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Water Diversion

Sec. 22a-372-1. Public hearings under the Connecticut water diversion policy act.

Public hearings on applications for permits under sections 22a-365 to 22a-378, inclusive, of the General Statutes shall be conducted in accordance with section 22a-3a-1 of the Regulations of Connecticut State Agencies and chapter 54 of the General Statutes.

(Effective March 21, 1990)

Sec. 22a-377(b)-1. Exemptions from the Connecticut water diversion policy act.

(a) In addition to those diversions exempted in section 22a-377 of the General Statutes, and subject to the conditions set out in subsection (b) of this section, the following diversions are exempt from the provisions of sections 22a-365 to 22a-378, inclusive, of the General Statutes:

(1) Diversion of surface waters caused by activities which are incidental to construction, including but not limited to dredging or fi1ling for site development, stream bank stabi1ization, erosion and sedimentation control, construction or use of coffer dams, and dewatering of below grade structures, provided:

(A) there is no permanent change in the location of the natural bed of any perennial brook, stream or river;

(B) no perennial brook, stream or river is channelized;

(C) the diversion structure allows the continuous passage of existing watercourses; and

(D) any permit or approval required by sections 22a-32, 22a-39, 22a-42a or 22a-361 of the General Statutes is obtained.

(2) Diversion of water incidental to testing the production capability of a well or the quality of water withdrawn therefrom, provided the diversion continues no longer than is necessary for testing the production capability of the well or the quality of water withdrawn therefrom.

(3) Withdrawal of groundwater from a well which is constructed in the vicinity of a failed well to replace the failed well, provided:

(A) the failed well was registered or permitted pursuant to sections 22a-365 to 22a-378, inclusive, of the General Statutes;

(B) the failed well is permanently plugged and abandoned; and

(C) the replacement well is located no further than 250 feet from the failed well.

(4) Diversion of water incidental to the inspection, maintenance, or repair of existing diversion structures and related facilities, provided:

(A) the diversion continues no longer than is necessary to carry out inspection, maintenance, or repair work;

(B) such existing diversion structures and related facilities were registered or permitted pursuant to sections 22a-365 to 22a-378", inclusive, of the General Statutes; and

(C) the surface elevation of any pond, lake, or reservoir, whether natural or artificial, is not drawn down except as may be authorized by subdivision 16 of this subsection.

(5) Diversion of water, or increase in the capacity to divert water, incidental to providing water treatment, extending distribution mains, or maintaining or expanding service within a service area, provided the quantity of water withdrawn from any source does not exceed the

quantity authorized pursuant to any applicable permit or registration issued or filed under section 22a-368 of the General Statutes

(6) Transfer of up to 50,000 gallons of water in any twenty-four hour period from one distribution system or service area to another distribution system or service area, or installation of capacity to transfer such water, provided the quantity of water withdrawn from any source does not exceed the quantity authorized pursuant to any applicable permit or registration issued or filed under section 22a-368 of the General Statutes.

(7) As used in subdivisions (5) and (6) of this subsection, "service area" means a service area identified in any applicable permit or registration issued or filed under section 22a-368 of the General Statutes or an exclusive service area established under section 25-33g of the General Statutes.

(8) Diversion of tidal water incidental to navigation improvements, dredging, or the construction of jetties, groins, piers, or similar structures, provided that the permit or approval required for such activity by sections 22a-32 or 22a-361 of the General Statutes is obtained.

(9) Diversion of water resulting from separation of combined storm water and sanitary sewer systems approved by the Commissioner pursuant to chapter 446k of the General Statutes, except when such diversion results in an interbasin transfer of surface water run-off from an area of 100 or more acres.

(10) Diversion of water incidental to the placement of an obstruction or encroachment within stream channel encroachment lines established pursuant to sections 22a-342 to 22a-348, inclusive, of the General Statutes, provided:

(A) the permit required by section 22a-342 of the General Statutes is obtained;

(B) the obstruction or encroachment allows the continuous passage of the watercourse for which such stream encroachment lines were established;

(C) no watercourse is dammed, diked, or channelized as a result of such diversion; and

(D) if such obstruction or encroachment is on or in a tributary to the watercourse for which such stream channel encroachment lines have been established, the total drainage area of the tributary does not exceed five square miles.

(11) Diversion of water authorized by the Commissioner pursuant to section 316 of the Federal Clean Water Act, 33 U.S.C. sections 1251 *et seq.*

(12) Diversion of water in a manner and degree which is specified by order of the Commissioner for the abatement of pollution pursuant to sections 22a-133e, 22a-424, 22a-428, 22a-430, 22a-431, 22a-432, 22a-449, or 22a-451 of the General Statutes, or as specified in approved plans submitted pursuant to such an order.

(13) Alteration of watercourses and collection or impoundment of water runoff in an area which has a tributary watershed of less than 100 acres, provided that any permit or approval required by sections 22a-32, 22a-39, 22a-42a, 22a-342, 22a-401 or 22a-403 of the General Statutes is obtained.

(14) Diversion of water authorized under a permit issued by the Commissioner pursuant to section 22a-403 of the General Statutes for removal of a dam, dike, or similar structure or for the lowering of the spillway elevation of a dam, dike, or similar structure, provided that the exemption set forth in this paragraph shall not apply when the diversion involves a dam owned or operated by a water company as defined by section 25-32a of the General Statutes.

(15) Diversion of water incidental to the hydraulic dredging of sediments from lakes, ponds or impoundments, and diversion of water incidental to dredging of lakes, ponds or

impoundments approved by the Commissioner pursuant to sections 22a-339a through 22a-339e, inclusive, of the General Statutes, provided:

(A) any permit or approval required by section 22a-430 of the General Statutes is obtained; and

(B) no less than seven days before such diversion commences, written notice thereof is given to any water company, as defined by section 25-32a of the General Statutes, which may be affected thereby.

(16) Diversion of water caused by drawing down the surface elevation of an impoundment and subsequent refilling for the purpose of aquatic weed control, water quality control, or inspection or maintenance of a dam, gate house, discharge structure, reservoir, shoreline or dock, provided:

(A) the surface elevation of the impoundment is lowered only to the elevation and for the amount of time necessary for aquatic weed control, water quality control, or inspection or maintenance of dam, gate house, discharge structure, reservoir, shoreline or dock;

(B) such impoundment was registered or permitted pursuant to sections 22a-365 to 22a-378, inclusive, of the General Statutes; and

(C) no less than seven days before such diversion commences, written notice thereof is given to the Commissioner and to any water company, as defined by section 25-32a of the General Statutes, which may be affected thereby.

(17) Diversion of water in connection with State or Federal flood control projects which are designed and constructed under the supervision of the Department of Environmental Protection or, in the case of a Federal project, sponsored or initiated by the Department of Environmental Protection in accordance with section 25-68c (2) of the General Statutes, provided:

(A) any permit required by sections 22a-39, 22a-342, or 22a-403 of the General Statutes is obtained or, in the case of a Federal project, certification pursuant to Section 401 of the Federal Clean Water Act is obtained; and

(B) this exemption shall not apply in any case of a multipurpose flood management facility where the secondary use is hydropower, public water supply, a storage reservoir, or any other consumptive use of water which is not otherwise exempted by section 22a-377 of the General Statutes or this section.

(18) Collection and drainage of storm water from pavement, building roofs and other impervious areas, provided:

(A) such activity is authorized by the Commissioner pursuant to section 22a-430 of the General Statutes; and

(B) no watercourse is dammed, diked, or channelized as a result of such diversion.

(19) Diversion of surface waters and storm drainage by the Connecticut Department of Transportation incidental to highway construction authorized by the Commissioner pursuant to sections 22a-32, 22a-39, 22a-342, 22a-361, 22a-403 or 25-68b to 25-68h, inclusive, of the General Statutes.

(b) No activity, including construction of structures and facilities, shall be exempted under subsection (a) of this section:

(1) unless best management practices are employed to minimize erosion and sedimentation, to provide for necessary downstream flow in surface waters affected by the diversion, and to avoid adverse impacts to adjacent wells and to fish and wildlife, including to their spawning and nesting seasons; or

(2) if such activity, structure, or facility may alter the habitat of any rare, endangered or threatened species listed or identified by any federal or state governmental agency.

(Effective March 21, 1990)

Sec. 22a-377 (c)-1. Regulated activities and registered diversions under the Connecticut water diversion policy act.

(a) Any diversion as defined in section 22a-367 (2) of the General Statutes, including construction of structures and facilities, is subject to the provisions of this section and section 22a-377 (c)-2 of the Regulations of Connecticut State Agencies and sections 22a-365 through 22a-378, inclusive, of the General Statutes unless registered pursuant to section 22a-368 of the General Statutes or exempted by section 22a-377 of the General Statutes or section 22a-377 (b)-1 of the Regulations of Connecticut State Agencies. Such diversions include but are not limited to:

(1) withdrawal of groundwater from one or more wells joined in one system whose combined maximum withdrawal exceeds fifty thousand (50,000) gallons of water during any twenty-four hour period, and withdrawal of surface waters in excess of fifty thousand (50,000) gallons during any twenty four hour period;

(2) collection and discharge of runoff, including storm water drainage or skimming flood flows, from a watershed area of 100 acres or greater;

(3) relocation, retention, detention, bypass, channelization, piping, culverting, ditching, or damming of waters where the drainage area tributary to such waters is 100 acres or greater; and

(4) transfer of water from one distribution system to another where the combined maximum withdrawal from any source supplying the system or interconnected systems exceeds fifty thousand (50,000) gallons during any twenty-four hour period.

(b) Any person or municipality which has received a permit to divert water may maintain such diversion only in accordance with the terms of the permit.

(c) (1) Any person or municipality which registered a diversion pursuant to section 22a-368 of the General Statutes may maintain such diversion only in accordance with the information provided in the registration form filed with the Commissioner. Any person or municipality which registered a diversion pursuant to section 22a-368 of the General Statutes may not cause or allow any modification of such diversion, including but not limited to an increase in withdrawal capacity, without having first obtained a permit under sections 22a-365 to 22a-378, inclusive, of the General Statutes and 22a-377(c)-2 of the Regulations of Connecticut State Agencies, unless such modification is exempt under section 22a-377 of the General Statutes or section 22a-377 (b)-1 of the Regulations of Connecticut State Agencies.

(2) (A) Whenever the Commissioner has a reasonable basis to believe, as a result of information received from the registrant or otherwise, that any person or municipality which registered a diversion pursuant to section 22a-368 of the General Statutes provided in the registration form filed with the Commissioner any information which was incorrect, imprecise or incomplete, or which otherwise did not properly indicate the extent of the diversion to which the registrant was rightfully entitled under such section, the Commissioner may issue to such registrant a notice of inquiry describing wherein the registrant's responses were inaccurate or deficient and establishing a time within which the registrant may file an amendment to the registration curing such inaccuracies or deficiencies. A notice of inquiry shall be served by certified mail, return receipt requested.

(B) The Commissioner may not issue a notice of inquiry later than five years after the effective date of this section.

(C) If a registrant does not file a timely amendment to the registration curing the inaccuracies or deficiencies described in the notice or does not file an answer disputing the notice by the date the amendment was to have been filed, such registrant may not maintain the subject diversion except as authorized by permit. An answer to a notice of inquiry shall be filed in writing wth the Commissioner and shall state with particularity the grounds for disputing the notice.

(D) Upon the filing of an answer disputing a notice of inquiry the Commissioner shall schedule a hearing and, unless the dispute is resolved by the agreement of all parties, shall hold a hearing in accordance with the provisions of chapter 54 of the General Statutes and section 22a-3a-l of the Regulations of Connecticut State Agencies. The registrant shall have the burden of persuasion with respect to any facts upon which he relies in support of his answer to the notice of inquiry.

(E) In making a final decision the Commissioner shall consider all relevant factors, including, as applicable, the registrant's water use, withdrawal history, system location and characteristics, and installed capacity. Unless otherwise provided by law, any person or municipality which filed an answer to a notice of inquiry shall maintain the subject diversion only in accordance with the terms of the final decision, whether issued by stipulation or after hearing.

(3) If a registrant to whom a notice of inquiry is issued pursuant to subdivision (2) of this subsection files with the Commissioner a timely amendment to his registration, which amendment purports to cure the asserted inaccuracies or deficiencies but in fact does not cure such inaccuracies or deficiencies, the Commissioner shall schedule and hold a hearing in accordance with the provisions of subdivision (2) of this subsection.

(4) (A) Any person or municipality which registered a diversion pursuant to section 22a-368 of the General Statutes may file with the Commissioner in writing a petition to correct any information such person or municipality provided in the registration form filed with the Commissioner. A petition to correct shall state with particularity the grounds therefor.

(B) The Commissioner may deny a petition to correct without holding a hearing. If the Commissioner denies a petition to correct without a hearing, the person or municipality petitioning for the correction may file a request for a hearing in accordance with the provisions of chapter 54 of the General Statutes and section 22a-3a-l of the Regulations of Connecticut State Agencies. If the Commissioner tentatively determines that a petition to correct should be granted and any person or municipality has demonstrated in a properly filed petition for intervention that he or it is entitled to intervene with respect to such petition to correct, the Commissioner shall schedule and hold a hearing in accordance with the provisions of subdivision (2) of this subsection.

(Effective March 21, 1990)

Sec. 22a-377 (c)-2. Permits under the Connecticut water diversion policy act

(a)(l) An application for a permit to divert water shall be made on a form available from the Commissioner and shall provide the information described in section 22a-369(1) to 22a-369(10), inclusive, of the general statutes. If the proposed diversion involves the withdrawal of ground water and can reasonably be expected to change the boundaries of an area of contribution or recharge areas of a well field as delineated on Level A Map approved under section 22a-354d of

the general statutes, the applicant shall submit a revised Level A Map prepared in accordance with section 22a-354b-1 of the Regulations of Connecticut State Agencies.

(2) For purposes of section 22a-369(7) of the general statutes, the effect of the proposed diversion shall be evaluated using stream flows, where applicable, with the following recurrence intervals: (A) for low flows: seven-day ten-year, seven-day two-year, thirty-day two-year, and average annual flows; (B) for high flows: peak flows corresponding to the probable maximum flood, and 500-year, 100-year, 50-year, 10-year, and 2-year flood events and average annual flows; and (C) a critical dry period with a 1 in 100 year chance of occurrence. For purposes of this subsection and section 22a-369 of the general statutes, "drought" and “critical dry period" shall include low flows or water shortages whether resulting from meteorological conditions or human use.

(3) If at any time during review of an application the Commissioner, pursuant to section 22a-371 (a) of the general statutes, requests additional information from the applicant, the applicant shall provide such information within four months of the request. Unless the information is provided within such time the Commissioner shall return the application to the applicant in accordance with section 22a-371(b) of the general statutes.

(b) Long-range water conservation plans submitted under section 22a-369 (9) of the General Statutes shall contain the information described in such section and shall:

(1) fully describe the policies and goals of the applicant's long-range water conservation efforts, the actions taken or to be taken in furtherance of such policies and goals, an implementation schedule for such actions, and a detailed program for measuring, in terms of quantities of water saved or to be saved, the effectiveness of the applicant's water conservation efforts;

(2) determine, pursuant to section 22a-369 (9) (A) of the General Statutes, the volume of lost or unaccounted for water, based on the average of available data from the five years immediately preceding submission of the application or, if such data are unavailable, on the most current of existing data; and

(3) fully describe the applicant's leak detection and repair program and, in the case of an application to divert water for public water supply, any leak detection services offered to consumers.

(c) (1) If the Commissioner, in consultation with the Department of Health Services and Department of Public Utility Control, determines that a permit applicant's plan under section 22a-369 (9) of the General Statutes to correct sources of lost or unaccounted for water is inadequate considering all relevant factors, including the nature of the applicant's water supply and distribution system, the Commissioner shall request, pursuant to section 22a-371 of the General Statutes, that the applicant provide a plan to reduce lost or unaccounted for water to an acceptable level. Such plan shall include, in addition to any other information requested, a schedule to implement remedial actions and a detailed program for measuring the effectiveness of such actions.

(2) If after the Commissioner notifies the applicant pursuant to subsection (c) of section 22a-371 of the General Statutes that the application is complete and it appears that the applicant's plan under section 22a-369 (9) of the General Statutes to correct sources of lost or unaccounted for water is inadequate, the Commissioner may condition any permit granted to require that the applicant provide a plan, as described in subdivision (1) of this subsection, to reduce lost or unaccounted for water to an acceptable level, to implement such plan in accordance with an

approved schedule, and to monitor the effectiveness of such plan as implemented. Nothing in this subdivision shall preclude the Commissioner from denying a permit application.

(d) Environmental impact reports submitted under section 22a.369 (10) of the General Statutes shall contain the information described in such section. The terms "donor basin" as used in such section and "drainage basin" as used in this subsection shall include that area which will or is reasonably likely to be affected by the proposed diversion. An environmental impact report shall not be deemed to satisfy section 22a-369 (10) of the General Statutes unless it:

(1) identifies existing water uses, existing and potential (for at least 25 years) conflicts in water use, and existing and projected *(*for at least 25 years) water supply needs and demands in the affected drainage basin(s);

(2) evaluates the social and economic effects of the proposed diversion on the affected drainage basin(s), including the capacity of remaining water resources to support existing and projected growth and development for at least 25 years;

(3) evaluates the potential effects in the affected drainage basin(s) for at least 25 years of the proposed diversion on water supply needs and demands, wastewater treatment, waste assimilation, power generation, flood management, navigation, water quality, recreation, wetland habitat, agriculture, fish and wildlife, and maintenance of adequate flows for the foregoing needs and resources;

(4) evaluates alternatives to the proposed diversion, including water conservation measures, and the financial costs and environmental impacts of each such alternative;

(5) identifies any water resource conflicts that will or are reasonably likely to result from the proposed diversion for at least 25 years, and evaluates means for resolving such conflicts and the financial costs and environmental impacts of each such means; and

(6) evaluates the effects of the proposed diversion together with the effects of the other diversions which the applicant reasonably expects to commence or maintain in the future.

(e) The Commissioner may condition a permit to require the construction of low flow and higher flow channels if appropriate for protecting aquatic resources.

(f) In making a decision on a permit application, the Commissioner shall consider the factors described in this section, and in subsections (b) and (c) of section 22a-373 of the General Statutes. Furthermore, no permit shall be issued unless the applicant demonstrates that:

(1) the proposed diversion is consistent with the standards, criteria, policies, and water quality classifications for ground and surface water adopted and amended under section 22a-426 of the General Statutes;

(2) the proposed diversion is consistent with the policies and requirements of chapter 440 of the General Statutes and regulations thereunder;

(3) the proposed diversion is designed and will be carried out so as to minimize and, if possible, eliminate flooding and flood hazards, and to be consistent with the policies and requirements of chapter 476a of the General Statutes and regulations thereunder;

(4) if it is within or may significantly affect the coastal area as defined by subsection (a) of section 22a-94 of the General Statutes, the proposed diversion is consistent with the goals and policies of chapter 444 of the General Statutes; and

(5) the proposed diversion is consistent with the relevant policies of the State Plan of Conservation and Development adopted under sections 16a-24 to 16a-32, inclusive, of the General Statutes (copies of such Plan are available at the Connecticut Office of Policy and Management).

(g) If the applicant for a permit will not be the user of all or a portion of the waters proposed to be diverted, the applicant and users shall jointly make application for the permit. For purposes of this subsection, a consumer, as that term is defined by section 25-32a of the General Statutes, shall not be deemed a user.

(h) (1) The Commissioner shall establish the duration of each diversion permit in light of all relevant factors, including but not limited to:

(A) the extent to which the waters affected by such permit have already been allocated;

(B) the uses to which such previously allocated waters are put, including non-consumptive uses;

(C) the need for water system rehabilitation or for an effective water conservation program; and

(D) the factors set out in this section and sections 22a-369 and 22a-373 of the General Statutes.

In no event shall a permit authorize any diversion for a period greater than twenty five years. Nothing in this subsection shall preclude the Commissioner from instituting proceedings to suspend, modify, or revoke any permit.

(2) An application for renewal or modification of a diversion permit shall be made and disposed of in accordance with the provisions of this section.

(i) Diversion permits shall contain the following standard conditions in addition to any other conditions which the Commissioner deems appropriate for accomplishing the purposes of sections 22a-365 to 22a-378, inclusive, of the General Statutes and this section:

(1) The permittee shall notify the Commissioner in writing two weeks prior to: (A) commencing construction or modification of structures or facilities authorized herein; and (B) initiating the diversion authorized herein.

(2) The permittee may not make any alterations, except de minimis alterations, to any structure, facility, or activity authorized by this permit unless the permittee applies for and receives a modification of this permit in accordance with the provisions of section 22a-377 (c)-2 of the Regulations of Connecticut State Agencies. Except as authorized by subdivision (5) of section 22a-377 (b)-1 (a) of the Regulations of Connecticut State Agencies, the permittee may not make any de minimis alterations to any structure, facility, or activity authorized by this permit without written permission from the Commissioner. A de minimis alteration means an alteration which does not significantly increase the quantity of water diverted or significantly change the capacity to divert water.

(3) All structures, facilities, or activities constructed, maintained, or conducted pursuant hereto shall be consistent with the terms and conditions of this permit, and any structure, facility or activity not specifically authorized by this permit, or exempted pursuant to section 22a-377 of the General Statutes or section 22a-377 (b)-1 of the Regulations of Connecticut State Agencies, shall constitute a violation hereof which may result in modification, revocation or suspension of this permit or in the institution of other legal proceedings to enforce its terms and conditions.

(4) Unless the permittee maintains in optimal condition any structures or facilities authorized by this permit, the permittee shall remove such structures and facilities and restore the affected waters to their condition prior to construction of such structures or facilities.

(5) In issuing this permit, the Commissioner has relied on information provided by the permittee. If such information was false, incomplete, or misleading, this permit may be modified,

suspended or revoked and the permittee may be subject to any other remedies or penalties provided by law.

(6) If construction of any structures or facilities authorized herein is not completed within three years of issuance of this permit or within such other time as may be provided by this permit, or if any activity authorized herein is not commenced within three years of issuance of this permit or within such other time as may be provided by this permit, this permit shall expire three years after issuance or at the end of such other time.

(7) This permit is subject to and does not derogate any rights or powers of the State of Connecticut, conveys no property rights or exclusive privileges, and is subject to all public and private rights and to all applicable federal, state, and local law. In constructing or maintaining any structure or facility or conducting any activity authorized herein, the permittee may not cause pollution, impairment, or destruction of the air, water, or other natural resources of this State. The issuance of this permit shall not create any presumption that this permit should be renewed.

(8) In constructing or maintaining any structure or facility or conducting any activity authorized herein, or in removing any such structure or facility under paragraph 4 hereof, the permittee shall employ best management practices to control storm water discharges, to prevent erosion and sedimentation, and to otherwise prevent pollution of wetlands and other waters of the State. The permittee shall immediately inform the Commissioner of any adverse impact or hazard to the environment which occurs or is likely to. occur as the direct or indirect result of the construction, maintenance, or conduct of structures, facilities, or activities authorized herein.

(9) This permit is not transferable without the prior written consent of the Commissioner.

(10) This permit shall expire on (date).

(Effective June 21, 1991)