

WATER SUPPLY MANAGEMENT ACT, N.J.S.A. 58:1A-1
P.L. 1981, c.262 (as amended 1/4/2008 by P.L. 2007, c.246)

- 58:1A-1. Short title.
- 58:1A-2. Legislative findings and declarations.
- 58:1A-3. Definitions.
- 58:1A-4. State of water emergency; emergency water supply allocation plan; powers of Governor and Commissioner; orders; review.
- 58:1A-5. Supply and diversion of water; rules and regulations.
- 58:1A-5.1. Establishment of permit system for certain diversions of water.
- 58:1A-6. Permit system; development of guidelines.
- 58:1A-7. Diversion of water, permit, renewal; criteria for critical water supply concerns.
- 58:1A-7.1. Transport of water from Pinelands National Reserve; prohibition.
- 58:1A-7.2. No tax, fee imposed on diversion of water; exceptions; "aquaculture" defined.
- 58:1A-7.3. Limitations on modification of existing diversion permit.
- 58:1A-7.4. Water allocation credit transfer program.
- 58:1A-7.5. Establishment of Water Allocation Credit Exchange; regional exchange.
- 58:1A-7.6. Report to Governor, Legislature.
- 58:1A-8. Provisions of permit.
- 58:1A-9. Rates.
- 58:1A-11. Administrative fees; diversion permits; water use registration; disposition.
- 58:1A-12. Condemnation for new or additional supply of water; approval by department.
- 58:1A-13. New Jersey Statewide Water Supply Plan.
- 58:1A-13.1. Maintenance of State-owned lands in the Six Mile Reservoir Site and other unused lands.
- 58:1A-13.2. Existing lease, agreement unaffected concerning unused lands.
- 58:1A-13.3. Preparation, adoption of revisions, updates to New Jersey Statewide Water Supply Plan.
- 58:1A-14. Inadequate supply available to water purveyor; order for development or acquisition; certification of amount in local budget.
- 58:1A-15. Powers and duties.
- 58:1A-15.1. Actions consistent with Pinelands, Highlands regulation.
- 58:1A-16. Violations of act; remedies.
- 58:1A-17. Continuation of prior rules and regulations.

58:1A-1. Short title.

This act shall be known and may be cited as the "Water Supply Management Act."

58:1A-2. Legislative findings and declarations.

The Legislature finds and declares that the water resources of the State are public assets of the State held in trust for its citizens and are essential to the health, safety, economic welfare, recreational and aesthetic enjoyment, and general welfare, of the people of New Jersey; that ownership of these assets is in the State as trustee of the people; that because some areas within the State do not have enough water to meet their current needs and provide an adequate margin of safety, the water resources of the State and any water brought into the State must be planned for and managed as a common resource from which the requirements of the several regions and localities in the State shall be met; that the present regulatory system for these water resources is ineffective and counterproductive; that it is necessary to insure that within each basin there exist adequate water supplies to accommodate present and future needs; that to ensure an adequate supply and quality of water for citizens of the State, both present and future, and to protect the natural environment of the waterways of the State, it is necessary that the State, through its Department of Environmental Protection, have the power to manage the water supply by adopting a uniform water diversion permit system and fee schedule, a monitoring, inspection and enforcement program, a program to study and manage the State's water resources and plan for emergencies and future water needs, and regulations to manage the waters of the State during water supply and water quality emergencies.

58:1A-3. Definitions.

As used in the provisions of P.L.1981, c.262 (C.58:1A-1 et seq.), P.L.1993, c.202 (C.58:1A-7.3 et al.), P.L.2003, c.251 (C.58:1A-13.1 et al.) and P.L. 2005 c.285 (C.58:1A-13 et al.):

- a. "Commissioner" means the Commissioner of the Department of Environmental Protection or the commissioner's designated representative;
- b. "Consumptive use" means any use of water diverted from surface or ground waters other than a nonconsumptive use as defined in this section;
- c. "Department" means the Department of Environmental Protection;
- d. "Diversion" means the taking or impoundment 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;
- e. "Nonconsumptive use" means the use of water diverted from surface or ground waters in such a manner that it is returned to the surface or ground water at or near the point from which it was taken without substantial diminution in quantity or substantial impairment of quality;

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

g. "Waters" or "waters of the State" means all surface waters and ground waters in the State;

h. "Safe or dependable yield" or "safe 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;

i. "Aquaculture" means the propagation, rearing and subsequent harvesting of aquatic species in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need 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. "Aquaculture" shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation;

j. "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;

k. "Six Mile Run Reservoir Site" means the land acquired by the State for development of the Six Mile Run Reservoir in Franklin Township, Somerset County, as identified by the Eastern Raritan Feasibility Study and the New Jersey Statewide Water Supply Plan prepared and adopted by the department pursuant to section 13 of P.L.1981, c.262 (C.58:1A-13).

58:1A-4. State of water emergency; emergency water supply allocation plan; powers of Governor and Commissioner; orders; review.

a. Upon a finding by the commissioner that there exists or impends a water supply shortage of a dimension which endangers the public health, safety, or welfare in all or any part of the State, the Governor is authorized to proclaim by executive order a state of water emergency. The Governor may limit the applicability of any state of emergency to specific categories of water supplies or to specific areas of the State in which a shortage exists or impends.

b. The department shall, within 180 days of the effective date of this act, adopt an Emergency Water Supply Allocation Plan as a rule and regulation. This plan shall be utilized as the basis for imposing water usage restrictions during a declared state of water emergency and shall include a priority system for the order in which restrictions would be imposed upon the various categories of water usage.

c. During the duration of a state of water emergency the commissioner, to the extent not in conflict with applicable Federal law or regulation but notwithstanding any State or local law or contractual agreement, shall be empowered to:

(1) Order any person to reduce by a specified amount the use of any water supply; to make use of an alternate water supply where possible; to make emergency interconnections between systems; to transfer water from any public or private system; or to cease the use of any water supply;

(2) Order any person engaged in the distribution of any water supply to reduce or increase by a specified amount or to cease the distribution of that water supply; to distribute a specified amount of water to certain users as specified by the commissioner; or to share any water supply with other distributors thereof;

(3) Establish priorities for the distribution of any water supply;

(4) Adopt rules and regulations as are necessary and proper to carry out the purposes of this section; and

(5) Direct any person engaged in the retail distribution of water to impose and collect a surcharge on the cost of that water as a penalty for the violation of any order to reduce water usage issued pursuant to this subsection. The disposition of all sums collected pursuant to this subsection shall be as provided by law; and

(6) Otherwise implement the Emergency Water Supply Allocation Plan adopted pursuant to subsection b. of this section.

Any order issued by the commissioner pursuant to this subsection shall be based upon fair compensation, reasonable rate relief and just and equitable terms, to be determined after notice and hearing which may occur subsequent to the order and compliance therewith.

d. During the existence of a state of water emergency, the Governor may order the suspension of any laws, rules, regulations, or orders of any department or agency in State Government or within any political subdivision which deal with or affect water and which impede his ability to alleviate or terminate a state of water emergency.

e. Any aggrieved person, upon application to the commissioner, shall be granted a review of whether the continuance of any order issued by the commissioner pursuant to this section is unreasonable in light of then prevailing conditions of emergency.

f. During a state of water emergency the commissioner may require any other department or other agency within State Government to provide information, assistance, resources, and personnel as shall be necessary to discharge his functions and responsibilities under this act, rules and regulations adopted hereunder, or applicable Federal laws and regulations.

g. The powers granted to the Governor and the commissioner under this section shall be in addition to and not in limitation of any emergency powers now or hereafter vested in the Governor, the commissioner, or any other State department or agency pursuant to any other laws; except that, upon declaring a state of energy emergency, the Governor may supersede any other emergency powers.

h. The state of water emergency declared by the Governor pursuant to this section shall remain in effect until the Governor declares by a subsequent executive order that the state of water emergency has terminated.

58:1A-5. Supply and diversion of water; rules and regulations.

The commissioner shall have the power to adopt, enforce, amend or repeal, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.) rules and regulations to control, conserve, and manage the water supply of the State and the diversions of that water supply to assure the citizens of the State an adequate supply of water under a variety of conditions and to carry out the intent of this act. These rules and regulations may apply throughout the State or in any region thereof and shall provide for the allocation or the reallocation of the waters of the State in such a manner as to provide an adequate quantity and quality of water for the needs of the citizens of the State in the present and in the future and may include, but shall not be limited to:

a. A permit system to allocate or reallocate any or all of the waters of the State, which system shall provide for the issuance of permits to diverters of more than 100,000 gallons per day of the waters of the State, containing at a minimum the conditions required by this act;

b. Standards and procedures to be followed by diverters to ensure that:

(1) Proper methods are used to divert water;

(2) Only the permitted quantity of water is diverted and that the water is only used for its permitted purpose;

(3) The water quality of the water source is maintained and the water standards for the use of the water are met;

(4) The department is provided with adequate and accurate reports regarding the diversion and use of water;

c. Inspection, monitoring, reporting and enforcement procedures necessary to implement and enforce the provisions of this act;

d. Standards and procedures to be followed to determine the location, extent and quality of the water resources of the State and plan for their future use to meet the needs of the citizens of the State;

e. Standards and procedures to be followed to maintain the minimum water levels and flow necessary to provide adequate water quantity and quality;

f. Standards and procedures governing the maintenance of adequate capacity by, and withdrawal limits for, water purveyors.

58:1A-5.1. Establishment of permit system for certain diversions of water.

Notwithstanding the provisions of subsection a. of section 5 of P.L.1981, c.262 (C.58:1A-5), or any rule or regulation adopted pursuant thereto, to the contrary, the Department of Environmental Protection, pursuant to section 34 of P.L.2004, c.120 (C.13:20-32), shall establish a permit system to provide for review of allocations or reallocations, for other than agricultural or horticultural purposes, of waters of the Highlands, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), to provide for the issuance of permits for diversions either individually or cumulatively of more than 50,000 gallons per day of waters of the Highlands in the Highlands preservation area as defined in section 3 of P.L.2004, c.120 (C.13:20-3).

58:1A-6. Permit system; development of guidelines.

a. The department in developing the permit system established by P.L.1981, c.262 (C.58:1A-1 et al.) shall:

(1) Permit privileges previously allowed pursuant to lawful legislative or administrative action, except that the department may, after notice and public hearing, limit the exercise of these privileges to the extent currently exercised, subject to contract, or reasonably required for a demonstrated future need. All diversion permits issued by the Water Policy and Supply Council prior to August 13, 1981 shall remain in effect until modified by the department pursuant to P.L.1981, c.262 (C.58:1A-1 et al.). Persons having or claiming a right to divert more than 100,000 gallons of water per day pursuant to prior legislative or administrative action, including persons previously exempted from the requirement to obtain a permit, shall renew that right by applying for a diversion permit, or water usage certification, as the case may be, no later than February 9, 1982. Thereafter, the conditions of the new diversion permit or water usage certification shall be deemed conclusive evidence of such previously allowed privileges.

(2) Require any person diverting 100,000 or more gallons of water per day for agricultural or horticultural purposes to obtain approval of the appropriate county agricultural agent of a five-year water usage certification program. This approval shall be based on standards and procedures established by the department. This program shall include the right to construct, repair or reconstruct dams or other structures, the right to divert water for irrigation, frost protection, harvesting and other agriculturally-related purposes, including aquaculture, and the right to measure the amount of water diverted by means of a log or other appropriate record, and shall be obtained in lieu of any permit which would otherwise be required by P.L.1981, c.262 (C.58:1A-1 et al.).

(3) Require any person diverting more than 100,000 gallons per day of any waters of the State or proposing to construct any building or structure which may require a diversion of water to obtain a diversion permit. Prior to issuing a diversion permit, the department shall afford the general public with reasonable notice of a permit application, and with the opportunity to be heard thereon at a public hearing held by the department.

b. In exercising the water supply management and planning functions authorized by P.L.1981, c.262 (C.58:1A-1 et al.), particularly in a region of the State where excessive water usage or diversion present undue stress, or wherein conditions pose a significant threat to the long-term integrity of a water supply source, including a diminution of surface water supply due to excess groundwater diversion, the commissioner shall, after notice and public hearing as provided by and required pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), designate that region as an area of critical water supply concern.

In designating an area of critical water supply concern, the department shall be required to demonstrate that the specific area is stressed to a degree which jeopardizes the integrity and viability of the water supply source or poses a threat to the public health, safety, or welfare. This designation shall conform to and satisfy the criteria of an area of critical water supply concern as defined in rules and regulations adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

Those specific areas previously designated by the department as water supply critical and margin areas, considered as Depleted or Threatened Zones, respectively, prior to the effective date of P.L.1993, c.202 shall be considered to be areas of critical water supply concern for the purposes of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.).

c. In designated areas of critical water supply concern, the department, in consultation with affected permittees and local governing bodies and after notice and public hearing, shall:

- (1) study water supply availability;
- (2) estimate future water supply needs;
- (3) identify appropriate and reasonable alternative water supply management strategies;
- (4) select and adopt appropriate water supply alternatives; and
- (5) require affected permittees to prepare water supply plans consistent with the adopted water supply management alternatives.

d. Following implementation of the adopted water supply management alternatives, the department shall monitor water levels and water quality within the designated area of critical water supply concern to determine the effectiveness of the alternative water supply management strategies selected. If the department determines that the alternatives selected are not effective in protecting the water supply source of concern, the department may revise the designation and impose further restrictions in accordance with the procedures set forth in this section. The results of all monitoring conducted pursuant to this section shall be reported to all affected permittees on an annual basis.

e. Nothing in P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) shall prevent the department from including, or require the department to include, the presently non-utilized existing privileges in any new, modified or future diversion permit issued to the present holder of these privileges, except as otherwise expressly provided in subsection b. of section 7 of P.L.1981, c.262 (C.58:1A-7).

58:1A-7. Diversion of water, permit, renewal; criteria for critical water supply concerns.

a. A person shall not divert more than 100,000 gallons per day of any waters of the State or construct any building or structure which may require a diversion of water unless the person obtains a diversion permit or water usage certification, as appropriate, pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6).

b. Every diversion permit issued or water usage certification approved pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6) shall be renewed by the department upon the expiration thereof, with any conditions deemed appropriate by the department, for the same quantity of water, except that the department may, after notice and public hearing, limit that quantity to the amount currently diverted, subject to contract, or reasonably required for a demonstrated future need. In designated areas of critical water supply concern, the department may, after notice and public hearing, modify the conditions of an existing diversion permit or water usage certification in order to (1) limit or reduce the quantity of water which lawfully may be diverted to the safe or dependable yield of the resource; (2) transfer the point of diversion; or (3) require a permittee to utilize alternate sources of water, upon a determination that the existing diversion or continued use of the same source in excess of the safe and dependable yield, as the case may be, adversely impacts or threatens to adversely impact the water resources of the State.

c. For any surface water or ground water source or area of the State that the department determines to be approaching conditions that may require the commissioner to designate that region as an area of critical water supply concern, and that meets the criteria established pursuant to subsection d. of this section, the department may, after notice and opportunity for public hearing, issue a temporary diversion permit which may be modified or terminated to any person seeking a new or modified permit to divert any waters of the State or to construct any building or structure or commence any activity which may require a diversion permit or water usage certification, as appropriate, pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6).

The duration of any temporary permit issued by the department pursuant to this subsection shall be for no longer than five years. The department may alter the conditions or amount of water allowed to be diverted, terminate the permit or renew the temporary permit for a subsequent term.

For the duration of the temporary permit issued by the department pursuant to this subsection, the permittee shall actively seek an alternative for the permittee's long-term water supply needs which, in the department's opinion, may be viable for the permittee to replace the previously allowable diversion amount.

Whenever the department terminates or modifies the conditions of a temporary permit, the department shall provide adequate advance notice to the permittee of the department's intentions and the rationale therefor. The department's rationale may include, but need not be limited to, an explanation of the status of watershed and water supply planning and infrastructure conditions and improvement initiatives for surface water or ground water sources or areas and alternatives which, in the department's opinion, may be viable for the permittee to replace the previously allowable diversion amount. These alternatives may include, but need not be limited to, reuse of treated wastewater effluent or other alternatives approved by the department.

Nothing herein shall alter the authority of the department to administer and enforce the provisions of P.L.1981, c.262 (C.58:1A-1 et seq.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) or any rules, regulations and orders adopted, issued or effective thereunder pertaining to designated areas of critical water supply concern.

Any procedures or requirements necessary to implement the provisions of this subsection shall be contained in rules and regulations adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

d. The department may issue a temporary permit pursuant to subsection c. of this section only when the proposed diversion, construction or activity is intended to serve the long-term water supply needs of the permittee and water users of Salem or Gloucester counties.

58:1A-7.1. Transport of water from Pinelands National Reserve; prohibition.

The provisions of any law, rule or regulation to the contrary notwithstanding, no person shall transport, or cause to be transported, more than 10 miles outside the boundary of the Pinelands National Reserve, any ground or surface water therefrom; provided, however, that nothing in this section shall prohibit the continued transportation of any such water utilized for public water supply purposes prior to the effective date of this act.

As used in this section, "Pinelands National Reserve" means the approximately 1,000,000 acre area so designated by section 502 of the "National Parks and Recreation Act of 1978" (P.L. 95-625), and generally depicted on the map entitled "Pinelands National Reserve Boundary Map" numbered NPS/80,011A and dated September 1978.

58:1A-7.2. No tax, fee imposed on diversion of water; exceptions; "aquaculture" defined.

The provisions of any law, rule or regulation to the contrary notwithstanding, no tax, fee or other charge shall be imposed on the diversion, for agricultural or horticultural purposes, including aquaculture, of any ground or surface water of this State; provided, however, that nothing in this section shall prohibit the imposition of a fee, pursuant to law, for the cost of processing, monitoring and administering a water usage certification program for persons who divert any ground or surface water for agricultural and horticultural purposes, or other agriculturally-related purposes, including aquaculture.

As used in this section, "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 need not be limited to, activities such as stocking, intervention in the rearing process to increase production, feeding, transplanting, and providing for protection from predators and shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation, and "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.

58:1A-7.3. Limitations on modification of existing diversion permit.

Notwithstanding the provisions of P.L.1981, c.262 (C.58:1A-1 et al.) or any other law, rule or regulation to the contrary, for a period not to exceed 10 years following the effective date of P.L.1993, c.202 (C.58:1A-7.3 et al.), the authority of the department to modify the conditions of an existing diversion permit issued or water usage certification approved pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6) within the area designated and established by the department as Water Supply Critical Area II shall be limited as hereinafter provided:

a. No existing diversion permit or water usage certification shall be reduced to an amount less than that withdrawn from the Depleted and Threatened Zone in 1991 or that specified through application of the formulas set forth as follows, whichever is less:

(1) Depleted Zone base allocations:

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

DZ = Depleted Zone base allocation issued to a person and expressed in million gallons per year (MGY);

D83 = A person's total Annual Potomac-Raritan-Magothy aquifer system (PRM) withdrawal from the Depleted Zone in MGY in 1983; and

Dmax = A person's total Annual PRM withdrawal from the Depleted Zone in any year between 1983 and 1991 in MGY.

The calculation of the Depleted Zone base allocation shall be based on the selection of one year for each affected permittee.

(2) Threatened Zone base allocations:

The Threatened Zone base allocation shall be equal to the maximum annual withdrawal from the Threatened Zone in any year between 1983 and 1991 in MGY.

In the case of those permittees with diversion permits for Depleted Zone and Threatened Zone withdrawals, the same year shall be used to calculate Depleted Zone allocations and Threatened Zone allocations.

The allocation for continued withdrawals for those industrial users whose withdrawals in 1991 were less than that withdrawn in any year between 1983 and 1990 due to economic conditions shall be calculated based upon the Depleted Zone and Threatened Zone formulas set forth in paragraphs (1) and (2) of this subsection and shall not be limited to the amount withdrawn in 1991.

In the calculation of revised PRM diversion permit withdrawal levels, the department shall consider the permittee's historic water use from the Depleted Zone and Threatened Zone.

The allocation represented by one-half of the difference between the total PRM allocation based upon the formula set forth in this subsection and the total 1991 withdrawal shall be designated as water allocation credits pursuant to section 5 of P.L.1993, c.202 (C.58:1A-7.4). These credits shall be available for transfer to areas designated for growth within the Water Allocation Credit Receiving Area as defined in subsection b. of this section.

b. Within the area designated and established by the department as Water Supply Critical Area II, those areas:

(1) north of the Rancocas Creek from its confluence with the Delaware River to the intersection of the southwest branch of the Rancocas Creek with State Route 38;

(2) north of State Route 38 to the start of County Route 530; and

(3) north of County Route 530 to the intersection of County Route 530 and State Route 70 near the Burlington-Ocean county boundary, shall be recognized as a Water Allocation Credit Receiving Area. The department shall not unreasonably withhold approval for the transfer of water allocation credits for local use only within this area unless it can be demonstrated that the withdrawals will result in a significant adverse impact on the aquifer system. The department shall not unreasonably withhold approval of a permit modification seeking an increase in allocation where the permittee has obtained water allocation credits in an amount equal to the requested increase in withdrawal.

The areas described in paragraphs (1), (2) and (3) of this subsection shall be recognized as a Water Allocation Credit Receiving Area because hydrogeologic studies have shown that increased withdrawals from the PRM may be possible in this portion of the aquifer system without adverse impacts. Permittees within this area may receive water allocation credits and water conservation credits.

Water conservation credits shall be granted to any permittee in the Water Allocation Credit Receiving Area who can demonstrate a net reduction in annual water use over the 13-year period from 1978 through 1991, inclusive. The water conservation credits shall be equal to 50% of the difference between the maximum year withdrawal during this period and 1991, where the reduction can be documented as attributable to water conservation. The department shall approve the diversion permit modification to reflect the water conservation credits granted.

Permittees that have established water supply system interconnections in order to develop alternate supplies pursuant to an administrative order issued by the department prior to the effective date of P.L.1993, c.202 (C.58:1A-7.3 et al.) shall have the continuing right to transfer water through the interconnection if the diversion permitted under subsection a. of this section provides for the withdrawal that exceeds the needs of the users of the suppliers' system exclusive of the interconnection.

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

c. As used in this section, the boundary of the designated Water Supply Critical Area II corresponds to the average potentiometric contour 30 feet below sea level for the Potomac-Raritan-Magothy Aquifer as published in Water Levels in Major Artesian Aquifers of the New Jersey Coastal Plain, Water Resources Investigations Report 86-4028 of the United States Department of the Interior Geological Survey, 1983, and the surrounding margin area.

58:1A-7.4. Water Allocation Credit Transfer Program.

a. There is established in the department the Water Allocation Credit Transfer Program. The purpose of this program is to provide for the transfer of a privilege to divert water within an area of critical water supply concern, as designated by the commissioner pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6), without adversely impacting the aquifer.

b. Within 60 days of the effective date of P.L.1993, c.202, the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this section. These rules and regulations shall include:

(1) A procedure for the review and approval or disapproval of the transfer of water allocation credits; and

(2) A provision that a well for which all privileges to divert have been transferred shall be closed and capped to prevent the pumping of water from that well in the future.

c. The department shall provide for the expeditious review and approval of a plan submitted by a county which facilitates the transfer of water allocation credits. This review and approval may occur prior to the adoption of the rules and regulations required pursuant to this section.

58:1A-7.5. Establishment of Water Allocation Credit Exchange; regional exchange.

a. The governing body of a county wherein an area of critical water supply concern has been designated by the commissioner pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6) may establish a Water Allocation Credit Exchange to facilitate the transfer of water allocation credits within the area of critical water supply concern.

(1) Any two or more adjacent or proximate counties located within any portion of a designated area of critical water supply concern may establish a Regional Water Allocation Credit Exchange to facilitate the transfer of water allocation credits within the area of critical water supply concern on a cooperative basis.

(2) Any Water Allocation Credit Exchange established in a county, by resolution of its governing body, prior to the effective date of P.L.1993, c.202 (C.58:1A-7.3 et al.) shall be vested with the authority provided herein.

(3) Any Regional Water Allocation Credit Exchange established in two or more adjacent or proximate counties, by resolution of their respective governing bodies, prior to the effective date of P.L.1993, c.202 (C.58:1A-7.3 et al.) shall be vested with the authority provided herein.

b. The owner of a sending well in a designated area of critical water supply concern may transfer a water allocation credit to the owner of a receiving well requiring the additional gallonage to meet the demand for water within its service area. This transfer may occur through a direct "arms length" transaction between the well owners, or between a well owner and a local government unit, or through the auspices of a county Water Allocation Credit Exchange established for this purpose pursuant to the provisions of this section.

The transfer shall be subject to confirmation by the department. The department shall issue a determination within 30 days of receipt of a request for confirmation and shall not unreasonably withhold confirmation of the transfer unless it can be demonstrated that the transfer will result in a significant adverse impact on the designated area of critical water supply concern. Upon confirmation of the transfer, the department shall modify the water allocation permits issued for diversions from the sending and receiving wells to reflect the water allocation credits being transferred, in accordance with the provisions of section 6 of P.L.1981, c.262 (C.58:1A-6).

c. The owner of a receiving well may increase the amount of gallons of water per year pumped from that well at a level equaling the amount of the water allocation credit.

58:1A-7.6. Report to Governor, Legislature.

The department shall prepare a report to the Governor and the Legislature on the Water Allocation Credit Transfer Program and make recommendations therein concerning the implementation and effectiveness of the program. The report shall be transmitted to the Governor, the President of the Senate and the Speaker of the General Assembly no later than 24 months following the effective date of P.L.1993, c.202 (C.58:1A-7.3 et al.), and every 24 months thereafter.

58:1A-8. Provisions of permit.

Every permit issued pursuant to P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) shall include provisions:

- a. Fixing the term of the permit;
- b. Fixing the maximum allowable diversion, expressed in terms of a daily, monthly or annual diversion;
- c. Identifying and limiting the use or uses to which the water may be put;
- d. Requiring the diverter to meter the water being diverted and report the amount and quality of the water being diverted;
- e. Allowing the department to enter the diverter's facilities or property to inspect and monitor the diversion;
- f. Requiring that all water diverted for a nonconsumptive use be returned to a reasonably proximate body of water designated by the department;
- g. Allowing the transfer of a permit with the consent of the department, but only for the identical use of the waters by the transferee;
- h. Governing the operations and maintenance of the specific facilities, equipment or premises not otherwise established in regulations because of the unique nature of the facilities, equipment or premises;
- i. Permitting the department to modify, suspend or terminate the permit, after notice and public hearing, for violations of its conditions, P.L.1981, c.262 (C.58:1A-1 et al.), P.L.1993, c.202 (C.58:1A-7.3 et al.), regulations adopted or orders issued by the department, and when deemed necessary for the public interest;

j. Permitting the department to modify the conditions of a diversion permit issued or water usage certification approved pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6) in a designated area of critical water supply concern in order to (1) limit or reduce the quantity of water which lawfully may be diverted to the safe or dependable yield of the resource; (2) transfer the point of diversion; or (3) require a permittee to utilize alternate sources of water, upon a determination that the existing diversion or continued use of the same source in excess of the safe or dependable yield, as the case may be, adversely impacts or threatens to adversely impact the water resources of the State;

k. Allowing the transfer of water allocation to a different point of diversion within a designated area of critical water supply concern with the approval of the department.

58:1A-9. Rates.

The Board of Regulatory Commissioners shall fix just and reasonable rates for any public water supply system subject to its jurisdiction, as may be necessary for that system to comply with an order issued by the department or the terms and conditions of a permit issued pursuant to P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.).

58:1A-11. Administrative fees; diversion permits; water use registration; disposition.

a. The department shall in accordance with a fee schedule adopted by rule and regulation, establish and charge reasonable administrative fees, which fees shall be based upon, and not exceed, the estimated cost of processing, monitoring, administering and enforcing the diversion permits issued by the department pursuant to the provisions of sections 6 and 7 of P.L.1981, c.262 (C.58:1A-6 and 58:1A-7) or section 39 of P.L.2004, c.120 (C.58:1A-5.1).

Any person who is required to apply for and obtain a water use registration pursuant to rules and regulations adopted by the department to administer and enforce the provisions of P.L.1981, c.262 (C.58:1A-1 et seq.), P.L.1993, c.202 (C.58:1A-7.3 et al.) or P.L.2004, c.120 (C.13-20-1 et al.) shall, in conjunction with a completed registration form, submit an initial registration fee.

Each person who holds a valid water use registration shall pay an annual renewal fee.

An annual renewal fee shall not be charged for a volunteer fire company created pursuant to N.J.S.40A:14-70.1.

b. The department shall deposit the fees in the "Environmental Services Fund" created by P.L.1975, c.232 (C.13:1D-30 et seq.). There shall be annually appropriated an amount equivalent to the amount anticipated to be collected as fees by the department for the administration of the water supply management program.

58:1A-12. Condemnation for new or additional supply of water; approval by department.

No person supplying or proposing to supply water to any other person shall have the power to condemn lands, water or water privileges for any new or additional source of ground or surface water until that person has first submitted to the department an application for approval to divert the source of the water and the department has approved the application subject to such conditions as it may determine to be necessary to protect the public health and welfare.

58:1A-13. New Jersey Statewide Water Supply Plan.

a. The department shall prepare and adopt the New Jersey Statewide Water Supply Plan, which plan shall be revised and updated at least once every five years.

b. The plan shall include, but need not be limited to, the following:

- (1) An identification of existing Statewide and regional ground and surface water supply sources, both interstate and intrastate, and the current usage thereof;
- (2) Projections of Statewide and regional water supply demands for the duration of the plan;
- (3) Recommendations for improvements to existing State water supply facilities, the construction of additional State water supply facilities, and for the interconnection or consolidation of existing water supply systems, both interstate and intrastate;
- (4) Recommendations for the diversion or use of fresh surface or ground waters and saline surface or ground waters for aquaculture purposes;
- (5) Recommendations for legislative and administrative actions to provide for the maintenance and protection of watershed areas;
- (6) Identification of lands purchased by the State for water supply facilities that currently are not actively used for water supply purposes, including, but not limited to, the Six Mile Run Reservoir Site, with recommendations as to the future use of these lands for water supply purposes within or outside of the planning horizon for the plan; and
- (7) Recommendations for administrative actions to ensure the protection of ground and surface water quality and water supply sources.

c. Prior to adopting the plan, including any revisions and updates thereto, the department shall:

- (1) Prepare and make available to all interested persons a copy of the proposed plan or proposed revisions and updates to the current plan;

(2) Conduct public meetings in the several geographic areas of the State on the proposed plan or proposed revisions and updates to the current plan; and

(3) Consider the comments made at these meetings, make any revisions to the proposed plan or proposed revisions and updates to the current plan as it deems necessary, and adopt the plan.

d. Prior to the adoption of any revision to the New Jersey Statewide Water Supply Plan pursuant to this section, the department shall consult with the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), concerning the possible effects and impact of the plan upon the Highlands regional master plan, adopted pursuant to section 8 of P.L.2004, c.120 (C.13:20-81), and the water and other natural resources of the Highlands Region, as defined in section 3 of P.L.2004, c.120 (C.13:20-3).

58:1A-13.1. Maintenance of State-owned lands in the Six Mile Reservoir Site and other unused lands.

a. The department shall take actions to assure that State-owned lands identified pursuant to paragraph (6) of subsection b. of section 13 of P.L.1981, c.262 (C.58:1A-13) shall be maintained in a manner to ensure that their future use for water supply purposes is not materially impaired or increased significantly in cost.

b. Until State-owned lands identified pursuant to paragraph (6) of subsection b. of section 13 of P.L.1981, c.262 (C.58:1A-13) are used for water supply purposes, these lands shall be dedicated to the protection of natural resources, including grasslands, wetlands, forests and reforestation, ecosystem improvement, natural ground water recharge, and agricultural purposes that are compatible with natural resource protection and water quality protection. The use of these lands shall be subject to the following conditions:

(1) The lands may be used for open space recreational purposes to the extent that these uses do not impair natural or historic resource protection;

(2) Except for the construction of walking paths or bicycle paths, or other structures for passive recreational uses in accordance with the purposes of this act, permanent structures and other impervious cover shall be less than two percent of the total land area. Permanent structures or extensive impervious cover shall not be constructed on those lands that would be used for water supply purposes;

(3) The use of these lands for non-water supply purposes shall not impair the planned water supply use in any material way. Active recreation shall be allowed only outside the perimeter of any proposed water supply facilities, including, but not limited to, reservoirs, pipelines, canals, pumping stations or dams;

(4) Passive recreation may be allowed within the perimeter of any proposed water supply facility; and

(5) Agricultural uses shall be allowed in the most suitable sites based on soils, water quality protection and site configuration and shall be sited in a manner that protects the agricultural uses from significant interference and damage from recreational uses. All agricultural activities shall be conducted in a manner that will protect natural resources and water quality, as determined by the department in conjunction with the Department of Agriculture.

58:1A-13.2. Existing lease, agreement unaffected concerning unused lands.

4. The provisions of section 3 of P.L.2003, c.251 (C.58:1A-13.1) shall not abrogate or in any way affect the terms or conditions of any lease or other agreement that is in effect on the date of enactment between the department and any party relative to the management of land identified pursuant to paragraph (6) of subsection b. of section 13 of P.L.1981, c.262 (C.58:1A-13), nor shall the provisions of P.L.2003, c.251 (C.58:1A-13.1 et al.) restrict the authority of the department to enter into or extend a lease or agreement to manage those lands, provided that any lease or agreement is consistent with the provisions of section 3 of P.L.2003, c.251 (C.58:1A-13.1).

58:1A-13.3. Preparation, adoption of revisions, updates to New Jersey Statewide Water Supply Plan.

a. The department shall prepare and adopt appropriate revisions and updates to the current New Jersey Statewide Water Supply Plan no later than December 31, 2006 pursuant to the provisions of section 13 of P.L.1981, c.262 (C.58:1A-13).

b. In its preparation of proposed revisions and updates to the current plan, the department shall consult with the New Jersey Water Supply Authority established pursuant to section 4 of P.L.1981, c.293 (C.58:1B-4) and the New Jersey Environmental Infrastructure Trust created pursuant to section 4 of P.L.1985, c.334 (C.58:11B-4), as appropriate, as well as with the public and private water purveyors.

58:1A-14. Inadequate supply available to water purveyor; order for development or acquisition; certification of amount in local budget.

a. When the department determines that the developed water supply available to a water purveyor is inadequate to service its users with an adequate supply of water under a variety of conditions, the department may order the water purveyor to develop or acquire, within a reasonable period of time, additional water supplies sufficient to provide that service.

b. The Division of Local Government Services in the Department of Community Affairs shall, when reviewing the annual budget of any municipality, county, or agency thereof which operates a public water supply system, certify that an amount sufficient to cover the cost of any order issued to the municipality, county or agency thereof pursuant to subsection a. of this section is included in that annual budget.

58:1A-15. Powers and duties.

The department may:

- a. Perform any and all acts and issue such orders as are necessary to carry out the purposes and requirements of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.);
- b. Administer and enforce the provisions of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) and rules, regulations and orders adopted, issued or effective thereunder;
- c. Present proper identification and then enter upon any land or water for the purpose of making any investigation, examination or survey contemplated by P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.);
- d. Subpena and require the attendance of witnesses and the production by them of books and papers pertinent to the investigations and inquiries the department is authorized to make under P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.), and examine them and those public records as shall be required in relation thereto;
- e. Order the interconnection of public water supply systems, whether in public or private ownership, whenever the department determines that the public interest requires that this interconnection be made, and require the furnishing of water by means of that system to another system, but no order shall be issued before comments have been solicited at a public hearing, notice of which has been published at least 30 days before the hearing, in one newspaper circulating generally in the area served by each involved public water supply system, called for the purpose of soliciting comments on the proposed action.
- f. Order any person diverting water to improve or repair its water supply facilities so that water loss is eliminated so far as practicable, safe yield is maintained and the drinking water quality standards adopted pursuant to the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.) are met;
- g. Enter into agreements, contracts, or cooperative arrangements under such terms and conditions as the department deems appropriate with other states, other State agencies, federal agencies, municipalities, counties, educational institutions, investor-owned water companies, municipal utilities authorities, or other organizations or persons;
- h. Receive financial and technical assistance from the federal government and other public or private agencies;
- i. Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations;

j. Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out the provisions of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.);

k. Delegate those responsibilities and duties to personnel of the department as deemed appropriate for the purpose of administering the requirements of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.);

l. Combine permits issued pursuant to P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) with permits issued pursuant to any other act whatsoever whenever that action would improve the administration of those acts;

m. Evaluate and determine the adequacy of ground and surface water supplies and develop methods to protect aquifer recharge areas.

58:1A-15.1. Actions consistent with Pinelands, Highlands regulation.

No action taken by the department pursuant to the provisions of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) shall be inconsistent with the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), the comprehensive management plan for the pinelands area adopted pursuant to section 7 of P.L.1979, c.111 (C.13:18A-8), the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.), or the Highlands regional master plan adopted pursuant to section 8 of P.L.2004, c.120 (C.13:20-8).

58:1A-16. Violations of act; remedies.

a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any of the provisions of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

(1) Issue an order in accordance with subsection b. of this section requiring the person to comply;

(2) Bring a civil action in accordance with subsection c. of this section;

(3) Levy a civil administrative penalty in accordance with subsection d. of this section;

(4) Bring an action for a civil penalty in accordance with subsection e. of this section;
or

(5) Petition the Attorney General to bring a criminal action in accordance with subsection f. of this section.

The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy so provided.

b. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any of the provisions of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an order: (1) specifying the provision or provisions of P.L.1981, c.262, or the rule or regulation adopted, or order or permit issued pursuant thereto, of which the person is in violation; (2) citing the action that constitute the violation; (3) requiring compliance with the provision of P.L.1981, c.262, or the rule or regulation adopted, or order or permit issued pursuant thereto, of which the person is in violation; (4) requiring the restoration to address any adverse effects resulting from the violation; and (5) giving notice to the person of a right to a hearing on the matters contained in the order.

c. The commissioner is authorized to commence a civil action in Superior Court for appropriate relief from a violation of the provisions of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto. This relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Recovery of reasonable costs of any investigation, inspection, sampling or monitoring survey that led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

(3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation of P.L.1981, c.262 for which a civil action has been commenced and brought under this subsection;

(4) An order requiring the restoration of any adverse effects resulting from any unauthorized regulated activity for which a civil action is commenced under this subsection.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, duration, and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall include a reference to the section of the statute, regulation, or order or permit condition violated;

recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in P.L.1981, c.262, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. Any person who violates any provision of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, or an order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay in full a civil administrative penalty levied pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 for each day during which the violation continues. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L. 1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with this act.

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly, or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to the provisions of P.L.1981,

c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day of violation, or by imprisonment, or both.

g. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto.

58:1A-17. Continuation of prior rules and regulations.

Any rules and regulations promulgated pursuant to any statutes repealed by this act shall remain in effect until superseded by rules and regulations promulgated pursuant to this act. However, all such rules and regulations shall be reviewed and revised where necessary by the department within 2 years of the enactment of this act.