

Decree No. 41.258 of 31 October 1996

Approves the Regulation for Articles 9 to 13 of Law No. 7.663 of 30 December 1991

Mario Covas, Governor of the State of Sao Paulo, by virtue of his legal authority and pursuant to article 47, sections II and III of the State Constitution, hereby decrees the following:

Article 1. The Regulation for Awarding Water Resource Usage Rights as mentioned in articles 9 to 13 of Law No. 7.663 of 30 December 1991 is hereby approved.

Article 2. This Decree shall enter into force on the date of its publication.

Annex to Decree No. 41.258 of 31 October 1996

Regulation for Awarding Water Resource Usage Rights

Section I

The Award and its Conditions

Article 1. This decree hereby constitutes the award by the Water and Electrical Energy Department (DAEE) of the following:

I -- the implementation of any project that may require the use of surface or subterranean water resources;

II -- the execution of works or services that may change the conditions, quantity and quality of those same resources;

III -- the execution of works involving the extraction of underground water;

IV -- the derivation of water from its course or deposit, surface or subterranean;

V -- the discharge of effluent into bodies of water.

Article 2. Requests for such award shall be made in writing, and shall include the information set forth in a norm issued by the Water and Electrical Energy Department (DAEE), and the award shall be approved pursuant to an administrative decree by the Superintendent of the Autarchy, with the following contents:

I -- authorization, in the cases of sections I and II of the previous article;

II -- license for execution, in the case of section III of the preceding article;

III -- authorization or concession, when the basis for the award is the public utility, in the cases of sections IV and V of the preceding article.

Section II

Validity of the Awards

Sub-Section I

Rights, Obligations and Restrictions

Article 3. Concessions, authorizations and licenses shall not be transferable under any circumstances, shall grant provisional title, and shall not imply the delegation of Public Authority to their holders.

Article 4. The authorization and license provided for in sections I, II and III of article 1 do not attribute to their holder the right to use water resources.

Article 5. The award decrees do not exempt users from responsibility for complying with the requirements of the Sao Paulo State Basic Sanitation, Technology and Environmental Protection Agency (CETESB), within the scope of its authority, as well as those which may be issued by other organizations and entities with jurisdiction over such matters.

Article 6. The awardee shall be responsible for the following:

I -- operating the water works in accordance with the conditions specified by the Water and Electrical Energy Department (DAEE);

II -- maintaining the works and services under perfect condition of stability and safety;

III -- assuming liability, on its own behalf, for harm caused to the environment and to third parties as a consequence of the maintenance, operation or functioning of such works or services, as well as such harm as may result from improper application of the award;

IV -- maintaining the operation of the hydraulic structures in such a way as to guarantee a continual minimum flow of water as established in the award decree, in order to be able to serve users downstream of the work or service;

V -- maintaining the physical and chemical characteristics of the underground water, refraining from making changes that may be to the detriment of the natural conditions of the aquifers or the management of these waters;

VI -- installing and operating water measurement stations and equipment, sending the Water and Electrical Energy Department (DAEE) the observed and measured data, in the form provided for in the award decree and in the procedural norms established by the DAEE, pursuant to an administrative decree from the Autarchy Superintendent;

VII -- under penalty of forfeiting the award, conforming to the deadlines established by the Water and Electrical Energy Department (DAEE) for the initiation and conclusion of the intended works;

VIII -- restoring everything to its original condition, in accordance with the criteria and periods to be established by the Water and Electrical Energy Department (DAEE), and assuming all expenses incurred.

Sub-Section II

Schedules

Article 7. The award decrees shall establish the respective schedule, in accordance with the deadlines established in the internal regulation of the Water and Electrical Energy Department (DAEE).

Sole paragraph. The Water and Electrical Energy Department (DAEE) may, at its sole discretion and on an exceptional basis, as a function of emergency situations or by reason of socio-economic factors that so justify, establish an award for a tenor different than those established in the internal regulations.

Article 8. When regional water resources planning studies or the protection of public assets make it necessary to revise the award, the Department of Water and Electrical Energy (DAEE) may:

I -- extend the period established in the award decree;

II -- revoke the award decree, at any time.

Sole paragraph. Revocation shall be mandatory when the legal basis for the award no longer exists.

Article 9. The award may be renewed, and the interested party may submit a request to that end, up to 6 (six) months prior to the respective expiration date.

Article 10. The award shall expire as a full matter of law in the event that the awardee fails to make use of the water for 3 (three) consecutive years.

Section III

General Provisions Regarding the Awards

Article 11. The Superintendent of the Water and Electrical Energy Department (DAEE) shall define the requirements for the award by administrative decree, for the cases provided for in article 1 of this Regulation.

Article 12. The studies, projects and works needed for the use of water resources must be executed under the responsibility of a duly qualified professional on the Regional Engineering, Architecture and Agronomy Council (CREA), with proof of his Certification of Technical Responsibility (ART) to be required, and any change must be communicated in advance to the Water and Electrical Energy Department (DAEE).

Article 13. Increased demand or a shortage of water for serving users shall be grounds for a temporary suspension of the award, or its adjustment.

Sole paragraph. In the event of an adjustment, the Water and Electrical Energy Department (DAEE) must set the new conditions for the award, noting the criteria and norms established in the Basin Plans and in the Resolutions of the State Water Resources Council (CRH).

Article 14. In the event that, by reason of public works, it becomes necessary to adapt the hydraulic works or the intake and discharge systems to new conditions, all costs incurred shall be assumed completely and in their entirety by the awardee, who shall be granted a period to take the relevant measures, subject to an official notification from the Water and Electrical Energy Department (DAEE).

Section IV

Violations and Penalties

Sub-Section I

Monitoring

Article 15. Fulfillment of the legal and regulatory provisions concerning the award and use of water resources shall be exercised by authorized agents of the Water and Electrical Energy Department (DAEE), who shall be responsible for the following:

- I -- performing general inspections, surveys and evaluations;
- II -- verifying the occurrence of violations and applying the respective penalties;
- III -- immediately drafting the Fine Notification, providing a copy thereof to the interested party;
- IV -- summoning the violating party in writing to provide clarifications at a place and date to be set in advance.

Article 16. Notwithstanding the applicable penalty, the violating party shall be required to submit to the Water and Electrical Energy Department (DAEE) the documentation corresponding to the intended purposes, as requested in a norm issued by the Autarchy.

Sole paragraph. The violating party may be represented by a duly qualified attorney, with a view to providing the necessary technical and legal clarifications.

Article 17. During the course of the monitoring activities, qualified agents shall be allowed access, at any day or time, and may remain for such time as is necessary, in public and private establishments.

Sole paragraph. When impeded, authorized agents may request police protection to exercise their responsibilities, in any part of the State's territory.

Article 18. Violations of the provisions of Law No. 7.663 of 30 December 1991, this Regulation and such other norms as derive therefrom shall, at the discretion of the enforcement authority, be classified as minor, serious or extremely serious, depending upon the following:

- I -- attenuating and aggravating circumstances;

II -- the violating party's history.

Article 19. Impeding or preventing inspections shall be considered as being an aggravating circumstance.

Sub-Section II

Fines

Article 20. Single or daily fines shall be established within the following ranges, at the discretion of the enforcing authority:

I -- from 100 (one hundred) to 200 (two hundred) times the nominal value of the UFESP, for minor violations;

II -- from 200 (two hundred) to 500 (five hundred) times the same amount, for serious violations;

III -- from 500 (five hundred) to 1,000 (one thousand) times the same amount, for extremely serious violations.

Sole paragraph. In the event of a repeat violation, the fine to be applied shall be double the amount previously applied.

Article 21. The violation notice shall be drafted in a minimum of 3 (three copies), with the first to be addressed to the alleged violating party, and the others to be used during the course the administrative process, and which must contain the following:

I -- the name of the alleged violating party, whether an individual or a legal entity, with the respective address;

II -- the event constituting the violation, indicating the place, time and date of the event;

III -- the legal or regulatory provision on which the charges are based;

IV -- the penalty applied and, where applicable, the deadline for correcting the irregularity;

V -- the signature of the authority with jurisdiction.

Article 22. The fines provided for in this Regulation must be paid by the violating party within 20 (twenty) calendar days after receipt of the payment notification, under penalty of their being recorded as a tax debt.

Sole paragraph. The payment mentioned in this article must be made to the credit of the Water and Electrical Energy Department (DAEE), at any branch of Banco do Estado de Sao Paulo S/A (BANESPA). Failing this, the payment shall be made at any branch of Nossa Caixa-Nosso Banco S/A, or to an authorized bank.

Sub-Section III

Appeals

Article 23. Imposition of the fine shall be subject to appeal to the Superintendent of the Water and Electrical Energy Department (DAEE).

Paragraph 1. Appeals must be filed in writing and shall be processed without suspensive effect.

Paragraph 2. The deadline for filing an appeal shall be 20 (twenty) days counting from the imposition of the penalty.

Paragraph 3. Under penalty of not being heard, the appeal must be filed with a copy of the Fine Payment Form; for the case of a daily fine, payment of the amount owed up to the date prior to that of the filing of the appeal must be proven.

Paragraph 4. The appeal may be sent by mail, with the date of its receipt at the Water and Electrical Energy Department (DAEE) serving as the date of filing.

Article 24. Refunds of fines resulting from the application of this Regulation shall always be made in the amount paid, with no increase.

Sole paragraph. Refunds mentioned in this article must be requested from the Financial Director of the Water and Electrical Energy Department (DAEE), by means of a written request, which must:

1 -- contain the name of the party identified as the violating party, the party's address and the respective administrative processing number;

2 -- be filed with a copy of the Fine Payment Form and proof of having filed an appeal.

Article 25. In setting the deadlines established in this Regulation, the start date shall be excluded and the expiration date included; in the event that the latter falls on a non-business day, the deadline shall be extended to the first subsequent business day.

Section V

Final Provisions

Article 26. Administrative decrees for the use of surface and underground water resources that have already been approved shall remain in force, unless any overriding event makes them unsustainable.

Article 27. Within a period of 180 (one hundred eighty) days after publication of the decree approving the Regulation, non-registered uses of water resources must be regularized, in conformance with the procedures established in a specific regulatory decree by the Water and Electrical Energy Department (DAEE).