

On October 21, 2009, the Superior Court of New Jersey, Appellate Division, determined that certain portions of the N.J.A.C. 7:20A rules were ultra vires and therefore invalid, and that two others were ultra vires as written. The rules found ultra vires were:

N.J.A.C. 7:20A-2.5 (a) 11.v. A wetlands impact study is no longer a required submission for a new Certification application. The applicant does not have to demonstrate impacts on freshwater wetlands.

N.J.A.C. 7:20A-1.3 and N.J.A.C. 7:20A-2.3 (j) The Court found that the rules should clearly identify the County Agricultural Agents as the issuing entity for new Agricultural Certifications, and not the NJDEP. These rule provisions should therefore be read accordingly: the County Agricultural Agents issue the new Agricultural Certifications using the standards and procedures adopted by the NJDEP.

The rules found ultra vires as written were:

N.J.A.C. 7:20A-1.7 (c) 1 and N.J.A.C. 7:20 1-2.6 (a) 13 The Court found that these rules as written could be read to provide too broad a range of remedies. However, the NJDEP's responses to comments on these rules were less broad. Thus, broad remedies cannot be imposed in the mitigation of adverse impacts on holders of Certifications should these impacts occur.

These provisions should be read as follows: Future mitigation requirements imposed by NJDEP may include relocating the source to minimize adverse impacts; establishing a series of diversion points to minimize the impact at any one location; managing pumping rates; modifying the duration and timing of the diversion to reduce adverse impacts; implementing conjunctive use of wells or aquifer storage and recovery methods to reduce impacts; reducing the allocation to the amount necessary to resolve the adverse impact; or in the worse case situation where alternatives are not available and impacts are severe, revoking the water usage certification.

The rules will be amended in the future to reflect these changes. In the meantime, the NJDEP is abiding by the Court's Decision in its practices, and has amended the Application for an Agricultural Certification to conform to the decision.

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

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:20A-1.1 Scope and authority

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

7:20A-1.2 Construction

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

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

(c) Any agricultural, aquacultural, or horticultural uses of water in the State of New Jersey will be presumed to be in the public interest for the purpose of this chapter, provided the agricultural, aquacultural, or horticultural activity employs agricultural management practices for conserving water to the maximum extent possible, minimizes the amount of water utilized, and uses the lowest quality of water for the intended purpose considering the size of the farm management unit where water will be used, crop type, and the amount of impervious surface on the farm management unit.

7:20A-1.3 Definitions

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

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

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

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

"Agricultural development plan" means a plan for identifying crop types anticipated to be planted, anticipated for the expansion of agricultural or horticultural activities into areas of the farm management unit currently not cultivated and/or irrigated, and/or the amount of impervious surface planned on the farm management unit during the effective period of the water usage certification.

"Agriculture management practices" means those methods, techniques and actions employed to conserve water and protect natural resources as described in various bulletins and guidance documents

prepared and distributed by the Rutgers Cooperative Research and Extension, New Jersey Agricultural Experiment Station, Rutgers University, the United States Department of Agriculture and/or the agricultural management practices adopted by the State Agriculture Development Committee in accordance with *N.J.A.C. 2:76-2.1*.

"Agricultural water usage registration" or "water usage registration" means the document issued to persons having the capability to divert more than 100,000 gallons of water per day from a source or combination of sources, but whose actual usage is less than 100,000 gallons of water per day for agricultural, aquacultural, or horticultural purposes.

"Applicant" means any person filing or required to file an application to establish, modify or renew a water usage certification or water usage registration to divert water pursuant to this chapter or the Act. An applicant may be the owner, of the farm management unit or the authorized representative.

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

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

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

"Area of critical water supply concern" or "critical area" means a region of the State, as designated by the Commissioner under *N.J.A.C. 7:19-8*, where excessive water usage or diversion presents undue stress, or wherein conditions pose a significant threat to the long-term integrity of a water supply source, including a diminution of surface water due to excess groundwater diversion.

"Authorized representative" means the person that the owner of the farm management unit on which the agricultural, aquacultural, or horticultural activity is taking place or is planned has designated in writing to the appropriate county agricultural agent and the Department as having authority to act on the owner's behalf on matters governed by this chapter. The authorized representative may include a lessee, the farmer and/or operator, or other person so designated by the owner to perform agricultural, aquacultural or horticultural activities on the farm management unit.

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

"Commissioner" means the Commissioner of the Department of Environmental Protection or the Commissioner's designated representative.

"County agricultural agent" or "appropriate county agricultural agent" means the person so appointed by the New Jersey Agricultural Experiment Station's Rutgers Cooperative Research and Extension.

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

"Decision maker" means the person designated by the Department to make decisions on applications, after consultation with the appropriate county agricultural agent, for water usage certifications and claims of privileges to divert water.

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

"Diversion source" means the aquifer and/or surface water sources from which a diversion of water is made and the associated infrastructure by which water is diverted.

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

"Drought" means a climatic condition characterized by lower than normal precipitation, and resulting in reduced stream flows, reduced soil moisture, reduced groundwater levels and/or a lowering of the potentiometric surface in wells that warrants or may warrant a declaration of a drought warning pursuant to *N.J.A.C. 7:19-13.1(d)*, or a water supply emergency pursuant to the Water Supply Management Act, *N.J.S.A. 58:1A-1 et seq.*

"Farm management unit" means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural, aquacultural or horticultural buildings, structures and facilities, producing agricultural, aquacultural or horticultural products, and operated under common ownership or by a common authorized representative if the same person is representing multiple owners, whether active or inactive, and as such parcels are reflected by lot and block numbers, or metes and bounds.

"Freshwater wetland" or "wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; provided, however, that the Department, in designating a wetland, shall use the three-parameter approach (that is, hydrology, soils, and vegetation) enumerated in the 1989 Federal Manual as defined in the Freshwater Wetlands Protection Acts rules at *N.J.A.C. 7:7A*. These include tidally influenced wetlands which have not been included on a promulgated map pursuant to the Wetlands Act of 1970, *N.J.S.A. 13:9A-1 et seq.* It shall not mean a "farmed wetland" pursuant to *N.J.A.C. 7:7A*.

"Impervious surface" means any structure or surface that prevents the infiltration of precipitation into the land. Examples of impervious surfaces include, but are not limited to, pavement, roof tops, sidewalks, driveways, barns, hoop houses, greenhouses, plastic or other impermeable ground cover, sheds, foundations, houses, garages, commercial buildings, compacted soil or stone areas, and lined ponds. This term shall not include temporary structures that remain in place for less than six months per calendar year.

"Lawful entry" means an entry by the Commissioner, or the Commissioner's designated representative, into any building, place, or premise pursuant to *N.J.S.A. 13:1D-1 et seq.* and *N.J.S.A. 58:1A-15c*, and otherwise provided by law, ordinance, regulation, order, permit, certification, or agreement, as may be required for the purpose of investigating actual or suspected non-compliance with the Water Supply Management Act, *N.J.S.A. 58:1A-1 et seq.*

"Modification" means a change to a certification including, but not limited to, an increase in monthly and/or annual certification volume, the addition of a new diversion source, or an increase in pump capacity of an existing diversion source.

"Off-stream pond" means a pond or other impoundment used for water supply purposes that is not connected directly by structures or channels to a surface water body, whereby the surface water is able to flow into the pond or impoundment, and where diverting from the pond or impoundment will not impact the flow or water level of the surface water.

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

"Person" means any individual, corporation, company, partnership, firm, association, owner, political subdivision of this State, or of any State, interstate or Federal agency, authorized representative, or a public water system.

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

"Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals daily for at least 60 days out of the year. This term includes any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system, and any collection or pre-treatment storage facilities not under such control which are used primarily in connection with the system.

"Replacement well" means a new well that is to replace an existing well which shall be sealed in accordance with N.J.A.C. 7:9D-3 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 pumping capacity; and be within 100 feet of the existing well, or as prescribed in *N.J.A.C. 7:20A-2.2(a)1i*.

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

"Saltwater" means water that contains chloride concentrations in excess of 10,000 mg/L.

"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 resource" means any river, stream, lake, pond, freshwater wetland, aquifer, other underground source, or other water body.

"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, aquacultural, or horticultural purposes.

"Water supply critical aquifer" means an aquifer within an area of critical water supply concern in which there may be either insufficient water supply, shortage of ground water due to overdraft, threat of salt water intrusion or contamination, or where other circumstances exist under which the Department determines that special measures are required to ensure the integrity and viability of the water source and to protect the public health, safety and welfare.

"Water usage certification" or "certification" means the document issued 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, aquacultural, or horticultural purposes for a five-year period.

"Well" means a hole or excavation larger than four inches in diameter or a hole or excavation greater than 10 feet in depth, that is drilled, bored, driven, cored, jetted, dug or otherwise constructed for the purpose of the removal or emplacement of, investigation of, or exploration for water.

"Well sealing" means the permanent closure or decommissioning of a well in accordance with the procedures set forth at N.J.A.C. 7:9D-3.

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

7:20A-1.4 Applicability

(a) This chapter applies to all persons who have been issued a water usage certification, and to other persons who are diverting, have the ability to divert 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes, and to all persons who in the future seek approval to

divert 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes except as specified below:

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

2. Water usage certifications shall not be required for a person receiving water from a public water system within the scope of an existing water supply allocation permit. Modification of a certification shall be required for diversions or transfers of water from a water usage certification to another use not within the scope of an existing water usage certification regardless of the same or different ownership of the property.

i. Transfers of water from an existing water usage certification to a non-agricultural use is prohibited.

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

i. The agricultural, aquacultural, or horticultural site or group of properties under common ownership or under a single authorized representative are contiguous to each other;

ii. The noncontiguous agricultural, aquacultural, or horticultural site or group of properties under common ownership or under a single authorized representative are all located within the same municipality; or

iii. The noncontiguous agricultural, aquacultural, or horticultural site or group of properties under common ownership or under a single authorized representative lie within an area of a square two miles on a side.

4. An application for a major modification of a water usage certification, as provided for under *N.J.A.C. 7:20A-2.2, 2.3 and 2.5*, is not required for the installation of a replacement well for an existing well included in an existing water usage certification.

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

(1) Location of the replacement well and the existing well on a map prepared in accordance with *N.J.A.C. 7:20A-2.3(e)*;

(2) Pump capacity and depth; and

(3) State of New Jersey assigned well permit number and local name or number.

ii. The holder of the water usage certification shall provide the State of New Jersey assigned well permit number for the existing well that is to be sealed to the person sealing the well. The existing well shall be sealed in accordance with *N.J.A.C. 7:9D-3*.

iii. The holder of a water usage certification shall notify the appropriate county agricultural agent of the installation of the replacement well within 30 days after the replacement well was installed.

iv. The county agricultural agent shall submit to the Department the information required under (a)4i above within 30 days after notification by the holder of the certification of the installation of the replacement well.

(b) An applicant shall be considered to have diverted 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes if the applicant proposes to divert 100,000 or more gallons of water per day, or existing documentation establishes that the applicant's proposed or actual total gallons of water diverted for agricultural, aquacultural, or horticultural purposes during the maximum month of usage in the three-year period immediately preceding the date the application was

submitted, when divided by the total number of days in the maximum month of usage, equals 100,000 or more gallons of water per day.

(c) An applicant whose diversion source is located within an area of critical water supply concern is subject to this chapter and, in addition, to the water allocation management requirements for areas of critical water supply concern set forth in the Water Supply Allocation Permit rules at N.J.A.C. 7:19-8.

(d) A water usage certification or water usage registration is issued to the owner or authorized representative of a specific farm management unit and remains in effect for that farm management unit until such time as the certification or registration is cancelled or modified by the owner or authorized representative of the farm management unit, expires without renewal, or is revoked by the Department pursuant to *N.J.A.C. 7:20A-2.6(a)*7.

7:20A-1.5 Uncertified diversions

(a) No person shall divert or have the capability to 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 either obtaining a water usage certification or water usage registration in accordance with this chapter, or 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 *N.J.A.C. 7:19*.

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

(c) Any person who intends to divert less than 100,000 gallons of water per day for agricultural, aquacultural, or horticultural purposes, but who has the capability to divert 100,000 gallons of water per day or more, shall register the diversion source in accordance with the procedures set forth in *N.J.A.C. 7:20A-3*.

(d) Any certification holder who, because of a water supply shortage and/or water quality emergency, seeks to divert water from a diversion source for which the certification holder does not have diversion privileges under a certification issued pursuant to this chapter, shall obtain from the appropriate county agricultural agent written verification of the water supply shortage and/or water quality emergency, and shall submit the verification with a written request for authorization for the uncertified diversion to the Department at: Bureau Chief, Bureau of Water Allocation, P.O. Box 426, Trenton, New Jersey 08625-0426. The certification holder shall be eligible for authorization for the uncertified diversion only if the following requirements are met:

1. The certification holder applies for a modification of their certification under *N.J.A.C. 7:20A-2.2* within 30 calendar days of the initiation of the uncertified diversion authorized under this subsection;
2. The certification holder uses the uncertified diversion authorized under this subsection only on a last on, first off basis until the certification modification required under (d)1 above is approved; and
3. The uncertified diversion is not from a water supply critical aquifer or from a point on a stream that is upstream of a public water supply intake or discharge regulated under the Water Pollution Control Act, *N.J.S.A. 58:10A-1* et seq., and the implementing rules at *N.J.A.C. 7:14A*.

(e) Pursuant to *N.J.S.A. 58:1A-6(a)(1)*, any person who holds a Water Policy and Supply Council permit that was valid prior to August 13, 1981, but who did not re-establish that privilege to divert water by February 9, 1982, shall apply for a water usage certification under these rules.

7:20A-1.6 Procedure for transfer of a water usage certification

(a) An existing water usage certification for any farm management unit utilized for agricultural, aquacultural, or horticultural purposes that has been transferred in ownership, authorized representative and/or operation without any change or modification in the specified conditions of water usage for agricultural, aquacultural, or horticultural purposes, may be transferred to the new owner of the farm management unit or the authorized representative upon notification by the new owner or the authorized representative to the appropriate county agricultural agent and the Department except that:

1. If any change in the specified conditions of water usage or farm management unit utilization for agricultural, aquacultural, or horticultural purposes occurs prior to or subsequent to the transfer of ownership, authorized representative, and/or operation, then the new owner or authorized representative shall follow the application process for new water usage certifications outlined in N.J.A.C. 7:20A-2.

2. If the new owner or authorized representative of the farm management unit does not notify the appropriate county agricultural agent and the Department of the transfer of the existing water usage certification within 180 days after the transfer of ownership or operation, then the privilege of the new owner or authorized representative to divert water under the existing water usage certification shall cease and the new owner or authorized representative shall follow the application process for new water usage certifications outlined in N.J.A.C. 7:20A-2 to establish the privilege to divert water.

7:20A-1.7 Complaints of interference

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

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

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

(c) The Department shall determine the validity of all such complaints. If the complaint appears to be valid, the Department shall investigate and make a determination as to cause based upon the facts in each particular case. The Department shall notify the complainant, the certification holder, and the appropriate county agricultural agent of its findings and shall, if necessary, direct that a solution be implemented within 30 days.

1. The water usage certification holder is responsible for mitigating adverse impacts on ground or surface waters, the users thereof who had a water supply allocation permit or water usage certification, and/or all authorized users of the ground or surface waters in operation prior to the water usage certification being issued to the water usage certification holder, caused as a direct result of the diversion.

7:20A-1.8 Program information

Unless otherwise specified, any questions concerning the requirements of this chapter shall be directed to the appropriate county agricultural agent, or to the Bureau of Water Allocation, Division of Water Supply, New Jersey Department of Environmental Protection, P.O. Box 426, Trenton, New Jersey 08625-0426.

7:20A-1.9 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.

7:20A-1.10 (Reserved)

7:20A-2.1 Scope

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

7:20A-2.2 Major and minor certification modifications

(a) A major modification of a water usage certification shall be obtained pursuant to *N.J.A.C. 7:20A-2.3* and *2.5* for the following:

1. The relocation of an intake or well to a site more than 100 feet from the site of the intake or well specified in the certification, or the location of replacement well in a different aquifer;

i. The Department shall approve a replacement well in the same aquifer or the relocation of a diversion point greater than 100 feet from the existing well or existing intake as a minor modification to the water usage certification pursuant to (b) below if, as determined by the Department, there are structures, facilities or physical barriers situated such that the replacement well or relocated intake cannot be located within 100 feet of the existing well or existing intake. In this event, the replacement well or relocated intake shall be located as near to the existing well or existing intake as possible. However, in no case shall a replacement well or relocated intake located beyond 200 feet from the existing well or existing intake, or closer to a contamination site on the Department's known contaminated site list, a surface water classified as category one pursuant to *N.J.A.C. 7:9B*, or to an exceptional resource value fresh water wetland pursuant to *N.J.A.C. 7:7A-2.4(b)*, or within 500 feet of the property line for the replacement well be considered as a minor modification in accordance with (b) below.

2. The addition of a diversion source, unless the new diversion source meets the criteria identified in (b)4 below or is a replacement well as defined under *N.J.A.C. 7:20A-1.3*, whether or not an increase in allocation is sought;

3. An increase in monthly or annual allocation;

4. An increase in pumping capacity, except for an off-stream pond intake that can be processed as a minor modification pursuant to (b) below; and/or

5. A change to any condition of the certification that has the potential to cause an adverse impact either upon a water resource or upon other users of that water resource.

(b) A minor modification of a water usage certification may be effected pursuant to the following:

1. A change in name or mailing address of the certification holder by a written notice of the change to the county agricultural agent and the Department within 30 days of the change;

2. A transfer of ownership or operation of the agricultural, aquacultural, or horticultural property in accordance with *N.J.A.C. 7:20A-1.6*;

3. The installation of a replacement well in accordance with *N.J.A.C. 7:20A-1.4(a)4* or as determined pursuant to *N.J.A.C. 7:20A-2.2(a)1i*;

4. The addition of a well in the same aquifer at the approximate same depth, with the same or lower pumping capacity as a well specified in the certification, provided the additional well is within 100 feet,

or as determined pursuant to *N.J.A.C. 7:20A-2.2(a)1i*, of the existing well, is being added solely to reduce the irrigation time, and does not require any increase in allocation. The additional well shall not be any closer than 500 feet to any property line. The certification holder shall provide the appropriate county agricultural agent with a copy of the well record form as required under *N.J.A.C. 7:9D-1.15* for the additional well and the location of the additional well relative to the existing well with the distance between the two wells delineated on a map produced in accordance with *N.J.A.C. 7:20A-2.3(e)*;

5. A reduction in allocation in accordance with *N.J.A.C. 7:20A-2.4(h)*; and

6. An increase in pumping capacity for an off-stream pond intake that does not require an increase in allocation.

7:20A-2.3 General application procedures and requirements

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

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

(c) The applicant shall follow all the instructions to complete the application forms, and shall obtain and prepare all other documents, including a copy of a map produced in accordance with (e) below with the farm management unit clearly delineated, as required by the instructions.

(d) If one or more existing or proposed diversion sources are located within the Delaware River Basin, the applicant or the county agricultural agent shall also:

1. Submit, at the time the water usage certification application is submitted to the Department, a copy of the application to the Delaware River Basin Commission (DRBC), P.O. Box 7360, West Trenton, New Jersey, 08628-0360; and

2. Provide a copy of the application cover letter sent to DRBC in accordance with (d)1 above, or other proof of filing with the DRBC, to the Department.

(e) The location of each water diversion source as required shall be identified on:

1. A map produced from the Department's internet mapping tool (i-Map) available on the Department's website at www.nj.gov/dep/gis. The map must be produced at a scale whereby streets and key features are clearly visible.

2. Diversion source locations shall be determined using the Global Positioning System (GPS), the Department's internet mapping tool (i-Map), a New Jersey licensed land surveyor, or other method meeting the Department standards at *N.J.A.C. 7:1D*, as set forth at *N.J.A.C. 7:1D* Appendix A, with source locations reported in New Jersey State plane coordinates. The location shall be taken at the well head or intake opening, or if the location cannot be collected at one of those locations, at another location on the subject property, as close as possible to the well head or intake opening.

3. The applicant and/or water usage certification holder is responsible for the accuracy of all source locations identified in the application. Failure to provide accurate source locations may be grounds for revocation of the certification and/or enforcement action by the Department.

(f) The applicant for a water usage certification shall provide information to demonstrate the water to be diverted is the lowest quality water that is appropriate for the intended use.

1. For non-edible crops or other non-edible agricultural, aquacultural, or horticultural products, and where determined to be feasible by the Department, the Department may require the use of reclaimed water for beneficial reuse for irrigation or other purposes.

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

1. The applicant, upon submission of an application to the county agricultural agent for renewal, modification or new certification or registration, shall sign and date the following certification on the application form:

i. "To the best of my knowledge, the information submitted in this application is true, accurate and complete. I am aware that there are significant civil and criminal penalties for knowingly submitting false, inaccurate or incomplete information, including the possibility of fines and/or loss of the privileges granted under the water usage certification."

(h) The applicant shall complete the application forms and other required documents in accordance with *N.J.A.C. 7:20A-2.3* and 2.4 or 2.5 as appropriate, and submit the completed application forms and other required documents to the appropriate county agricultural agent.

(i) The county agricultural agent shall submit the complete application to the Department for review and processing.

(j) After review, the Department shall approve, in consultation with the county agricultural agent, the water usage certification application and issue the water usage certification with conditions, deny the application, or return the application to the county agricultural agent for additional consultation with the applicant.

7:20A-2.4 Application requirements and procedures for the renewal with no modification or the renewal with minor modification of an existing water usage certification; extension of certain existing certifications

(a) Renewals with no or minor modifications, as identified in *N.J.A.C. 7:20A-2.2(b)*, shall be processed in accordance with this section. Renewals with major modifications shall be processed in accordance with *N.J.A.C. 7:20A-2.5*.

1. An application for renewal of a current water usage certification shall be submitted to the appropriate county agricultural agent at least three months prior to the expiration date of the existing certification.

2. An applicant for renewal of a current water usage certification shall submit the appropriate application forms and other information as requested by the Department for the proper implementation of the Act and this chapter.

3. If the certification holder does not comply with (a)1 and 2 above, the Department may:

i. Notify the certification holder by certified mail that the permit has expired;

ii. Take appropriate enforcement action including the assessment of penalties under *N.J.A.C. 7:19-18*; and/or

iii. Require the certification holder to file an application as a new applicant in accordance with this chapter.

4. A current water usage certification for which a complete renewal application package has been submitted to the county agricultural agent three months prior to the expiration date shall remain in effect until the Department grants or denies the renewal application.

(b) In addition to the requirements in *N.J.A.C. 7:20A-2.3*, the applicant for renewal shall submit a completed application form including the following information:

1. The name, address, and telephone number of the property owner, and the authorized representative, if different;

2. The total number of acres owned or operated for agricultural, aquacultural, or horticultural purposes, the number of acres actively being farmed or otherwise utilized for agricultural, aquacultural, or horticultural purposes, the U.S. Department of Agriculture soil mapping unit, the amount of impervious surface in acres currently on the farm management unit and/or planned in the future, the acreage planted in each crop, and the number of acres of each crop under irrigation;

3. A description of the location of each diversion source, and the name and pumping capacity for each diversion source;

4. The location of each diversion source shall be identified as required by *N.J.A.C. 7:20A-2.3(e)*;

5. If the diversion source is a well, the State of New Jersey assigned well permit number, the well depth and diameter, and the date the well was drilled;

6. If the diversion source is a surface water body other than an off-stream pond, the drainage area in square miles, upstream of the intake. Drainage area information is available from the United States Geological Survey by calling 609-771-3900 or from its web site at www.usgs.gov;

7. If the diversion source is an on-stream or off-stream pond, the average depth, surface area in acres, and the source of water to the pond, including any wells or streams that are used for supplementation;

8. A description of the irrigation or water use practices and irrigation equipment used;

9. A description of the method used to measure the amounts of water diverted from each diversion source; and

10. To demonstrate the method used to determine water use, for the last month of operation prior to application, a copy of the daily and/or monthly hours of operation of each diversion source, and the quantity of water diverted for that month for calculated diversions or a copy of the month-end flow meter readings from each diversion source for metered diversions as taken from the log or other appropriate record, as required pursuant to *N.J.A.C. 7:20A-2.6(a)4*.

i. For a cranberry growing operation, the applicant shall provide the method used to measure water usage to ensure the same volume of water is not counted multiple times if it is transferred within the bog system of the cranberry growing operation.

(c) The appropriate county agricultural agent shall notify the applicant if the application submitted under (b) above is incomplete, and shall request that the applicant submit any necessary information to the county agricultural agent within 30 days of the date of notification.

(d) Upon receipt of a complete application, the appropriate county agricultural agent shall calculate a water allocation adequate to meet the applicant's water usage requirements based upon the information submitted under (b) above and the agent's knowledge of agriculture, aquaculture, and horticulture and shall submit the application to the Department.

1. The amount of water requested shall be limited to the type of crop under cultivation, and the area in acres of the farm management unit actually under cultivation, or where there is a formal written agricultural development plan or an alternate plan pursuant to (d)4 below, the amount of water requested shall be based on future use or expansion into non-cultivated areas during the effective term of the water usage certification. If upon renewal of the water usage certification, the amount of water allocated has not been utilized or the area in the agricultural development plan or an alternate plan pursuant to (d)4 below has not been cultivated in accordance with the plan, the Department may reduce the amount of water in accordance with (h) below in the water usage certification that had been allocated to that area or for that purpose.

2. The agricultural development plan shall include at a minimum:

- i. A map of the farm management unit with the area currently under cultivation depicted;
- ii. A map of the farm management unit with the area planned to be cultivated during the effective period of the certification depicted;
- iii. A list of crop types currently cultivated and the area in acres of each crop type irrigated; and
- iv. A list of crop types planned to be cultivated during the effective period of the certification and the area in acres of each crop type to be irrigated.

3. The agricultural development plan shall be submitted with the application.

4. In lieu of the agricultural development plan described at (d)2 above, the Department will accept a water management plan developed in cooperation with the United States Department of Agriculture, Natural Resources Conservation Service (NCRS) or other similar water conservation plan, if such plan meets, as determined by the Department, the requirements at (d)2 above sufficient to enable the Department to make a determination regarding the amount of unused allocation to be included in the water usage certification.

(e) If the applicant requests renewal of the certification with no modification or renewal with minor modification, as identified at *N.J.A.C. 7:20A-2.2(b)*, the appropriate county agricultural agent shall submit to the Department the application, the county agent's recommendation for an adequate water allocation calculated under (d) above, and recommended additional conditions, if any.

(f) The Department shall review the application, the county agricultural agent's recommended water allocation and conditions, and the applicant's historical water usage as reported in accordance with *N.J.A.C. 7:20A-2.6(a)5* in consultation with the county agricultural agent, and shall determine if the allocation is reasonably required for future use as described in the plan at (d)1 through 3 above to determine if the allocation is reasonably required for future use.

(g) If the Department determines under (f) above that the allocation is reasonably required for the applicant's future use, the Department shall renew the certification with the appropriate allocation and conditions as outlined at *N.J.A.C. 7:20A-2.6(a)* for a term of five years.

(h) If the Department determines under (f) above that the allocation is not reasonably required for future use and the certification holder's allocation should be reduced below the amount requested in the application or in the existing certification on renewal, the Department shall:

1. Prepare a written analysis of the proposed reduction in allocation which shall be available for review on request;
2. Notify the applicant and the appropriate county agent of the proposed reduction in allocation, including the written analysis; and
3. Provide an opportunity for the water usage certification holder to submit to the Department, within 30 days of the notification of the reduced allocation, written comments and/or a request for a public hearing, on the proposed reduction in allocation.

(i) If the Department does not receive any requests for a hearing on the proposed reduction in allocation within the comment period established under (h)3 above, the Department shall renew the certification for a term of five years with the appropriate allocation and conditions as outlined at *N.J.A.C. 7:20A-2.6(a)*, or issue a water usage registration if the recommended allocation is less than 100,000 gallons per day, and shall include a summary of responses to all written comments timely received.

(j) If the Department receives a written request for a public hearing on the proposed reduction in allocation within the comment period established under (h)3 above, the Department shall hold a public hearing and subsequently shall renew the certification for a term of five years in accordance with the following:

1. The Department shall schedule the public hearing within 30 days of the close of the comment period established under (h)3 above;

2. At least 15 days before the scheduled date of the public hearing, the Department shall notify the applicant, the appropriate county agricultural agent, and each person who submitted a request for a public hearing, and shall also publish a notice of the public hearing in a newspaper of general circulation in the area of the certification holder's diversion sources; and

3. Within 60 days after the public hearing, the Department shall renew the certification for a term of five years, or issue a water usage registration if the recommended allocation is less than 100,000 gallons per day, with the appropriate allocation and conditions as outlined at *N.J.A.C. 7:20A-2.6(a)*, and shall include a summary of responses to all comments received within the public comment period established under (h)3 above and at the public hearing.

7:20A-2.5 Application requirements and procedures for a new water usage certification, renewal of a certification with major modification, or major modification of a certification

(a) In addition to the requirements in *N.J.A.C. 7:20A-2.3*, the applicant for a new water usage certification, renewal of a certification with major modification, or major modification of a certification shall also submit to the appropriate county agricultural agent a completed application form including the following information:

1. The name, address, and telephone number of the property owner and authorized representative, if different;

i. In those instances where the owner of the farm management unit allows an authorized representative to utilize the property included in the water usage certification or agricultural water usage registration for agricultural, aquacultural or horticultural purposes, the owner shall provide in writing any subsequent changes in the authorized representative information to the county agricultural agent within 30 days of the change. The county agricultural agent shall notify the Department in writing of the change within 30 days of notification from the owner;

2. The total number of acres owned or operated for agricultural, aquacultural, or horticultural purposes, the number of acres actively being farmed or otherwise utilized for agricultural, aquacultural, or horticultural purposes, the number of acres planned to be farmed or otherwise utilized for agricultural, aquacultural, or horticultural purposes, and the crop types by acre identified in the agricultural development plan required at *N.J.A.C. 7:20A-2.4(d)3*, the U.S. Department of Agriculture soil mapping unit, the amount of impervious surface in acres currently on the entire farm management unit and/or planned in the future, the acreage planted in each crop type, and the number of acres of each crop type that is under irrigation;

3. A description of the location of each diversion source, and the name and pumping capacity for each diversion source;

4. The location of each diversion source shall be identified in accordance with the requirements at *N.J.A.C. 7:20A-2.3(e)*;

5. If the diversion source is a well, the State of New Jersey assigned well permit number, the well depth and diameter, installed pump capacity, and the date the well was drilled;

6. If the diversion source is a surface water body other than an off-stream pond, the drainage area in square miles, upstream of the intake. Drainage area information is available from the United States Geological Survey by calling 609-771-3900 or from its web site at www.usgs.gov;

7. If the diversion source is an on-stream or off-stream pond, the average depth, surface area in acres, and the source of water, including any wells or stream that are used for supplementation;

8. A description of the irrigation or water use practices and irrigation equipment used;

9. A description of the method used to measure the amounts of water diverted from each diversion source;

10. For a renewal with major modification and for a major modification, in order to demonstrate the method used to determine water use, a copy of the daily and/or monthly hours of operation of each diversion source, and the quantity of water diverted monthly for calculated diversions or a copy of the month end flow meter readings from each diversion source for metered diversions for the last month of operation prior to application, as taken from the log or other appropriate record, as required pursuant to *N.J.A.C. 7:20A-2.6(a)4*.

i. For a cranberry growing operation, the applicant shall provide the method used to measure water usage to ensure the same volume of water is not counted multiple times if it is transferred within the bog system of the cranberry growing operation; and

11. Sufficient information to demonstrate that under standard operating conditions:

i. The diversion of the quantity of water requested shall not unduly interfere with other existing diversions;

ii. The diversion shall not exceed the natural replenishment or safe yield of a water resource or threaten to exhaust the water resource or to render it unfit for use;

iii. In the case of a ground water diversion, the diversion shall not cause an increase in saltwater intrusion that renders the water resource unfit for use; shall not spread ground water contamination; and shall not interfere with any ground water remediation plan or activity;

iv. The diversion shall not reduce the dry season flow or level of a river, stream, lake, or pond so as to adversely affect sanitary conditions downstream, ecologically based flows as determined by the Department, or otherwise unduly injure public or private interests, including the maintenance of fish life; and

v. The diversion shall not reduce surface flow or water levels of freshwater wetlands so as to adversely affect the viability of the wetland to support sustainable and diverse flora and fauna populations, or adversely impact the wetlands functions and values as determined by the Department.

(b) An applicant for a new water usage certification, or for a modification where an increase in allocation is requested, from a source that is located within the Highlands Preservation Area as defined in *N.J.A.C. 7:38* shall submit:

1. A copy of an approved farm conservation plan, prepared in accordance with the Highlands Water Protection and Planning Act, *N.J.S.A. 13:20-1* et seq., and the implementing rules at *N.J.A.C. 2:92*, Agriculture Development in the Highlands, if any agricultural or horticultural development results individually or cumulatively in an increase in new agricultural impervious surface as defined at *N.J.A.C. 2:92* of at least three percent but less than nine percent of the total land area of the farm management unit since August 10, 2004; or

2. A copy of an approved resource management plan, prepared in accordance with the Highlands Water Protection and Planning Act, *N.J.S.A. 13:20-1* et seq., and the implementing rules at *N.J.A.C. 2:92*, Agriculture Development in the Highlands, if any agricultural or horticultural development results individually or cumulatively in an increase in new agricultural impervious surface as defined at *N.J.A.C. 2:92* of nine percent or greater of the total land area of the farm management unit since August 10, 2004.

(c) The appropriate county agricultural agent shall notify the applicant if the application submitted under (a) and (b) above is incomplete, and shall request that the applicant submit any necessary information within 30 days of the date of notification.

(d) Upon receipt of a complete application, the appropriate county agricultural agent shall calculate a water allocation adequate to meet the applicant's water usage requirements based upon the information

submitted under (a) and (b) above and the agent's knowledge of agriculture, aquaculture, and horticulture conditions.

1. The amount of water requested shall be limited to the type of crop under cultivation and the area in acres of the farm management unit actually under cultivation or where there is a formal written agricultural development plan or an alternate plan pursuant to *N.J.A.C. 7:20A-2.4(d)*, the amount of water requested shall be based on future use or expansion into non-cultivated areas during the effective term of the water usage certification. If upon renewal of the water usage certification the amount of water allocated has not been utilized or the area in the agricultural development plan or an alternate plan pursuant to *N.J.A.C. 7:20A-2.4(d)* has not been cultivated in accordance with the plan, the Department may reduce the amount of water, in accordance with *N.J.A.C. 7:20A-2.4(h)*, in the water usage certification that had been allocated to that area or for that purpose.

(e) The county agent shall submit to the Department the application, the recommendation of an adequate water allocation calculated under (d) above, and recommended additional conditions, if any.

(f) The Department shall review the application and any other relevant information to determine if the requirements of (a)1 above are met. The Department shall, in consultation with the county agricultural agent, request any additional information necessary for this determination.

(g) Upon completion of its review under (f) above, the Department shall:

1. Notify the county agricultural agent and the applicant; and

2. Issue a Notice of Application that shall be sent to the governing bodies of all municipalities and counties and water supply allocation permit holders and water usage certification holders within a one-mile radius of the proposed diversion. The Notice shall contain information as described below in (h)1 and 2 below and shall provide a 30-day period for submission of comments and/or a request for a public hearing on the application to the Department.

(h) The Department, in consultation with the county agricultural agent, shall publish a notice of application in a newspaper of general circulation in the area of the applicant's diversion source. The applicant shall pay to the Department the cost of publishing the notice. The certification shall not be issued by the Department until such time as the applicant pays the cost of publishing the notice in full to the Department. The notice shall:

1. Describe the diversion for which the application has been submitted, including the name and location of the diversion source, and the quantity and allocation of water to be diverted;

2. State that the application is available for review at the office of the county agricultural agent and at the Department; and

3. Provide an opportunity for submission to the Department, within 30 days after the date on which the newspaper notice is published, of written comments and/or requests for a public hearing on the application.

(i) After the close of the comment period established under (g) and (h) above, the Department shall review any written comments received, and all other relevant data including the county agricultural agent's recommendation of water allocation.

(j) If the Department does not receive a request for a public hearing on an application within the public comment period established under (g) and (h) above, the application shall be processed as follows:

1. For each application, the Department, in consultation with the appropriate county agricultural agent, shall issue an approval or denial of the application, provide the basis for the decision, and incorporate a summary of responses to all comments timely received;

2. If the decision at (j)1 above is to approve the application, the applicant shall be notified and issued a certification as follows:

i. For the approval of a new water usage certification, the Department, in consultation with the appropriate county agricultural agent, shall issue the certification with the appropriate allocation and conditions as outlined at *N.J.A.C. 7:20A-2.6(a)*;

ii. For the approval of an application for a major modification of a water usage certification or for renewal of a water usage certification with major modification, the Department shall issue the certification with the appropriate allocation and conditions as outlined at *N.J.A.C. 7:20A-2.6(a)*; and

3. If the decision at (j)1 above is to deny the application, the applicant shall be notified as follows:

i. For the denial of a new water usage certification, the Department, in consultation with the appropriate county agricultural agent, shall issue a letter of denial, which shall state the reasons for the denial; and

ii. For the denial of a major modification of a water usage certification or renewal of a water usage certification with major modification, the Department shall issue a letter of denial, which shall state the reasons for denial.

(k) If the Department receives a request for a public hearing on an application within the public comment period established under (g) and (h) above, the application will be processed as follows:

1. The Department shall notify the applicant, the appropriate county agricultural agent and the Department of Agriculture of the request and shall convene an informal advisory panel, consisting of a representative of the Bureau of Water Allocation, the designated representative of the Secretary of Agriculture, and a representative of the Dean of Cook College, Rutgers University, The State University of New Jersey;

2. The advisory panel shall schedule an informal meeting including the applicant or their authorized representative, the advisory panel, any person(s) who have requested a public hearing on the application, and, if appropriate, the County Agricultural Development Board (if one has been established in the county where the diversion source is located) to discuss the application;

3. If the meeting results in an agreement among the involved parties regarding the application that obviates the need for a public hearing on the application, the advisory panel shall prepare a report outlining the agreement and, based upon the report, a certification, incorporating the agreed upon conditions resulting from the meeting, shall be issued by the Department in accordance with (j)2 above;

4. If the meeting of the advisory panel does not result in an agreement regarding the application, the Department shall schedule a public hearing on the application and designate a hearing officer. The Department shall notify the applicant, the advisory panel, all persons who submitted written comments during the comment period established under (g) and (h) above, and all other persons who participated in the informal meeting with the advisory panel and shall, in addition, publish notice of the public hearing on the application in a newspaper of general circulation in the area of the applicant's diversion source at least 30 days before the date of the scheduled public hearing. The notice shall contain a description of the application, the date, time and place of the public hearing, and a statement that written comments on the application may be submitted until 14 days after the scheduled public hearing date, or as may be extended by the hearing officer at the public hearing;

5. For each application, the Department shall prepare written findings regarding the application and shall present the findings at the public hearing on the application if one is held under (k)4 above. In addition, the Department shall, at least five days before the date of the public hearing, provide the findings to any person who submits a written request for it;

6. The hearing shall be held before a hearing officer appointed by the Department, and the hearing officer shall have reasonable discretion to conduct the public hearing and shall:

i. Allow the Department an opportunity to present their findings on the application;

ii. Allow the applicant an opportunity to make a presentation on the application;

- iii. Allow other persons an opportunity to comment in favor of or in opposition to the application;
- iv. Set the date the hearing record closes;
- v. Give the applicant reasonable time to respond to comments received at the hearing;
- vi. Review all comments received to ensure they have been addressed and indicate in the hearing officer's report that all comments received during the public comment period and the public hearing have been addressed; and
- vii. Submit the hearing officer's report to the decision maker or his/her designee within the Department;

7. The Chief, Bureau of Water Allocation or other person so delegated by the Commissioner, as decision maker on the application, shall review the hearing officer's report, the application, the water allocation recommended by the appropriate county agricultural agent, the Department's findings and recommendations, any written comments received, the transcripts from the public hearing, the Department's responses to the comments, and any other information relevant to the application, and shall approve or deny the application as follows:

i. If the application is denied, the applicant shall be so notified in a letter of denial, which shall state the reasons for the denial. The letter of denial shall be issued in accordance with (j)3 above, and a copy of the letter of denial shall be sent to each person who submitted written comments or who attended the public meeting regarding the application and requested a copy of the decision;

ii. If the application is approved, the applicant shall be so notified in a letter of approval, which shall state the reasons for approval. The water usage certification, with the appropriate allocation and conditions as outlined in *N.J.A.C. 7:20A-2.6(a)* shall be issued in accordance with (j)2 above. A copy of the letter of approval, the signed certification document, and the hearing officer's report shall be sent to each person who submitted written comments or who attended the public hearing regarding the application and requested a copy of the decision; and

8. The Department shall certify the costs of the public hearing on the application, including the costs for advertisement and of the stenographic record but excluding expenses for the Department's hearing officer and Department staff, and shall bill such costs to the applicant. The Department, in consultation with the county agricultural agent, shall not issue either a denial letter or an approval letter and water usage certification under (k)7 above unless the applicant pays the costs in full no later than 30 days after the date of the bill.

7:20A-2.6 Water usage certification conditions

(a) The Department, in consultation with the appropriate county agricultural agent, shall include as standard conditions in all water usage certifications the following conditions:

1. The term of the certification, which shall be five years;
2. A list of the approved diversion sources and the approved diversion rate for each;
3. The maximum allowable diversion for the certification, expressed in terms of a monthly and annual allocation;
4. That the certification holder shall maintain a log or other appropriate record in which the daily and/or monthly hours of operation, or month end meter readings for metered sources, for each diversion source is recorded in, and the quantity of water diverted monthly from each diversion source is recorded in indelible ink and is to be maintained on site for a minimum of three years after the end of the year in which the record was created;
5. That by February 28 of each year the certification holder shall submit to the Department, with a copy to the appropriate county agricultural agent, a report for the preceding calendar year of monthly

water usage for each diversion source, as recorded in the log or other appropriate record required under (a)4 above, and the crop types planted and the acres of each crop type that were under irrigation;

6. That the certification holder may transfer the certification provided, in accordance with *N.J.A.C. 7:20A-1.6*, notification is made to the appropriate county agricultural agent and the Department, and provided no changes or modifications are made in the specified conditions of the water usage certification;

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

8. That the water diverted shall be used only for the approved purposes;

9. That if the authorized diversion privileges are not currently utilized, or are not reasonably required for a demonstrated future need, as described in the agriculture development plan developed pursuant to *N.J.A.C. 7:20A-2.4(d)*1 through 3, they shall, all or in part, revert back to the State upon renewal or modification of the certification as determined by the Department;

10. That an increase in allocation, the relocation of a diversion source more than 100 feet from an existing diversion source or as authorized under *N.J.A.C. 7:20A-2.2(a)*1i, the addition of a new diversion source, or an increase in pumping capacity requires prior approval through a major modification of the certification, except as exempted pursuant to *N.J.A.C. 7:20A-2.2(b)*6;

11. That a certification that includes a diversion source located within a water supply critical aquifer is subject to the water allocation management requirements for areas of critical water supply concern in the Department's Water Supply Allocation Permit rules at *N.J.A.C. 7:19-8*;

12. All water usage certifications that impact or have the potential to impact surface water bodies, may include a passing flow for the affected portion of the waterbody. In establishing the passing flow, the Department shall take into account the needs of other authorized, existing downstream users, existing holders of a valid water supply allocation permit or registration, water usage certification or agricultural water usage registration, aquatic and water-dependent ecological requirements, use and classification of the waterbody, natural streamflow variability (hydrograph) of the impacted waterbody, impacts to the safe yield of existing public water supply systems, and the feasibility of implementing a passing flow requirement.

i. The Department may implement the use of new passing flow assessment tools as they develop in order to protect the integrity of waterbodies;

13. The certification holder is responsible for mitigating to the Department's satisfaction adverse impacts on ground or surface waters, or appropriately permitted users of wells or surface water resulting directly from the certification holder's diversion; and

14. The Department may impose additional conditions in a new certification or a major modification to an existing certification to ensure protection of the source water for public community water systems in accordance with the standards at *N.J.A.C. 7:10-11.7*.

(b) The appropriate county agricultural agent or the Department may include in a water usage certification a condition or conditions in addition to the standard conditions listed at (a) above as necessary to ensure the proper implementation of the Act and this chapter.

7:20A-2.7 Record of decision

(a) There shall be maintained by the Department and the appropriate county agricultural agent for each application reviewed a record consisting of copies of:

1. The application documents;

2. Water allocation recommendation by appropriate county agricultural agent;
3. Written basis supporting approval or denial of the application;
4. Advisory Panel recommendations;
5. The public hearing report and transcript;
6. Comments received, and a summary of the Department's responses;
7. The letter of approval and water usage certification or letter of denial; and
8. All other relevant information.

(b) This record may be reviewed at the Department and the office of the appropriate county agricultural agent and copies of it may be obtained upon payment of the fee for duplication.

7:20A-2.8 Appeal procedure

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

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

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

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

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

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

1. The name, address and telephone number of the person making the request;
2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;
3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in the decision;
4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested, as well as any legal issues associated with the alleged facts at issue;
5. An estimate of the time frame required for the hearing (in days and/or hours);
6. A request, if necessary, for a barrier free hearing location for physically disabled persons; and
7. An indication whether the applicant or certification holder is willing to negotiate a settlement with the Department prior to the Department sending the hearing request to the Office of Administrative Law.

(e) A hearing request based upon an issue not raised during the public comment period on a certification application shall be denied by the Department.

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

(g) If the applicant or certification holder fails to include all the information required under (d) above, the Department may deny the hearing request.

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

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

7:20A-2.9 Certifications including construction, repair or reconstruction of dams and other related structures

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

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

7:20A-2.10-2.22 (Reserved)

7:20A-3.1 Scope

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

7:20A-3.2 Procedures for obtaining an agricultural water usage registration

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

(b) Any person who intends to divert less than 100,000 gallons of water per day for agricultural, aquacultural, or horticultural purposes, but who has the capability to divert 100,000 gallons of water per day or more, shall apply for an agricultural water usage registration.

(c) An applicant for an agricultural water usage registration or modification thereof shall contact the appropriate county agricultural agent to obtain an application form and other instructions needed to file a complete application.

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

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

i. The name, address, and telephone number of the applicant, which shall be the property owner or the authorized representative, if different;

ii. A description of the location of each diversion source, and the name and pumping capacity for each diversion source. All diversion source locations shall be identified on a map as required at *N.J.A.C. 7:20A-2.3(e)*;

iii. If the diversion source is a well, the State of New Jersey assigned well permit number, the well depth and diameter, the installed pump capacity, and the date the well was drilled;

iv. If the diversion source is a pond, the average depth, surface area in acres, and the source of water to the pond, including any wells or streams that are used for supplementation;

v. The maximum quantity of water to be diverted from each source on a monthly and annual basis;

vi. The total number of acres owned or operated for agricultural, aquacultural, or horticultural purposes, the number of acres actively being farmed, the number of acres intended to be farmed as indicated in the Agriculture Development Plan, the United States Department of Agriculture soil mapping unit, the acreage planted in each crop, and the number of acres of each crop under irrigation;

vii. A description of the method used to measure the amounts of water diverted from each diversion source; and

viii. A description of the irrigation or water use practices and irrigation equipment used.

(e) The appropriate county agricultural agent, shall determine if the applicant's water usage requirements are less than 100,000 gallons of water per day based upon the information submitted under (d) above, and shall:

1. If the applicant's water usage requirements are determined to be 100,000 gallons or more of water per day, direct the applicant to apply for a water usage certification pursuant to *N.J.A.C. 7:20A-2.3*; or

2. If the applicant's water usage requirements are determined to be less than 100,000 gallons of water per day, forward the application and the determination of water usage requirements to the Department.

(f) Upon receipt of an application under (e) above, the Department shall issue an agricultural water usage registration to the applicant.

(g) Each agricultural water usage registration is subject to the following conditions:

1. Agricultural water usage registration shall include a list of the approved diversion sources and the approved diversion rate for each source;

2. The agricultural water usage registration holder shall maintain a log or other appropriate record in which the daily and/or monthly hours of operation, or meter readings for metered diversions, of each diversion source is recorded in indelible ink and maintained on site;

3. The agricultural water usage registration holder shall submit to the Department by February 28 of each year, with a copy to the appropriate county agricultural agent, a report for the preceding calendar year of the monthly water usage for each diversion source, as recorded in the log or other appropriate record required under (g)2 above, the crop types planted and the acres of each crop type that were under irrigation;

4. The Department may revoke the agricultural water usage registration, after notice and after an adjudicatory hearing, if requested, for violations of the registration conditions, the rules adopted or the orders issued by the Department, or when deemed necessary for the public interest;

5. The water diverted shall be for the approved purposes; and

6. An increase in diversion, the relocation of a diversion source more than 100 feet from an existing diversion source or as authorized under *N.J.A.C. 7:20A-2.2(a)1i*, the addition of a new diversion source, or an increase in pumping capacity requires prior approval through a modification of the agricultural water usage registration or may require the agricultural water usage registration holder to obtain a water usage certification prior to using any such increased diversion or alternate diversion source(s).

7:20A-3.3 Registration record

(a) There shall be maintained by the Department and the office of the appropriate county agricultural agent a record of all agricultural water usage registrations for agricultural, aquacultural, or horticultural purposes, consisting of copies of:

1. The application documents;
2. Determination of water usage requirements by the appropriate county agricultural agent;
3. The agricultural water usage registration; and
4. All other relevant information.

(b) This record may be reviewed at the Department and the office of the appropriate county agricultural agent, and copies of it may be obtained upon payment of the fee for duplication.

7:20A-4.1 Authority and purpose

This subchapter governs the Department's assessment of civil administrative penalties under the Water Supply Management Act, *N.J.S.A. 58:1A-1* et seq., for the violation of any provision of the Act, this chapter, or of any order adopted or issued by the Department pursuant to this chapter. 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.

7:20A-4.2 Procedures for assessment, settlement and payment of civil administrative penalties for violations

(a) To assess a civil administrative penalty under this subchapter, 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 water usage certification or certification condition 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. 7:20A-4.3*.

(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. 7:20A-4.3*, 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. 7:20A-4.3(b)*, 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;
3. If the Department denies the hearing request pursuant to *N.J.A.C. 7:20A-4.3(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 settle any civil administrative penalty assessed pursuant to *N.J.A.C. 7:20A-4.4* 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. 7:20A-4.4(d)7*;
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. 7:20A-4.4(d)5*; and/or
3. Any other terms or conditions acceptable to the Department.

7:20A-4.3 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant this subchapter, 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, PO Box 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 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 Procedure Act, *N.J.S.A. 52:14B-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

7:20A-4.4 Civil administrative penalty determination

(a) The Department may assess a civil administrative penalty under this subsection against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative. 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. The Department shall assess the penalty in accordance with (a)1 or 2 below, as applicable, except as adjusted pursuant to (d) below:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which an administrative order or water usage certification has been issued under this chapter, the civil administrative penalty shall be in an amount up to \$ 5,000; or

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount up to \$ 2,000.

(b) The Department may assess a civil administrative penalty under this subsection 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, or who fails to submit or maintain any application, record, or other document required to be submitted or maintained, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under this chapter or any order adopted or issued by the Department pursuant to this chapter. 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. The Department shall assess the penalty at the midpoint of the range at (b)1 through 3 below, as applicable, except as adjusted pursuant to (d) below:

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 \$ 5,000 or less than \$ 1,000;

2. For any unintentional but foreseeable act or omission, the civil administrative penalty shall be in an amount not more than \$ 2,500 nor less than \$ 500.00; or

3. For any other violation, the civil administrative penalty shall be in an amount not more than \$ 2,000.

(c) For each violation of the Act, this chapter, water usage certification, certification condition, or order adopted or issued under this chapter, other than a violation described at (a) or (b) above, the Department may assess a civil administrative penalty under this subsection. The Department shall consider each violation of each provision of this chapter 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. The Department shall assess the penalty at the midpoint of the range at (c)1 through 3 below, as applicable, except as adjusted pursuant to (d) below:

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

2. For the second violation of the same provision, not less than \$ 1,000 nor more than \$ 2,500; and

3. For the third and subsequent violations of the same provision, not less than \$ 2,500 nor more than \$ 5,000.

(d) The Department may adjust the amount determined pursuant to (a), (b), or (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 ranges described in (a), (b), or (c) above, on the basis of any or a combination of the factors listed in (d)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 subject 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.