

REGULATIONS GOVERNING
THE
ALLOCATION OF WATER

Delaware Department of Natural Resources
and Environmental Control

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1. General Provisions Section

1.01 Statement of Policy and Authority

The availability of adequate water supplies is paramount to the health, safety and economic welfare of the people of the State of Delaware and its environment. As provided in statute (7 Del. Code, Section 6001, the State, in the exercise of its sovereign power, acting through the Department of Natural Resources and Environmental Control should “control the development and use of the land and water...resources of the state so as to effectuate full utilization, conservation, and protection of the water resources of the State... to make the maximum contribution to the public benefit”. These water resources include water occurring in any water course, lake, aquifer, or any other water body in the State.

The responsibility for management and regulation of these assets rests in the State as trustee of its water resources for the public benefit. The State acts through the Department of Natural Resources and Environmental Control. The Department has the power to adopt, enforce, amend or repeal pursuant to established administrative procedures, rules, regulations to control, conserve and manage the waters of the State and the use of those waters in the public interest.

According to statute the Secretary (of the Department) shall approve the allocation and use of waters in the State on the basis of equitable apportionment (7 Del. Code, Section 6010 (f)). These regulations provide for the allocation and re-allocation of the waters of the state in such a manner as to provide and adequate quantity and quality of water for the needs of the people of Delaware in the present and future.

The state’s position as trustee of water resources was recognized in the Administrative Principles of the 1969 Regulations Governing the Use of Water Resources adopted pursuant to the 1966 Water and Air Resources Act, which stated in section 2.016 “The rights of the public are considered to be usufructuary upon approval by the Department”, meaning the public may make use of the water resources upon approval by the Department. Permits are required for “any activity which may cause or contribute to the withdrawal of ground water of ground water or surface waters or both” (7 Del. Code, Section 6003(a)).

1.02 Scope

Water allocation permits are required for all water withdrawals greater than 50,000 gallons in any 24 hour period. (Water withdrawals of 50,000 gallons or less in 24 hours are granted with the permits to construct the water facilities with which the withdrawals are made). The water allocation permit allows the

permittee to withdraw water subject to the terms and conditions specified. These regulations prescribe the procedures for obtaining water allocation permits.

1.03 Applicability

- A. These regulations apply to all water users presently holding a water allocation permit or withdrawing or claiming to have authority to withdraw more than 50,000 gallons of water in any 24 hour period from one or more than 50,000 gallons of water in any 24 hour period from one or more sources combined and to all persons who in the future wish to withdraw more than 50,000 gallons of water in any 24 hour period from one or more sources except in cases of emergency withdrawal.
- B. Compliance with these regulations does not exempt those who make water withdrawals within the Delaware River Basin from the requirements of the Delaware River Basin Commission (DRBC) . All water withdrawals having a substantial effect on the water resources of the basin -- i.e., averaging more than 100,000 gallons per day over any 30 day period--must have DRBC approval. Application for DRBC approval will be forwarded through the Department and in accordance with the provisions specified in DRBC/Department administrative agreements.

1.04 Schedule for Applying for Water Allocation Permits

- A. A person holding a valid water allocation permit and desiring a renewal must apply for a new permit at least 90 days prior to the expiration date of the permit.
- B. A person holding a valid water allocation permit with no expiration date must apply for a permit with 180 days of the effective date of these regulations.
- C. Any person presently withdrawing or claiming the right to withdraw more than 50,000 gallons of water in any 24 hour period who does not hold a valid water allocation permit shall apply for a permit within 90 days of the effective date of these regulations.
- D. Any other person who intends to withdraw more than 50,000 gallons of water in any 24 hour period must receive permit prior to withdrawal.
- E. Upon receipt of an application as set forth in 1.04 (a) through (c) above, the applicant will be granted temporary authority to continue use of the water facilities until the application is acted upon by the Department, and

- F. The Department may, if a need for an emergency withdrawal is substantiated to the satisfaction of the Department, grant interim approval for water withdrawal upon submission of a complete application. Such interim authority will be affective until an allocation permit is issued or for a maximum period of 180 days, whichever comes first.

1.05 Construction

These regulations shall be liberally construed to implement the terms of the Delaware Environmental Protection Act (7 Delaware Code, Chapter 60).

1.06 Program Information

Unless otherwise stated, any questions concerning the requirements of these regulations shall be directed to the Division of Water Resources, Water Supply Section, 89 Kings Highway, P.O. Box 1401, Dover, DE 19903.

1.07 Enforcement

- A. Any person presently withdrawing or claiming the right to withdraw more than 50,000 gallons of water during any 24 hour period who does not apply for a water allocation permit pursuant to the provisions of Sections 1.04 and 6 shall forfeit his claim and privilege to withdraw water.
- B. Any person who fails to comply with these regulations, the Act, or conditions specified in water allocation permits shall be subject to the penalty provisions set forth in the Act.

Section 2. Definitions

The Act -	The Delaware Environmental Protection Act (7 <u>Del. C.</u> Chapter 60.)
Allocation -	The amount of water per unit of time which the Department will permit an applicant to withdraw for us.
Applicant -	Any person applying for a water allocation permit.
Aquifer -	Any water bearing formation or unit that has sufficient transmissive properties to enable water to flow into a well.
Beneficial Use-	Any use of water which is necessary to the applicant, non-wasteful, reasonably non-damaging to other users, and in the best interest of the public.

Conjunctive- Use	A practice whereby two or more independent sources of water are used in combination, or alternatively, for meeting one or more objectives, e.g., improved reliability of supply, long-term cost effectiveness, and environmental protection.
Department -	The Delaware Department of Natural Resources and Environmental Control.
Dewatering -	Withdrawal of water on a temporary basis from wells or excavation in order to facilitate construction or extraction of earth materials.
Emergency Withdrawal -	A withdrawal of ground or surface waters for emergency situations involving fire protection, human lives or human health.
Equitable Apportionment-	The allocation of water resources based on the needs of the applicant and other users, and the availability and reasonable beneficial use of the water resources.
Ground Water -	Any water naturally found under the surface of the earth.
Industrial Water Use -	Use of water resources for processing, washing, packaging, or manufacturing of a product.
Person -	An individual, firm, association, organization, partnership, business trust, corporation, company, contractor, supplier, installer, user or owner, or any federal, state, or local government agency or public district or any officer or employee thereof.
Public Supply Water Use -	Use of water resources for the supply of water to more than two (2) families, the public in general or for food preparation in a restaurant.
Safe Sustainable Yield -	The amount of water that may be withdrawn from a ground or surface water source without producing any significant

adverse affects, including those listed in sections 3.03 and 3.04.

Secretary - The Secretary of the Department of Natural Resources and Environmental Control or his duly authorized designee.

Surface Water
Water Course - Any water occurring generally on the surface of the earth.. Any lake, river, creek, cut or other body of water or channel with established bed or banks.

Water Table - The elevation at which water is encountered below ground surface in an unconfined aquifer.

Water Utility - Any person engaged in the operation of a public water supply system.

Section 3. Criteria for Permit Approval

3.01 Scope

The water resources of the state shall be managed for the greatest long-term benefits to the people of Delaware. In general, sources of water supply will be developed on a safe sustainable yield basis and according to the doctrine of equitable apportionment. However, temporary over-drafting of ground water and use of non-renewable ground water for beneficial purposes may be approved subject to the development of long-term plans to preserve and extend the non-renewable resources. This section outlines the criteria used in setting water withdrawal limits.

3.02 Regionalization Policies

The following policies regarding regionalization of water supplies will be followed by the Department in assessing new or renewal allocation permit applications.

- A. Existing Systems : Use of established regional water collection and distribution systems by new water users will be encouraged whenever appropriate.
- B. Interconnections: Construction of interconnections between established public water systems, whether publicly, or privately owned, is in the public interest and will be encouraged

- C. Small Water Supply Systems: Proliferation of small water supply systems of insufficient size to maintain an efficient, safe and adequate level of service will be discouraged.
- D. Franchise Areas: Proliferation of small franchise areas so situated or designed as to preclude the establishment or extension of regional water collection and distribution systems will be discouraged.
- E. New Water Service Facilities: Wherever practicable new water service facilities shall be planned to provide water supply on a regional basis, eventually becoming part of an established regional distribution system. Any new or expanded portion of a housing development with 25 or more total planned units will ordinarily be required to provide a public water supply system.

3.03 Surface Water Withdrawal Limits

Withdrawals from surface waters shall be limited to those rates which:

- A. do not interfere with other permitted withdrawals unless compensation for such injury is provided satisfactory to the Department;
- B. allow dilution and flushing of waste discharges and maintain adopted water quality standards;
- C. protect valuable fish and wildlife;
- D. maintain adequate flow over spillways of downstream impoundment's;
- E. prevent intrusion of saline waters where such intrusion threatens ground or surface water supplies; and
- F. provide other ecological, recreational, aesthetic, and private benefits which are dependent upon surface water flows.

3.04 Ground Water Withdrawal Limits

Withdrawals from ground waters shall be limited to those rates which will not cause:

- A. long-term progressive lowering of water levels, except in compliance with management water levels established by the Department;
- B. significant interference with the withdrawals of other permit holders unless compensation for such injury is provided satisfactory to the Department;
- C. violation of water quality criteria for existing or potential water supplies;
- D. significant permanent damage to aquifer storage and recharge capacity; or
- E. substantial impact on the flow of perennial streams below those rates specified for surface waters in the preceding section

3.05 Consistency with Water Plans and Policies

Any permitted withdrawal of water must be consistent with any applicable regional water supply plan, the Comprehensive Statewide Water Supply Plan and with applicable regional and state water management policies. In particular evaluation of conjunctive water use where possible and the location, amount, and quality of return flows and their impact on water resources and availability must be considered in the review of any water allocation permit applications.

Section 4. Permit Application Procedures

4.01 Scope

This section prescribes the application and processing procedures to be followed by applicants and the Department for original, renewal and modification of water allocation permits.

4.02 General Application Procedures

- A. Application for water allocation permits shall be made on forms provided by the Department.
- B. Information required on the application form shall include, but not be limited to, supply source(s), type of water use, withdrawal point locations, maximum daily, maximum monthly, and annual rates of withdrawal, conservation measures, estimated depletive use, water

shortage contingency plans, and manner and location of wastewater disposal.

- C. Applications for allocation permits for irrigation supplies shall be accompanied by a map (U.S. Geological Survey 7 1/2 minute Quadrangle Series, 1:24000 scale) showing withdrawal point locations, the area(s) to be served by each withdrawal point locations, the area(s) to be served by each withdrawal point, and the total number of acres served by each withdrawal point.
- D. No new facility requiring a water allocation permit may be operated until the allocation permit has been issued by the Department.
- E. Upon receipt of a completed application. it shall be reviewed by the Department for completeness and consistency with local, State and Regional Water Resources Plan. Land Use Plans, and zoning requirements. If the application is insufficient, incomplete, or prepared improperly, the applicant shall be notified within fifteen (15) working days as to what steps must be taken to make the application complete.
- F. Once an application is deemed complete, the application shall be processed as proved in 7 Del C., Section 6004.
- G. If no hearing is scheduled, the applicant will be notified of the Department's decision. Any denial of an application shall state reasons for denial. Any public hearing shall be conducted as set forth in 7 Del. C., Section 6006 and decisions will be made in accordance with the administrative procedures contained therein.
- H. Any appeal of a decision by the Department must be made in accordance with the provisions of 7 Del. C., Section 6008.

4.03 Water Conservation Requirements

All applicants for water allocation permits are required to submit in writing and demonstrate the existence of and commitment to a water conservation program, suitable to their particular use, as a condition of their application.

- A. Establishment of a program of periodic monitoring and evaluation of water usage.

- B. Establishment of a systematic leak detection and control program which, through routine maintenance and discovery of leaks, is responsive to high unaccounted for water usage rates.
- C. Use of the best practical methods and devices to conserve water.
- D. A plan to alert employees and customers of the need to conserve water and reduce wasteful usage.
- E. Evaluation of the potential to use water of less than potable quality including the use of treated wastewater, where possible.
- F. The establishment of pricing schedules which reflect the actual cost of water service is required of utilities regulated by the Public Service Commission and is encouraged for non-regulated utilities.

Section 5. Water Allocation Permit

5.01 Permit Duration

Permits will be issued for a thirty year duration except in cases of hydrologic complexity or uncertainty or where water quality or quantity considerations may require more frequent review. All permits will be subject to review at intervals of 5 years. Review of water withdrawal permits will be coordinated with periodic analyses of water withdrawals and hydrologic conditions on an aquifer or drainage basin-wide basis where possible.

5.02 Permit Renewal

Water allocation permits are renewable upon expiration. Permits will be renewed with the same conditions and withdrawal limitations as long as the use remains reasonable and beneficial and providing the withdrawal has not exceeded the safe sustainable yield. In cases where continued development of the resource creates competition between users and exceedence of the safe sustainable yield, priority in renewed permit issuance shall be with the permittee who was first in time. All types of water uses deemed reasonable and beneficial are considered equal for the purposes of allocation. Retention of unused portions of allocations must be justified to the satisfaction of the Department in order to be renewed.

5.03 Permit Modification

- A. Applications for modification of existing or renewal water allocation permits will be approved where the modification represents continued beneficial use and complies with all requirements applicable to new applications.
- B. The Department reserves the right to modify the terms and conditions of any permit at any time when substantial water quality or quantity considerations require a permit review and modification to avoid or mitigate significant adverse impacts on human health, aquifers, or the environment. Except in any emergency, a public hearing shall precede a modification.

5.04 Transfers of Water Allocation Permits

- A. The Department will authorize transfer of an existing water allocation permit between users upon written application and notification to the Department providing that there will be no change in terms of the permit.
- B. If a proposed permit transfer entails any increase in the rates of withdrawal authorized in the permit, the amount of increased withdrawal will be subject to the same requirements as a new permit.

5.05 Water Allocation Permit Contents

- A. Each permit shall have a fixed effective and expiration date.
- B. Each permit shall specify maximum allowable withdrawal rates expressed daily, monthly, and yearly terms.
- C. Permits shall require that the applicant meter water withdrawals to demonstrate compliance with the permit conditions and to file water use report with the Department at least annually on forms provided by the Department.
- D. Allocation permits will require that all wells be equipped with a mechanism for recording water levels under both pumping and nonpumping conditions.
- E. Each allocation permit will stipulate that representatives of the Department, the Delaware Geological Survey and the United States Geological Survey are allowed to enter the permittee's facilities or property to inspect and monitor water withdrawal.

- F. Each allocation permit shall stipulate that the permittee is specifically subject to the requirements of 7 Del. C., Section 6031 which stipulates obligations of water allocation permit holders whose use causes impairment of other existing water withdrawals.
- G. Each allocation permit shall require that reasonable efforts be made to minimize unnecessary use and/or waste of water in accordance with the conservation plan submitted with the permit application.
- H. Each allocation permit shall state that violations of any conditions within the permits are subject to penalties provided in 7 Del. C., Chapter 60.
- I. Each allocation permit may also include, if appropriate, a listing of other agencies or entities that may require additional approvals such as, but not limited to, the Delaware River Basin Commission, the Division of Public Health, and the Public Service Commission.
- J. In addition to the permit contents listed above, the Department may require the performance of aquifer tests, installation of monitoring wells, water quality sampling, or other conditions deemed appropriate.

5.06 Allocation Permits for Irrigation

- A. Allocation permits for irrigation are subject to the same permit application procedures and conditions as any other water allocation permit with the following exceptions:
 - 1. Water level measurements from supply sources in the water table (unconfined) aquifer need not be recorded or reported to the Department, except on specific request by the Department.
 - 2. Water allocation needs will be based on best estimates of anticipated crop needs recognizing natural variability in climate and precipitation.
 - 3. Permits for irrigation will specify that alternative means of measuring water use such as time lapse recorders may be used to gauge water withdrawals. Water meters, though recommended will not be required for determining irrigation water usage.

Section 6. Water Transfer Permits

Prior to the initiation of construction of facilities for any transfer of water from one allocation permit holder to another, both parties must have the written approval of the Department in the form of a water transfer permit. Application for such permits must be made on forms provided by the Department and include a map showing the location of the interconnection and a copy of the agreement between parties for the transfer permits to determine consistency with approved water supply development plans and water withdrawal limit criteria.

Section 7. Severability

If any part of these regulations is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

Section 8. Rights of Appeal

In accordance with Del. C. Sections 6008 and 6009, any person whose interest is substantially affected by any action of the Department regarding an allocation permit has the right of appeal to the Environmental Appeals Board, a seven member board appointed by the Governor . If any person is aggrieved by any decision of the Environmental Appeals Board, they have the further right to appeal the decision to the Superior Court.