exceed 75 gallons per person per day.

7:19-6.6 Rehabilitation

(a) Purveyors shall comply with the following requirements for preparation and implementation of management and status surveys:

1. Within one year after the effective date of this subchapter all Class 3 purveyors must perform management and status surveys in accordance with criteria to be provided by the Department, except that those having had such surveys or partial surveys performed within the preceding five years may, with the approval of the Department, submit such completed work in partial or complete compliance with this requirement. The survey must include an analysis of the current status of the system infrastructure and the planned renewal and rehabilitation required to maintain the system in good physical condition, including preventative maintenance. The survey shall be accompanied by an evaluation of the status of the system, including acceptance or rejection of each recommendation and a schedule for planned renewal and rehabilitation. Within two years of the effective date of this subchapter all Class 2 purveyors must also submit such surveys and evaluations. The management and status survey required hereby does not preclude compliance with similar requirements of the Board of Public Utilities.

2. Upon approval by the Department, the schedule of planned renewal and rehabilitation shall commence upon the next fiscal year starting after approval by the Department; thereafter it shall be implemented annually by the purveyor.

3. If no management and status survey is submitted pursuant to the above requirements or

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if the recommended schedule is disapproved by the Department, planned renewal and rehabilitation of system infrastructure shall be carried out by each purveyor to the extent of 10 percent of total gross water supply revenue, in accordance with Departmental criteria.

4. Upon the effective date of these regulations, all Class 2 and 3 purveyors must initiate administrative preparation for planned renewal and rehabilitation programs, of the magnitude contemplated by this section, as applied to each purveyor's particular situation. This shall be done without awaiting the completion of the management and status surveys required above.

(b) Upon determination by the Department that any component(s) of a water supply system have deteriorated to a degree that may jeopardize the ability of the system to deliver an adequate and reliable supply of water or may cause waste of an unduly large amount of water, the purveyor shall submit, within a time period required by the Department, a report and implementation schedule specifically identifying the scope of rehabilitation work necessary, the time required for work implementation and the required water rate modification to finance the work.

(c) Upon approval of the report by the Department, the purveyor shall commence rehabilitation work in an expeditious manner and shall perform the work in a manner which minimizes system disruptions.

(d) All rehabilitation work performed on water supply systems shall conform to the current design requirements specified in the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A et seq., and this subchapter.

(e) For planned or required transmission/distribution system rehabilitation, loans will be provided on a priority basis, pursuant to the Water Supply Bond Act of 1981, (Public Law 1981, Chapter 261) and associated rules (N.J.A.C. 7:1A-1 et seq.), to the extent that eligibility requirements of the regulations are met and the funding availability allows.

1. In cases where a critical water supply transmission/distribution disruption exists, pursuant to N.J.A.C. 7:1A-6, application may be made for an emergency, interim rehabilitation loan. Upon approval of said loan, the emergency applicant is required to make full application for a Water Supply Rehabilitation Loan, pursuant N.J.A.C. 7:1A-1 et seq.

7:19-6.7 System pressure and storage

(a) Public community water systems shall be adequately maintained so as to sustain minimum water pressures of at least 20 pounds per square inch at street level, in all parts of the distribution network, under all required flow conditions. The balances and interrelationships of source location, interconnections, transmission and distribution grid, size of transmission-distribution system lines, location of booster pumps, existence of pressure zones and location of storage facilities must be such as to insure the minimum pressure of 20 pounds per square inch at street level.

(b) With respect to the total capacity of system storage, the following minimum requirements apply to all systems. The Department may modify these requirements provided

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adequate justifying data is submitted which will demonstrate that service will not be disrupted during extended periods of system stress.

Type of System	Minimum Storage Percentage of Average Daily Demand
i. Single, prime source, no interconnection(s), no auxiliary power at water source.	100 percent
ii. Single, prime source, no interconnection(s), auxiliary power provided at water source*	80 percent
iii. Single, prime source with interconnection(s)**	50 percent
iv. Multiple source, no interconnection(s), no auxiliary power at water source	80 percent
v. Multiple sources, no interconnection(s), auxiliary power provided at water source*	50 percent
vi. Multiple sources, with interconnection(s)	50 percent
vii. Multiple sources, interconnection(s)**, auxiliary power provided at water source*	30 percent
viii. Same as vii. above, and distributing more than an average of 50 million gallons per day	20 percent

*Auxiliary power must be able to supply at least 50 per cent of average production.

**Combined interconnection(s) must be able to supply at least 50 per cent of average production; contract commitment from supplier is required.

(c) Where system size allows, storage should be spread out and located at different points within the system.

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(d) The provisions of this section, are intended to complement section 7:10-11.8(a) of the New Jersey Safe Drinking Water Act Regulations and are to be complied with in lieu of the present requirements in 7:10-11.8(a)3 and 4.

7:19-6.8 Interconnections

(a) In order to assure the availability of water during times of emergency, including drought, the Department may require interconnections of the Class A or Class B standard (see N.J.A.C. 7:6.2, Definitions) to the extent practicable and economically feasible for all Class 2 and 3 purveyors. The purveyor, upon being notified of such a requirement, is required to conduct an interconnection feasibility study which must identify the most cost-effective alternative and schedule for project completion. The conclusions of the study shall be approved by the Department before project implementation. Prior to issuing an order requiring interconnections, the Department shall advise the purveyor(s) of the proposed action and thereafter allow 30 days for submission of information by the purveyor(s). If undue hardship would be caused by the proposed action, it may be waived by the Department.

(b) For the purposes of this subchapter, potential interconnections shall be presumed to be economically feasible in all cases in which the actual service areas of two-purveyor systems are closer than 1000 feet, at the closest point, measured between mains at least eight inches in diameter. Exceptions to this requirement may be granted where hardship can be shown, such as where system pressures require a pumping station. In cases where there is a minimum distance of over 1000 feet, but less than a mile, between adjacent service areas, a feasibility study may be required. Where adjacent service areas are more than a mile distant at all points, a feasibility study will be required only in cases where there are special conditions threatening the continued viability of the existing source of water.

(c) Unless it can be clearly shown that benefits accrue mainly to one system, costs of interconnections shall be shared between the participating systems. Where both systems benefit, distribution of costs between participating systems shall be proportionate to the benefits, as approved by the Department.

(d) Large, integrated water systems may be exempt from the requirements of N.J.A.C. 7:19-6.8 where it can be demonstrated that system components provide adequate alternative sources.

(e) If found to be necessary, to accomplish the purposes of the Act, the Department may order the constructions of interconnections by purveyors serving less than 10,000 population.

7:19-6.9 Operation of interconnections

(a) All Class 3 purveyors shall make a report as to the status of interconnections within one year of the effective date of this subchapter.

(b) All Class 2 purveyors shall make a report as to status of interconnections within three

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years of the effective date of this subchapter.

(c) If found to be necessary to accomplish the purposes of the Act, purveyors serving less than 10,000 population may be required to provide a report as to the status of interconnections.

(d) Class 2 and 3 purveyors shall make interconnection flow tests (without measurement) on an annual basis on all interconnections six inches or more in diameter, unless exempted by the Department. The results of such tests may be submitted to the Department at any time, but shall be submitted by the end of each calendar year.

1. Such annual tests shall be attended by representatives of both interconnected systems.

2. When specifically ordered to do so by the Department, a purveyor shall perform complete interconnection flow tests.

(e) All purveyors operating interconnections between public community water systems shall have rate tariffs for sale of water through such interconnections, which shall be part of the overall tariff for that system. The purveyor shall submit the tariff, once established, to the Board of Public Utilities, if appropriate, and to the Department.

(f) Higher rates may be charged during a water emergency pursuant to N.J.A.C. 7:19-15.2.

(g) There shall be a written agreement between interconnected systems, specifying the conditions for use of each interconnection of six inches or more in diameter. The agreement must be approved by the Department and a copy placed on file with the Department.

7:19-6.10 Administrative hearings

(a) A purveyor may apply in writing to the Department for an administrative hearing before the Office of Administrative Law within 15 days of receiving an order or other final decision pursuant to N.J.A.C. 7:19-6.6(a)3 and 6.8(a).

(b) An adversely affected person may apply in writing to the Department for an administrative hearing before the Office of Administrative Law within 15 days of receiving an order or other final decision pursuant to N.J.A.C. 7:19-6.3(d).

(c) The request for a hearing shall specify in detail the basis for the request. The Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate. Should the efforts to settle the dispute fail, and the Department determines that the matter is a contested case, the Department will forward the request for a hearing to the Office of Administrative Law, pursuant to the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).

SUBCHAPTER 7. PROCEDURES FOR CONTRACT REVIEW AND APPROVAL

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7:19-7.1 Purpose and Scope

(a) The purpose of this subchapter is to ensure that the safe yield of a permittee's sources of supply and/or allocations are not exceeded as a result of the permittee's contractual obligations.

(b) This subchapter prescribes the procedures which shall be followed by applicants applying for approval of contracts for the sale of water.

7:19-7.2 Applicability

This subchapter applies to contract arrangements for the routine sale and purchase of water to be used by a public water supply or for the transfer of base allocations pursuant to N.J.A.C. 7:19-8. Contract arrangements for emergency purposes are excluded.

7:19-7.3 Procedures for contract approval

(a) The applicant for approval of a contract shall be the party which is selling water.

(b) The applicant shall contact the Department in accordance with N.J.A.C. 7:19-1.7 to obtain application forms and other instructions necessary to file a complete application for contract approval. A complete application shall include:

1. A copy of the draft contract in final form or the executed contract in the case of existing contracts.

2. A copy of the completed contract review application form.

3. A Water Conservation and Drought Management Plan, for each party to the contract, in accordance with N.J.A.C. 7:19-6.5(a)3, if such plan was not previously filed with the Department.

(c) For new contracts, the contract and application forms shall be filed, by the party selling the water, at least two months prior to executing the contract.

(d) For any contract which is in force as of March 20, 1995 and which has not been approved by the Department pursuant to this subchapter, the party selling water pursuant to the contract shall immediately file an application and a copy of the fully executed contract with the Department.

(e) The Department, within 20 days of receipt of a complete application for contract approval will:

1. Review the application;

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2. Determine whether the applicant has sufficient safe yield and adequate allocation to supply the buyer; and

3. Develop preliminary findings on the potential for the contract to be approved.

(f) The Department will provide a written copy of the preliminary findings to the applicant. The applicant shall review the preliminary findings, verify the information on existing contractual obligations and demands, and submit written comments to the Department within 20 working days from receipt of the Department's preliminary findings.

(g) Within 14 working days of receipt of the applicant's written comments on the Department's preliminary findings the Department will:

1. If the Department determines, pursuant to (e) and (f) above, that an applicant does not have sufficient safe yield and/or allocation to meet its system demands and all contractual obligations, or that the contract is not in accordance with a Department-approved regional plan developed pursuant to N.J.S.A. 58:1A-13, issue a contract denial letter to the applicant.

2. If the applicant and/or the party buying water have not filed and received approval of a Water Conservation and Drought Management Plan pursuant to (b)3 above, issue a contract denial letter to the applicant.

7:19-7.4 Appeal procedure

An applicant, the party buying water or any person, subject to the limitations on third party appeal rights set forth in P.L. 1993, c.359 (N.J.S.A. 52:14B-3.1 through 3.3) who believes himself or herself aggrieved by a decision of the Department pursuant to this subchapter may request an adjudicatory hearing in accordance with N.J.A.C. 7:19-2.13.

SUBCHAPTER 8. AREAS OF CRITICAL WATER SUPPLY CONCERN

7:19-8.1 Scope and authority

This subchapter constitutes the rules governing the establishment of and management of water allocations within areas of critical water supply concern pursuant to P.L. 1993, chapter 202, of the Water Supply Management Act (N.J.S.A. 58:1A-1 et seq.).

7:19-8.2 Designation of areas of critical water supply concern

(a) The Commissioner shall, after notice and public hearing, designate as areas of critical water supply concern those areas in which the Department determines that adverse conditions exist, related to the ground or surface water, such that special measures are required to ensure the integrity and viability of the water supply source and to protect the public health, safety or welfare. The

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Department shall demonstrate that the designation is warranted through the use of a water supply availability study. The adverse conditions upon which the designation of an area of critical water supply concern is based shall include one or more of the following:

1. Shortage of surface water due to diversions from surface or ground water sources which leave insufficient surface water for permitted, certified, or registered diversions or for environmental protection purposes within a drainage area of at least ten square miles.

2. Shortage of ground water due to diversions exceeding the long-term, safe or dependable yield of an aquifer in an area of at least ten square miles. The Department may demonstrate such a shortage by a verified mathematical ground water model, or if such a model is unavailable, by one or more of the following:

i. A progressive lowering of ground water to the extent that existing wells of 50 feet or more in depth are threatened by declining water levels or rendered inoperative;

ii. A reduction of the average potentiometric surface in a confined aquifer such that the 30 foot below mean sea level contour is within five miles of salt water or intersects the 250 part per million chloride isochlor;

iii. A reduction of the average potentiometric surface in an unconfined or semi-confined aquifer to the zero foot contour (mean sea level) or lower, such that the contour line is either within five miles of salt water or intersects the 250 part per million chloride isochlor.

3. Aquifer pollution, such that actual pollution contaminates a substantial part of the aquifer or major sources of hazardous or toxic pollution may be reasonably anticipated to contaminate the aquifer.

4. Location within the Delaware River Basin Commission ground water protection area as designated by the Commission, where it has been determined that adverse conditions exist.

(b) Each area of critical water supply concern designated pursuant to (a)1, 2 or 3 above, shall consist of two zones: the depleted zone, which is the area adversely affected, and the threatened zone, which is a margin area, encompassing areas which may be adversely affected if present trends continue. The Department may establish different water use restrictions for the depleted zone and the threatened zone.

(c) Those areas designated by the Department as water supply critical areas prior to the enactment of P.L. 1993, chapter 202, are deemed areas of critical water supply concern for purposes of this subchapter.

(d) Within areas of critical water supply concern designated pursuant to (a)4 above, the Department may institute controls and requirements only as mandated by interstate agreement unless the critical area is also a critical area designated pursuant to (a)1, 2 or 3 above. Such additional controls and requirements may include metering, additional reporting requirements, restriction of inter-basin diversions of water for water supply or wastewater discharge, restriction of consumptive

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uses and water quality testing of wells.

(e) Upon its determination to designate an area of critical water supply concern, the Department will issue an administrative order establishing the depleted zone and threatened zone boundaries for the area of critical water supply concern.

7:19-8.3 Management of water allocations within areas of critical water supply concern

(a) For each area of critical water supply concern designated pursuant to N.J.A.C.7:19-8.2, the Department, in consultation with affected permittees and local governing bodies, shall:

1. Study water supply availability;
2. Estimate future water supply needs;
3. Identify appropriate and reasonable alternative water supply management strategies, including but not limited to:
 - i. Water conservation;
 - ii. Substitution of alternative water sources;
 - iii. Participation in a Department approved regional water supply project;
 - iv. Transfer of diversion rights;
 - v. Artificial recharge of diversion sources; and
 - vi. Substitution of water supply from a noncritical aquifer.
4. Select and adopt water supply alternatives after notice and public hearing pursuant to N.J.A.C. 7:19-2.8 through 11.

(b) The Department will issue a Notice of Intent to Modify Permit to each affected permittee, which shall specify the water supply alternatives adopted pursuant to (a) above, each affected permittee's water use as reported pursuant to N.J.A.C. 7:19-2.14(a)3, and the steps each affected permittee shall take to comply with the area of critical water supply concern's management strategies.

(c) The Department will, after notice and public hearing pursuant to N.J.A.C. 7:19-2.8 through 11:

1. Modify the conditions of an existing water supply allocation permit or water usage certification in order to limit or reduce the quantity of water which may be diverted to the safe or dependable yield of the water resource, provided any reduction in diversion shall not exceed the

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amount necessary to reduce the total withdrawal from the aquifer to the dependable yield for the ground water diversion source, as determined by the Department;

2. Allow the permittee to transfer the diversion source location through a permit modification pursuant to N.J.A.C. 7:19-2.2; or

3. Require the permittee to use alternate sources of water.

(d) The Department shall require affected permittees to prepare and submit alternative water supply plans consistent with the alternative water supply management strategies adopted pursuant to (a)4 above. The plan shall identify the permittee's water deficit, the method by which the permittee shall obtain additional water to meet demands, and a schedule for the implementation of the alternative water supply plan.

(e) An affected permittee may only increase its base allocation in accordance with N.J.A.C. 7:19-8.6, and those persons seeking diversion privileges within an area of critical water supply concern shall do so only in accordance with N.J.A.C. 7:19-2.2 and N.J.A.C. 7:19-8.6.

(f) The Department may require, as conditions of water supply allocation permits for diversions in critical areas, measures for water conservation, metering, leak detection and control more stringent than those required as conditions in permits for diversions elsewhere in the State.

(g) Following implementation by affected permittees of the alternative water supply plan adopted pursuant to (d) above, the Department will monitor water levels and water quality within the designated critical areas to determine the effectiveness of the alternative water supply management strategies. If the Department determines that the alternatives implemented are not effective in protecting the water supply source of concern, the Department may revise the designation and impose further restrictions in accordance with this subchapter. The Department will report the results of any monitoring conducted pursuant to this subsection to all affected permittees on an annual basis.

(h) The designation of an area of critical water supply concern shall be modified or rescinded only upon the Department's determination that the adverse conditions on which the designation was based pursuant to N.J.A.C. 7:19-8.2(a) has either worsened, diminished or ceased. The Department will evaluate each critical area designation and the need for any adjustments to the alternative water supply management strategies at intervals of 10 years from the date of implementation of the permittee's alternative water supply plan.

(i) The Department will not issue new or increased diversions from affected aquifers within an area of critical water supply concern except for:

1. Temporary dewatering permits for construction related purposes in accordance with N.J.A.C. 7:19-1.4(c) and 2.3.

2. Ground water remediation in accordance with a Department-approved plan;

3. Transfer of base allocations or water credits in accordance with N.J.A.C. 7:19-8.6;

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and/or

4. An interim allocation to be utilized by a permittee until an approved alternative water supply is available.

5. Projects that provide recharge of the affected aquifer.

(j) The Department will not issue new or increased diversions from wells located outside the boundaries of an area of critical water supply concern that divert water from an affected aquifer and adversely affect the safe or dependable yield of the aquifer.

(k) The Department may issue an interim allocation pending completion of a Department-approved alternative water supply, if the alternative water supply is not yet available to meet demands. Such interim allocations shall be terminated when the Department approved alternative water supply is available.

7:19-8.4 Water Supply Critical Area I

(a) The Department designated Water Supply Critical Area I by administrative order on July 30, 1985. Based upon regional water supply studies substantiated by United States Geological Survey monitoring and modeling, and following public notice and public hearings, the Department determined that four aquifers, namely, the Mt. Laurel-Wenonah, the Englishtown, the Old Bridge, and the Farrington aquifers were depleted such that designation as an area of critical water supply concern was warranted. The boundary of the depleted zone of the critical area corresponds to the average potentiometric contour 30 feet below mean sea level for each affected aquifer, as published in "Water Levels in Major Artesian Aquifers of the New Jersey Coastal Plain, 1983 U.S.G.S., WRI 86-4028." The threatened zone, consisting of a three mile wide margin area, surrounds the depleted zone of each aquifer.

(b) The Department will determine base allocations within Water Supply Critical Area I in accordance with the following:

1. The base allocations from the depleted zone of the Mt. Laurel-Wenonah, Englishtown, and Farrington aquifers shall be reduced to an amount equal to $0.50 \times D83$, where $D83$ is the permittee's 1983 annual withdrawal in millions of gallons from the depleted zone of each of these aquifers, as reported to the Department.

2. The base allocation from the depleted zone of the Old Bridge aquifer shall be reduced to an amount equal to $0.60 \times D83$, where $D83$ is the permittee's 1983 annual withdrawal in millions of gallons from the depleted zone of the aquifer, as reported to the Department.

3. The base allocation from the threatened zone of the Mt. Laurel-Wenonah, Englishtown, Farrington, and Old Bridge aquifers shall be equal to $T83$, where $T83$ is the permittee's 1983 annual withdrawal in millions of gallons from the threatened zone of each of these aquifers, as reported to the Department.

7:19-8.5 Water Supply Critical Area II

(a) The Department designated Water Supply Critical Area II by administrative order on January 15, 1993. Based upon a regional water supply study substantiated by United States Geological Survey monitoring and modeling, and following public notice and public hearings, the Department determined that the Potomac-Raritan-Magothy (PRM) aquifer system was depleted such that designation as an area of critical water supply concern was warranted. The boundary of the depleted zone of the critical area corresponds to the average potentiometric contour 30 feet below sea level for the PRM, as published in "Water Levels in Major Artesian Aquifers of the New Jersey Coastal Plain, 1983 U.S.G.S., WRI 86-4028." The threatened zone surrounds the depleted zone of the critical area.

(b) The Department will determine base allocations within Water Supply Critical Area II in accordance the following:

1. For those allocations existing on July 24, 1993 for a period of not less than 10 years from that date, the Department shall not reduce any existing allocation to an amount less than either the amount withdrawn from the depleted and/or threatened zone in 1991 or the amount determined pursuant to i or ii below, whichever is smaller.

i. The base allocation from the depleted zone shall be:

$$DZ = (0.65 \times D83) + (Dmax - D83)$$

Where DZ equals the depleted zone base allocation in millions of gallons per year (MGY); D83 is the permittee's 1983 annual withdrawal from the depleted zone of the Potomac-Raritan-Magothy (PRM) aquifer system in MGY; and Dmax is the permittee's maximum annual withdrawal in MGY from the depleted zone of the PRM aquifer system between 1983 and 1991.

ii. The base allocation from the threatened zone shall be the maximum annual withdrawal in millions of gallons per year from the threatened zone of the PRM aquifer system between 1983 and 1991.

2. The base allocation for each affected permittee with multiple, interconnected permits shall be determined using the single year in which the annual withdrawal from all diversion sources in the PRM aquifer system was greatest.

3. The base allocation for each affected permittee with diversion sources in both the depleted and the threatened zone of the PRM aquifer system shall be determined using a single year.

(c) Where an affected industrial permittee demonstrates to the satisfaction of the Department that its withdrawals from the PRM aquifer system were less in 1991 than in any year between 1983 and 1990 due to economic conditions, the industrial permittee's base allocation shall be determined according to (b)1i and/or ii above and shall not be limited to the amount withdrawn in

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1991.

(d) The area north of Rancocas Creek from its confluence with the Delaware River to the intersection of the southwest branch of the Rancocas Creek with State Route 38, then north of State Route 38 to the start of County Route 530, then north of County Route 530 to the intersection of County Route 530 with State Route 70 to the Burlington-Ocean county boundary is designated the Water Allocation Credit Receiving Area for Water Supply Critical Area II. Within this Water Allocation Credit Receiving Area, the following shall apply:

1. The allocation represented by one-half of the difference between the total base allocation as established pursuant to (b) above for all permittees and the total of 1991 withdrawals from the PRM aquifer system is designated water allocation credits.

2. Such water allocation credits may be transferred provided that the credits transferred are for local use only, as "local use" is defined in N.J.A.C. 7:19-1.3, and the increased diversion will not have an adverse impact upon the PRM aquifer system or other users of the system. The transfer shall be made in accordance with N.J.A.C. 7:19-8.7.

3. The base allocation of any affected permittee in the Water Allocation Credit Receiving Area who demonstrates that a net reduction in its water use over the period from 1978 to 1991, inclusive, was the result of documented water conservation efforts shall be supplemented by water conservation credits. Water conservation credits shall be equal to 50 percent of the difference between the maximum volume of water withdrawn during this period and 1991, and shall be used by the permittee to satisfy its water demands. Conservation credits cannot be sold, leased or transferred from their geographic location.

4. A supplier of an interconnected system shall have the right to obtain water allocation credits in an amount that would allow transfer of additional volumes through the interconnection provided that such additional volumes do not exceed 50 percent of the volume transferred through the interconnection in 1991.

(e) The governing body of a county may establish a water allocation credit exchange. The water allocation credit exchange shall initially contain the water allocation credits determined pursuant to (d)1 above. The water allocation credits shall be considered a common resource, administered by the county in consultation with the Department. Any county governing body that establishes a water allocation credit exchange shall submit to the Department an implementation plan for review and approval.

(f) Water allocation credits become part of a permittee's base allocation once they are transferred from the water allocation credit exchange to the permittee. Transfers of water allocation credits from the credit exchange are subject to Department approval in accordance with N.J.A.C. 7:19-8.7 below.

7:19-8.6 Base allocation transfers

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(a) Within areas of critical water supply concern, a permittee may transfer base allocations with the Department's approval, in order to facilitate the transfer of water to areas of anticipated growth or areas where alternative supplies of water are not available.

(b) The base allocation from the sending party, the permittee from which the base allocation is transferred, shall be transferred to the receiving party, the permittee to which the base allocation is transferred. Upon transfer of all or a portion of the base allocation by the sending party, the diversion privileges for that permittee shall be reduced by the Department, by an amount equal to the transferred base allocation and the diversion privileges of the receiving party shall be increased by an amount equal to the transferred base allocation.

(c) A permittee proposing to permanently transfer a portion of its base allocation to another permittee may do so either in a direct transaction between the two parties or through the auspices of a county water credit exchange established pursuant to N.J.A.C. 7:19-8.5(e). The Department shall review and approve such a permanent transfer in accordance with N.J.A.C. 7:19-8.7.

(d) The Department does not consider the leasing of base allocations a viable long term water supply alternative but may consider it to be an acceptable short term alternative until a dependable long term alternative water supply is available.

(e) The permittee proposing to transfer all or part of its base allocation diversion privileges must be the applicant for approval of the transfer of base allocation pursuant to N.J.A.C. 7:19-8.7.

7:19-8.7 Base allocation and water supply allocation credit transfer procedure

(a) A permittee seeking to transfer all or part of its base allocation or the permittee seeking to obtain water supply allocation credits shall submit an application to the Department which shall include the following:

1. A map showing the locations of the wells from which the base allocation is proposed to be transferred and the location of the receiving wells. Wells shall be identified by the Department's well permit number;

2. The aquifer and amount of base allocation or water supply allocation credits to be transferred;

3. An assessment of the impact of the transfer on the water resource and other users of the resource in the vicinity of receiving wells; and

4. Information demonstrating that the sending party's demands can be met after the transfer of the base allocation.

(b) The Department shall approve, subject to other applicable requirements of this chapter, a permanent transfer of any or all of a permittee's base allocation to another permittee through a permit modification in accordance with N.J.A.C. 7:19-2.2, provided that the transfer will not result in:

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1. A diversion which is from an aquifer different from that in which the sending well is located;
2. A diversion which is closer to the salt water interface, or is at a lower potentiometric surface than the sending well, and further degrades the condition of the water supply source; and
3. The sending party's inability to meet its water supply demands.

(c) The Department will not approve a transfer of base allocations or water allocation credits if the receiving party does not develop and implement an appropriate water conservation and drought management plan pursuant to N.J.A.C. 7:19-2.14(a)10 or if the alternative water supply plan required pursuant to N.J.A.C. 7:19-8.3(d) is not in accordance with the water supply alternatives adopted by the Department pursuant to N.J.A.C. 7:19-8.3(a)4.

(d) The receiving party's use of the water does not have to be for the same purpose as the sending party's use of the water.

(e) Any wells for which the total diversion privileges have been transferred shall be sealed in accordance with N.J.A.C. 7:9-9.

(f) If, because of the receipt of the transferred base allocation or water supply allocation credits, the receiving party would require a new diversion source, an increase in pumping capacity, or an increase in monthly and/or yearly allocation, the receiving party shall apply for a permit modification in accordance with N.J.A.C. 7:19-2.2.

(g) If the purchase of additional base allocation or water supply allocation credits is solely for the purpose of replacing water allocation reduced as a result of Department-implemented action, this will be considered a minor modification of the permit. Upon receipt of notification that the transaction has been completed, the Department will proceed in accordance with N.J.A.C. 7:19-1.5(b).

(h) If the sending party retains diversion rights in excess of 100,000 gallons per day, the reduction in allocation will be considered a minor modification of the permit. Upon receipt of notification that the transfer has been completed, the Department will proceed in accordance with N.J.A.C. 7:19-1.5(b).

7:19-8.8 Adjudicatory hearings

A permittee who believes himself or herself to be aggrieved by a decision of the Department pursuant to this subchapter may request an adjudicatory hearing in accordance with N.J.A.C. 7:19-2.13.

SUBCHAPTER 9. ESTABLISHMENT OF WATER SURCHARGE SCHEDULE

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7:19-9.1 Scope and authority

This subchapter, adopted pursuant to the Water Supply Management Act, N.J.S.A. 58:1A et seq., shall constitute the rules governing the establishment of a water surcharge schedule applicable during a declared state of emergency as mandated by Executive Order No. 5, signed by Governor Thomas Kean on April 27, 1982.

7:19-9.2 Purpose

The purpose of this subchapter is to establish a water surcharge schedule for the retail costs of water supplies during water emergencies, declared by the Governor of the State of New Jersey. The schedule will be utilized by all applicable water purveyors in the event of such a declared emergency.

7:19-9.3 Establishment of the water emergency surcharge schedule

(a) Once a water emergency has been declared, as provided at N.J.S.A. 58:1A-4, and at the initiation of Phase II, the Drought Coordinator shall cause to be implemented the following water surcharge schedules established for the retail cost of water.

1. During Phase II of a water emergency the normal water rate shall be charged residential users for the first 50 gallons per capita used daily. Any water used above the prescribed amount in each billing period shall be charged the normal rate plus a \$5.00 surcharge for each additional 100 cubic feet of portion thereof (one cubic foot equals about 7.5 gallons). This rate may be increased, up to a maximum surcharge of \$10.00 for each additional 100 cubic feet or portion thereof, at the discretion of the Drought Coordinator should Phase II continue or should desired conservation levels not be met.

2. During Phase II of a water emergency, non-residential users of water shall be charged the normal water rate plus 0.33 times the normal rate as a surcharge for all water purchased. This rate may be increased, up to a maximum of the normal rate plus 0.50 times the normal rate, at the discretion of the Drought Coordinator should Phase II continue or should desired conservation levels not be met.

3. Water surcharge schedules set forth herein may be reviewed and adjusted, after notice and public hearing, in order to fulfill the objectives of the Act and Executive Order No. 5 (1982).

4. Each purveyor shall give appropriate notice of the imposition of the surcharge schedule, as directed by the Department.

5. The Drought Coordinator may authorize the owner of any building or complex with multiple dwelling units, where the individual dwelling units lack individual water meters, to pass through the surcharge to the occupants of the individual dwelling units. The pass-through shall be pro rated in proportion to the number of bedrooms served by the water meter. No political subdivision of the State shall enact or enforce any ordinance, rule, regulation, or order which shall prevent such a

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pass-through. Prior to the imposition of a pass-through, the owner of any building or complex with multiple dwelling units shall comply with the following requirements, including, but not limited to:

- i. An inspection for leaks and the repair of water fixtures;
- ii. The installation of water conservation fixtures and devices;
- iii. The dissemination of information to the building's occupants on the need for water conservation; and
- iv. The submission of a report to the Drought Coordinator detailing the owner's compliance with the above requirements and setting forth the procedures to be used to insure proper collection and payment of the surcharges.

(1) The Drought Coordinator may require owners to submit updated reports and may revoke an authorization to pass-through surcharges where the owner has failed to comply with the requirements of this paragraph.

7:19-9.4 Submission of the water emergency surcharge schedule; quarterly report

(a) Upon declaration of a water emergency, each applicable water purveyor shall submit a copy of its water surcharge schedule, determined pursuant to the method provided herein, to the Department of Environmental Protection.

(b) For monitoring purposes, each applicable water purveyor shall submit a bi-monthly report on its surcharge and rationing activities to the Water Emergency Task Force using forms provided by the Department.

(c) The purveyors shall also submit a quarterly report to the Department of Environmental Protection and the Department of Treasury and the Board of Public Utilities, where applicable, detailing the source, amount and other information required by these agencies concerning excess sums collected pursuant to the water surcharge schedule.

(d) The purveyors shall submit any additional reports and submittals necessary to properly manage a water emergency as may be required by the Department.

7:19-9.5 Collection of the emergency water surcharge; water emergency fund

(a) It shall be the responsibility of the applicable water purveyor to assess and collect all sums under the water surcharge schedule and to forward, on a quarterly basis, those sums in excess of the amount collected under normal water rates, to a collecting authority designated by the Department of Treasury for deposit into a cash management account to be known as the "Water Emergency Fund."

(b) Access to the monies in the Fund shall be limited to the State Treasurer and the

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Commissioner of the Department of Environmental Protection or their designees.

(c) Interest accrued on the monies in this fund shall be credited to the Fund.

(d) The Fund shall be disposed of as directed by the Drought Coordinator, in consultation with the Commissioner, only for the following purposes;

1. The promotion of water conservation, the purchase of water conservation devices for distribution to water users affected by the water supply emergency, and emergency projects;

2. Reimbursement, in whole or part, to water purveyors for reasonable expenses incurred in the administration and enforcement of the accelerated rate schedule; and

3. Reasonable administrative costs directly attributed to the water supply emergency incurred by the State in the discharge of duties and responsibilities under an Executive Order which declares a water supply emergency.

(e) A customer of record shall pay the surcharge assessed pursuant to (a) above to its water purveyor within 30 days after receipt of a bill for such surcharge.

7:19-9.6 Exemption from the water emergency surcharge schedule

Exemptions from water rationing requirements in this subchapter may be granted by the Department according to the procedures and standards in N.J.A.C. 7:19-10.

SUBCHAPTER 10. POWERS OF THE COMMISSIONER DURING A WATER EMERGENCY

7:19-10.1 Scope

This subchapter establishes the restrictions and requirements that the Commissioner may impose on water purveyors and users during a water emergency, notwithstanding any State or local law or contractual agreement. The Commissioner may impose such additional restrictions and requirements during a water emergency he deems necessary to alleviate the water emergency.

7:19-10.2 Restrictions and requirements placed on water purveyors

(a) The restrictions and requirements placed by the Commissioner on water purveyors during a water emergency may include the following:

1. Reduction by a specified amount of the use of any water supply;

2. Utilization of an alternate water supply where possible;

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3. Emergency interconnections between water supply systems;
4. Transfer of water from any public or private system;
5. Cessation of the use of any water supply;
6. Alteration of passing flow requirements. Such alteration in passing flow requirements does not exempt the purveyor from paying appropriate excess diversion fees;
7. Imposition of bans on adjustable water uses;
8. Other modifications or measures to insure an adequate water supply;
9. Reduction, reapportionment and/or redistribution of their particular water supply;
10. Cessation of the distribution of their particular water supply,
11. Distribution of a specified amount of water to certain users; and
12. Collection by water purveyors of rates pursuant to the water emergency rate schedule.

7:19-10.3 Requirements placed on departments and agencies within State government

After a determination by the Commissioner and after notice to the appropriate State government body, agency, department, said body, agency, or department shall provide immediately, any information, assistance, resources and personnel as shall be necessary for the Commissioner to discharge his functions and responsibilities under the Act or this subchapter.

SUBCHAPTER 11. GENERAL POWERS OF THE DEPARTMENT

7:19-11.1 Scope

This subchapter establishes the requirements that the Commissioner shall impose on water purveyors and users, but not limited thereto, after the effective date of this chapter.

7:19-11.2 Water purveyor emergency response plans and teams

(a) Water purveyors serving more than 3,000 residents, and other purveyors when requested by the Department shall develop and submit to the Department:

1. Emergency response plans by February 16, 1986, for water purveyors serving more than 50,000 residents or by March 19, 1991 for water purveyors serving more than 3,000 residents but

not more than 50,000 residents.

i. The plans shall include, but not be limited to:

- (1) Organization structure including names of emergency response team members and telephone numbers;
- (2) Emergency notification and communication procedures;
- (3) Interconnections and backup supplies to be utilized;
- (4) Interim water restrictions, conservation measures and alternate sources of water;
- (5) Coordination procedures for emergency response with other agencies;
- (6) Resources inventory;
- (7) Vulnerability assessment; and
- (8) Any other information the Department deems necessary to respond to unforeseen water emergencies and long-term relatively predictable water emergencies.

2. Revised and updated emergency response plans whenever there is a significant change to the procedures in the plan, but in all cases at least every two years. Any change in emergency response personnel or their telephone numbers shall be reported to the Department within two weeks after such change.

(b) Water purveyor emergency response teams shall be comprised of managerial, technical, operations, and public information personnel to implement the emergency response plan. The members of the emergency response teams shall be listed in the emergency response plans.

(c) The water purveyor shall undertake the periodic evaluation of the effectiveness of the emergency response plan and shall incorporate the results of such evaluations into the plan revisions and updates.

7:19-11.3 Interconnection tests

(a) Complete interconnection flow tests shall be taken by the water purveyor when specifically ordered by the Department during an emergency.

(b) Any purveyor wishing to be exempt from the requirements of this section on the basis of hardship, should petition the Department and demonstrate that same would result in extraordinary hardship to the water purveyor.

(c) Such tests shall be attended by representatives of both systems.

7:19-11.4 Large user contingency plans

(a) Water purveyors shall request that all water users with a rate of use of 250,000 gallons per day or more to submit contingency plans to their respective purveyors. Such users shall submit contingency plans to their respective purveyors within a time frame established by the Department. Self-supplied users with a rate of use of 250,000 gallons per day or more shall submit contingency plans to the Department. Such large user contingency plans shall include but shall not be limited to the following:

1. A description of where water conservation can be achieved in their system and what alternative supplies are available to replace existing ones.
2. A description of the measures which such user would take in the event such user was required to cease operations on a partial or total basis, outlining the expected consequences to the public which might result from such a closure and the possible alternative sources of supply of any products produced by the user or services provided by the user.

7:19-11.5 Other water use information

Water purveyors and water users shall provide any additional information necessary to properly manage a water emergency as required by the Department.

7:19-11.6 Drought warning requirements

(a) During a drought warning condition identified in accordance with N.J.A.C. 7:19-13.1(d), the Department may order water purveyors to comply with any or all of the following requirements:

1. Development of an alternative water supply where possible;
2. The rehabilitation and activation of interconnections between water supply systems;
3. Complete interconnection flow tests;
4. The transfer of water from any public or private system; and
5. Other modifications or measures to insure an adequate water supply.

SUBCHAPTER 12. WATER EMERGENCY TASK FORCE

7:19-12.1 Scope

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(a) This subchapter establishes the purpose of the Water Emergency Task Force which is created to:

1. Review and make recommendations to the Commissioner regarding applications for hardship exemptions from the ban on adjustable water uses;

2. Hear appeals of water purveyors' decisions regarding applications for hardship exemptions from the requirements of the water rationing plans and make recommendations to the Commissioner; and

3. Assist the Commissioner in the formulation of policy during a water emergency.

7:19-12.2 Membership; meetings

(a) The Water Emergency Task Force shall consist of State agency representatives appointed thereto by their particular agency heads. This Task Force shall be assisted by consultants, water purveyors and other advisors, as necessary.

(b) Meetings of the Task Force shall be convened at the discretion of the Chairman who shall direct its activities.

SUBCHAPTER 13. THE PRIORITY-BASED PHASE SYSTEM OF WATER RESTRICTIONS

7:19-13.1 Scope

(a) This subchapter establishes the prioritized allocation of water supplies which will be implemented by the Department with the assistance of other State and local agencies once a water emergency is declared.

(b) This subchapter also defines the "phases" which denote the severity of the water emergency and upon which the prioritized allocation of water supplies and restrictions are based. Once a water emergency is declared by the Governor, the Commissioner shall immediately determine the severity of the water emergency and order the implementation of the activities specified in the appropriate phase or phases outlined below.

(c) Reservoir levels, stream flow, water quality conditions, ground water levels, time of year and other relevant criteria will be considered in determining the phase and the proper point of transition from one phase to another, during an emergency.

(d) Prior to actual declaration of a water supply emergency by the Governor, the Department may call for action to be taken under its non-emergency powers in order to reduce the likelihood or impact of any impending emergency. Where such situations involve a relative lack of

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precipitation or a lower than normal storage of water supplies, the Department may identify the affected area or the State as a whole as being in a "Drought Warning" condition. The Department shall give notice of and hold a public hearing prior to implementing any of the drought warning requirements in N.J.A.C. 7:19-11.6.

(e) Where the Delaware River basin Commission, in accordance with its rules and procedures, declares a drought emergency based upon the storage in New York City's Delaware Basin reservoirs, thereby impacting the New Jersey portion of the Delaware Basin, the Governor may also declare a water emergency in the New Jersey portion of the Basin. The Department shall coordinate with the DRBC concerning the implementation of this subchapter and the Water Emergency Surcharge Schedule, N.J.A.C. 7:19-9.

(f) In the discretion of the Department, the restrictions in this Subchapter will not apply to use or diversion of salt water, except in situations where use or diversion of such water effects utilization of fresh water.

7:19-13.2 Agricultural activities

Pursuant to the "Agricultural Retention and Development Act", P.L. 1983, c.32 agricultural activities on land in a municipally-approved program shall be exempt from this subchapter unless the Governor declares that the public safety and welfare require otherwise.

7:19-13.3 Phase I: Available water supply levels determined to be below normal

- (a) Voluntary water conservation may be encouraged at this phase.
- (b) A ban on adjustable water uses may be instituted at this phase. Such adjustable uses include:
 - 1. The watering of all plant growth, except commercially grown food crops, sod at commercial sod farms and nursery stock at nurseries or retail outlets;
 - 2. The washing of vehicles, except by businesses engaged exclusively in car washing on site, including self-service car washes equipped with total recycle of both wash and rinse water, or in those instances where a threat to public health may exist;
 - 3. The washing of streets, driveways, sidewalks or paved areas;
 - 4. The serving of water in restaurants, clubs, or eating places unless specifically requested by patrons;
 - 5. The use of water for flushing sewers by municipalities or any public or private entity except as municipal health officials deem necessary in the interest of public health or safety;

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6. The use of fire hydrants by fire companies for testing fire apparatus and for fire department drills except as the municipal governing body and the purveyor deem necessary in the interest of public safety;

7. The use of fire hydrants by municipal road departments, contractors, and all others, except as necessary for fire fighting or protection purposes;

8. The use of water for all outdoor recreational purposes;

9. The washing of buildings or other structures, except for windows; and

10. Any other uses of water as the Commissioner may designate. The Commissioner shall effect such designations by administrative order and such designations shall be effective immediately upon adoption by the Commissioner and published in the New Jersey Register as soon thereafter as possible.

(c) Variables affecting the application of a ban on adjustable water users include but are not limited to the following:

1. Severity of the water emergency;

2. Time of year; or

3. Climatic conditions

(d) Any person wishing to be exempt from the ban on adjustable water uses shall file an application for a hardship exemption in accordance with N.J.A.C. 7:19-16.1.

(e) If the Phase I activities fail to achieve water demand management objectives, Phases II through IV shall be implemented in a manner that reflects the existing water supply conditions.

7:19-13.4 Phase II: Severity; substantial threat to the public health and welfare

(a) Non-residential users shall be subject to the water emergency rate schedule as provided by rule. (See N.J.A.C. 7:19-9).

(b) Water rationing shall be instituted at a maximum daily rate of 50 gallons of water per person for residential users.

(c) Based on the limitations on water use imposed during Phase II or a subsequent phase of an emergency and the number of customers served by an affected water purveyor, each such purveyor shall be assigned a water use allocation target. The affected purveyor shall be required to make good faith efforts to remain within these targets. Such targets may be modified in subsequent phase of the emergency.

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(d) Any person wishing to be exempt from the requirements of this section shall file an application for a hardship exemption in accordance with N.J.A.C. 7:19-16.2.

7:19-13.5 Phase III: Further rationing required

This stage requires further rationing of water supplies to all sectors or the selective curtailment of industrial water users in accordance with N.J.A.C. 7:19-14.

7:19-13.6 Phase IV: disaster stage

(a) At the disaster stage, public health and safety cannot be guaranteed. Water quality is of major concern.

(b) Maintenance of health facilities shall be at emergency levels.

(c) Industrial use shall be further curtailed and selective closings shall occur. Interruptions in water service may be necessary.

SUBCHAPTER 14. INDUSTRIAL CURTAILMENT STRATEGY

7:19-14.1 Scope

This subchapter establishes the components of the industrial curtailment strategy and the procedural steps to effectuate this strategy in phases III and IV.

7:19-14.2 Procedure for selective curtailment during a water emergency situation

(a) The Department shall require the purveyors and water users to submit appropriate information upon request in order to prepare for possible water curtailment.

(b) The Commissioner shall determine that supplies are at a level which justify initiating Phase III actions, including partial industrial curtailments.

(c) Industry wholly dependent upon public water supply, shall be closed (Phase IV) unless exempted by the Department.

7:19-14.3 Basis of selective curtailment

(a) Selective curtailment of large industrial users, as referred to in Phase III, shall be based upon:

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1. Water consumption per work site;
2. Number of employees per work site;
3. Essential nature of the industry; and
4. Other pertinent data.

(b) After considering the essential nature of the industry and other pertinent data, the first priority for curtailment shall be those industries with high water use and a low number of employees per work site relative to water use.

7:19-14.4 Submission of water supply information

Industrial users, water purveyors and other water users, shall submit to the Department, upon its request, all information relating to water consumption and employment required by N.J.A.C. 7:19-11.4, 11.5, 14.2 and 14.3.

SUBCHAPTER 15 EMERGENCY WATER TRANSFER PRICING

7:19-15.1 General pricing procedures

(a) Within 90 days after the effective date of this chapter, all water purveyors having physical interconnections with other water purveyors shall initiate negotiations with the interconnected purveyors regarding the prices to be charged for supply of water through such interconnections ordered by the Commissioner during a water supply emergency.

1. Prices may be expressed either in terms of specific prices or of a formula.

(b) The water purveyor shall submit the record of negotiations, and the agreed upon prices if arrived at, to the Board of Public Utilities, if within its jurisdiction, or the Department, in all other cases, for approval and/or reconciliation of differences and approval in accordance with the following time schedule:

1. Within 12 months after the effective date of this chapter:
 - i. All water purveyors with interconnections 12 inches in diameter or greater between their systems;
 - ii. All water purveyors having interconnections of any size with water purveyors serving those seashore communities having shoreline contiguous with the Atlantic Ocean proper from Cape May to Highlands inclusive where the water supply serves 10,000 or more residents for two months or more per year.

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2. Within 36 months after the effective date of this chapter:
 - i. All water purveyors with interconnections of 8 inches in diameter or greater where either system serves 10,000 or more residents; and
 - ii. All water purveyors interconnected with purveyors serving seashore communities having shoreline contiguous with the Atlantic Ocean proper from Cape May to Highlands inclusive, except those covered by (b)1ii above.
3. Within five years after the effective date of this chapter all other water purveyors interconnected with another water purveyor.

7:19-15.2 Criteria for pricing

(a) In the event an emergency transfer of water is ordered by the Commissioner, the price charged to the receiving system should be based upon fair compensation, reasonable rate relief and just and equitable terms as to not create a situation wherein the customers or owners of the supplying systems are subsidizing the transfer.

(b) Where an emergency transfer is ordered by the Commissioner which requires a reduction in the amount of water used by existing customers of the supplying system in order to effectuate the transfer, the price charged to the receiving system should be set at a level which will insure the fair recovery of all costs incurred by the supplying system as a result of the reduction.

(c) Where an emergency transfer requiring no such reduction is mandated, the normal bulk water rates for existing regular customers of the supplier should receive serious considerations in determining the price of transferred water, except that this should not apply, for example, where such bulk rates are for off-peak water.

(d) Where such rates have not been established, rates may, in appropriate cases, be set so as to achieve revenue levels to cover the following requirements related to the facilities utilized to produce and transport water to the emergency purchaser:

1. Operation and maintenance;
2. Depreciation;
3. Taxes or payment in lieu thereof; and
4. Return (original plant investment minus depreciation times the rate of return) or debt service.

(e) Any foreseeable additional cost attributable to a mandated transfer shall be borne by the buyer of the water.

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(f) Price schedules may specify that rate adjustments may be made later if actual costs fall short of or are greater than expected.

(g) If existing agreement on water transfer rates and other terms has been reached by the purveyors involved in such transfer and approved by the Department, the above criteria (a)-(f) shall not apply.

7:19-15.3 Price resolution process

(a) Whenever during a water supply emergency a transfer of water has been made between one purveyor and one or more other purveyors, and the supplying water purveyor determines that additional cost recovery is required the following procedure shall be followed:

1. The supplying water purveyor, the receiving water purveyor and any other water purveyor whose facility was used to effectuate the transfer shall have 30 days from the date the supplying water purveyor gives notice that additional cost recovery is required to reach agreement as to the amount of additional charge.

(b) If the informal negotiation process is unsuccessful, any party may then file a written request for the initiation of formal proceedings to the Commissioner and the Board of Public Utilities where appropriate within 60 days of the ending date for negotiation specified in (a) above. Said request shall include:

1. The added charge the party is proposing;
 2. Substantiated arguments supporting the charge; and
 3. Any other pertinent data including but not limited to the following:
 - i. The extent to which, if any, there would be curtailment of use by regular customers of the supplying system as a result of the sharing of the resources, and concomitant loss of revenue;
 - ii. The cost to the supplying system which would not be incurred except for the fact that the transfer must be made and any other costs which the party believes should be attributed to the transfer, including a detailed explanation of cost calculation;
 - iii. All wholesale and retail rates (with terms and conditions):
 - (1) Charged by the supplying system to its customers;
 - (2) Paid by the receiving system to its suppliers; and
 - (3) Charged by the receiving system to its customers.
- (c) The Commissioner or the Board of Public Utilities shall review the submitted requests,

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decide the fair compensation, and advise the parties.

(d) The actual transfer of water shall be accomplished in accordance with the order issued by the Department without regard to the time required for settlement of the added charge.

SUBCHAPTER 16 HARDSHIP EXEMPTION PROCEDURES

7:19-16.1 Application procedures for hardship exemption from the ban on adjustable water uses

(a) Any person wishing to be exempt wholly or partially from the ban on adjustable water uses may apply for a hardship exemption according to the following procedures:

1. The applicant shall submit his or her request along with full documentation supporting the request to the attention of the Water Emergency Task Force at the following address:

Water Emergency Task Force c/o
Water Supply Element
CN 426
Trenton, New Jersey 08625

2. The applicant's submittal shall include a demonstration that extraordinary hardship and no reasonable alternative exists if the exemption is not granted.

3. After the Task Force's review of the application and the Task Force's recommendation to the Commissioner, the Commissioner shall notify the applicant in writing of his or her decision and the reasons for the decision. Before making a recommendation, the Task Force may request the applicant to supply additional documentation. An exemption approved by the Commissioner may be rescinded should public health, safety and the welfare require further reduction in water use.

4. An exemption granted to an applicant for a specific property, purpose or person is not transferable to any other property, purpose or person without prior approval from the Task Force which may be obtained by submitting a request to the Task Force including full documentation.

7:19-16.2 Application procedures for hardship exemption from the requirements of water rationing

(a) Any person wishing to be exempt from the requirements of water rationing may, within 30 days following receipt of the surcharge bill issued pursuant to N.J.A.C. 7:19-9, file an application for a hardship exemption with the appropriate water purveyor according to the following procedures:

1. The applicant shall submit the request for exemption along with whatever documentation which would aid the water purveyor in making its decision.

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2. The applicant's submittal shall include a demonstration that extraordinary hardship and no reasonable alternative exists if the exemption is not granted.

3. After review of the application, the water purveyor shall notify the applicant of the results of its review. Before making a decision, the water purveyor may request the applicant to supply additional documentation.

4. An exemption granted to an applicant for a specific property, purpose or person is not transferable to any other property, purpose or person without prior approval from the water purveyor.

5. The denial by the water purveyor of an application for exemption entitles the applicant to appeal to the Water Emergency Task Force.

6. The water purveyor is required to notify the Task Force within seven days of all of its approvals. The Task Force may, at its discretion, review any approval granted and recommend to the Commissioner whether to uphold or deny said approval.

(b) An appeal to the Water Emergency Task Force shall contain the following documentation:

1. A copy of the original request for exemption with any documentation submitted to the water purveyor.

2. A copy of the exemption decision by the water purveyor.

3. No appeal from the decision of the water purveyor on an exemption application will be accepted unless received by the Task Force within 30 days following the date of the denial by the water purveyor.

(c) The Task Force shall review the request for appeal and all supporting documentation and make a recommendation to the Commissioner. The Commissioner shall notify the applicant in writing of his or her decision and the reasons for the decision. Before making a recommendation, the Task Force may request the applicant to supply additional documentation.

SUBCHAPTER 17. DEPARTMENT ORDERS

7:19-17.1 Requirements for Departmental orders issued during a water emergency

(a) All Departmental orders issued pursuant to N.J.A.C. 7:19-9 through 17 will be based upon fair compensation, reasonable rate relief, and just and equitable terms.

(b) Subsequent to the issuance of an order and compliance therewith, the basis upon which the order was issued will be determined after notice and hearing.

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7:19-17.2 Appeal procedure

(a) The party to whom an order has been issued by the Department, shall have a right to request a hearing thereon, by submitting a letter requesting an adjudicatory hearing, pursuant to N.J.A.C. 7:19-2.13, to the Department within 20 days of receipt of the order.

SUBCHAPTER 18: CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:19-18.1 Authority and purpose

This subchapter governs the Department's assessment of civil administrative penalties for the violation of any provision of the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., or any regulation, rule, permit or order adopted or issued by the Department pursuant thereto. This subchapter also governs the procedure for assessment, settlement and payment of civil administrative penalties and for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

7:19-18.2 Procedures for assessment, settlement and payment of civil administrative penalties for violations

(a) To assess a civil administrative penalty under the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This notice of civil administrative penalty assessment (NOCAPA) shall:

1. Identify the section of the statute, rule, administrative order or permit violated;
2. Concisely state the alleged facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:19-18.3.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:19-18.3, a notice of civil administrative penalty assessment becomes a final order and is deemed received on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
2. If the Department denies the hearing request pursuant to N.J.A.C. 7:19-18.3(b), a

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notice of civil administrative penalty assessment becomes a final order and is deemed received on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;

3. If the Department denies the hearing request pursuant to N.J.A.C. 7:19-18.3(c), a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial; or

4. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:19-18.4, 18.5 or 18.6 according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:19-18.4(d)7, 18.5(c)6 or 18.6(d)6;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:19-18.4(d)5, 18.5(c)5 or 18.6(d)5;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and/or a notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; and/or

4. Any other terms or conditions acceptable to the Department.

7:19-18.3 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

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the violator shall submit the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings

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denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being contested, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:19-18.4 Civil administrative penalty determination; general

(a) The Department may, in its discretion, assess a civil administrative penalty pursuant to this section of not more than \$5,000 per day for each violation of each provision of the Water Supply Management Act, N.J.S.A. 58A-1 et seq., or of any regulation, rule, permit or order adopted or issued by the Department pursuant thereto. The Department shall assess penalties under this section in lieu of N.J.A.C. 7:19-18.5 or 18.6 when N.J.A.C. 7:19-18.5 or 18.6 is not applicable to the violation.

(b) The Department shall consider each violation of each provision of the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., or of any regulation, rule, permit or order adopted or issued by the Department pursuant thereto, as a separate and distinct violation. If the violation is of a continuing nature, each day during which a violation continues shall constitute an additional, separate and distinct violation subjecting the violator to the penalty schedule set forth in (c) below.

(c) The Department may assess a civil administrative penalty for each violation of each provision of the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., or any regulation, rule, permit or order adopted or issued by the Department pursuant thereto at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For the first violation of a provision, not more than \$1,000;

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2. For the second violation of the same provision, not more than \$2,500; and
3. For the third and subsequent violations of the same provision, not more than \$5,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (c) above, on the basis of any or a combination of the factors listed in 1 through 7 below. No such factor constitutes a defense to any violation:

1. The compliance history of the violator;
2. The number, frequency and severity of the violations;
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not recur;
6. Any unusual or extraordinary costs directly or indirectly imposed on the public by the violation; and/or
7. Any other extenuating, mitigating or aggravating circumstances.

7:19-18.5 Civil administrative penalties for failure to allow lawful entry and inspection

(a) The Department may, in its discretion, assess a civil administrative penalty of \$5,000 against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative.

(b) Each day, from the initial day on which the violator refuses, inhibits or prohibits immediate lawful entry and inspection by any authorized Department representative up to and including the day on which the Department receives written notification from the violator that the violator will not refuse, inhibit or prohibit immediate lawful entry and inspection, shall constitute an additional, separate and distinct violation.

(c) The Department may, in its discretion, reduce a civil administrative penalty determined pursuant to (a) on the basis of any or a combination of the factors listed in 1 through 6 below. No such factor constitutes a defense to any violation:

1. The compliance history of the violator;

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2. The number, frequency and severity of the violations;
3. The measures taken by the violator to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation and ensuring that the violation does not recur; and/or
6. Any other extenuating, mitigating or aggravating circumstances.

7:19-18.6 Civil administrative penalties for submitting inaccurate or false information

(a) The Department may, in its discretion, assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained under the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., or any regulation, rule, permit or order adopted or issued by the Department pursuant thereto, or who fails to submit or maintain any application, record, or other document required to be submitted or maintained under the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., or any regulation, rule, permit or order adopted or issued by the Department pursuant thereto, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained by the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., or any regulation, rule, permit or order adopted or issued by the Department pursuant thereto at the midpoint of the ranges in (c) below except as adjusted pursuant to (d) below:.

(b) Each day, from the day on which the violator submits the inaccurate information or false statement, representation or certification to the Department up to and including the day on which the Department receives a written correction of the inaccurate information or false statement, representation or certification, shall constitute an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty based on the conduct of the violator as follows:

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount of not more than \$3,000 nor less than \$1,000;

2. For any unintentional but foreseeable act or omission the civil administrative penalty shall be in amount not more than \$1,500 nor less than \$500; or

3. For any other violation the civil administrative penalty shall be in an amount not more than \$1,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c)

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above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (c) above, on the basis of any or a combination of the factors listed in 1 through 6 below. No such factor constitutes a defense to any violation:

1. The compliance history of the violator;
2. The number, frequency and severity of the violations;
3. The measures taken by the violator to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation and ensuring that the violation does not reoccur; and/or
6. Any other extenuating, mitigating or aggravating circumstances.