

Environmental Conservation

ARTICLE 15 WATER RESOURCES

TITLE 15 WATER SUPPLY

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§ 15-1501. Water withdrawals; permit.

1. Except as otherwise provided in this title, no person who is engaged in, or proposing to engage in, the operation of a water withdrawal system with a capacity of greater than or equal to the threshold volume, shall have any power to do the following until such person has first obtained a permit or permit modification from the department pursuant to this title:

a. To make a water withdrawal from an existing or new source or an increased water withdrawal from an existing permitted source;

b. To take or condemn lands for the protection of any existing sources of public water supply; or for the development or protection of any new or additional sources of public water supply;

c. To commence or undertake the construction of any works or projects in connection with the proposed withdrawal; or

d. To extend its supply or distribution mains into any new water service area or extension that has not been approved by the department or a predecessor commission; or

e. To make a significant change in the principal use of the water

withdrawal system from that specified in the permit, or permit application.

2. All valid public water supply permits and approvals issued by the department or its predecessors shall remain in full force and effect for the purpose of satisfying the permit requirements of subdivision one of this section for existing water withdrawals from a source and in an amount authorized by such permit or approval. Until the department promulgates regulations pursuant to subdivision four of this section, nothing contained in subdivision one of this section concerning permits from the department shall be applicable to water withdrawals other than for a public water supply system.

3. Nothing contained in this title concerning permits from the department for water withdrawals shall be deemed to nullify the requirements of the State Sanitary Code applicable to drinking water supplies, including public water systems and bottled water facilities, in effect on February 15, 2012, as may be amended from time to time. No supplier of water shall make, install or construct, or allow to be made, installed or constructed, a public water supply system or any addition or deletion to or modification of a public water supply system until the plans and specifications therefor have been submitted to and approved by the commissioner of health or his or her designee as may be required by the state sanitary code.

4. The department shall promulgate regulations to implement a permitting program for water withdrawals equal to or greater than the threshold volume consistent with the requirements of this section which shall establish: (a) minimum standards for operation and new construction of water withdrawal systems; (b) monitoring, reporting and recordkeeping requirements; and (c) protections for present and future needs for sources of potable water supply. Such regulations may establish quantitative standards that maintain stream flows protective of aquatic life, consistent with the policy objectives of this article and any other conditions, limitations and restrictions that the department, in consultation with the department of health, determines are necessary to protect the environment and the public health, safety and welfare and to ensure the proper management of the waters of the state. The regulations may establish exemptions from permitting requirements in addition to those exemptions specified in this section.

5. The department is authorized to consolidate existing water supply permits for a public water supply system into one permit, and may require submission of an application for such permit where the department determines that such actions are necessary to protect the environment and the public health, safety and welfare and to ensure the proper management of the waters of the state.

6. Each person who is required under this section to obtain a permit shall annually, on a form prescribed by the department, report all information requested by the department, including but not limited to water usage and water conservation measures undertaken during the reporting period. Information on water usage and water conservation measures shall be posted on the department's website.

7. The following water withdrawals are exempt from the permit requirements established by this section: (a) withdrawals used for fire suppression or public emergency purposes; (b) withdrawals that have received an approval from a compact basin commission which administers a program governing water withdrawals; (c) closed loop, standing column, or similar non-extractive geothermal heat pumps; (d) withdrawals for which a permit has been issued pursuant to the requirements of section 15-1527 of this title; (e) existing withdrawals for agricultural

purposes provided the withdrawal has been registered with the department pursuant to the requirements of title sixteen of this article or reported to the department pursuant to the requirements of title thirty-three of this article on or before February fifteenth, two thousand twelve; and (f) withdrawals at remediation sites conducted pursuant to a federal or state court order or federal or state government agency agreement or order.

8. The department shall establish a water conservation and efficiency program with the goals of (a) ensuring improvement of the waters and water dependent natural resources, (b) protecting and restoring the hydrologic and ecosystem integrity of watersheds throughout the state, (c) retaining the quantity of surface water and groundwater in the state, (d) ensuring sustainable use of state waters, and (e) promoting the efficiency of use and reducing losses and waste of water.

9. The department shall issue an initial permit, subject to appropriate terms and conditions as required under this article, to any person not exempt from the permitting requirements of this section, for the maximum water withdrawal capacity reported to the department pursuant to the requirements of title sixteen or title thirty-three of this article on or before February fifteenth, two thousand twelve.

§ 15-1502. Definitions.

When used in this title, unless otherwise expressly stated or unless the context or subject matter otherwise requires:

1. "Coastal communities" shall mean those areas on Long Island where the Magothy aquifer is either absent or contaminated with chlorides.

2. "Lloyd Sands" shall mean that geological strata generally known to be the deepest and oldest water-bearing layer of the Long Island aquifer system and shall not include bedrock.

3. "Water well" shall mean any groundwater excavation for the purpose of obtaining water.

4. "Water well drilling" or "water well drilling activities" shall mean the construction and reconstruction of water wells, the establishment or repair of a connection through the well casing and the repair of water wells including repairs which require the opening of the well casing.

5. "Water well driller" shall mean a person who, for compensation or as part of property development and sale, engages in water well drilling activities; provided, however, that, for the purposes of this subdivision, the term "person" shall not include a public corporation, political subdivision, government agency, department, or bureau of the state or a municipality.

6. "Enforcement officer" shall mean any person authorized to enforce the provisions of this title or the building code in the municipality in which the water well drilling activities are taking place.

7. "Agricultural purpose" shall mean the practice of farming for crops, plants, vines and trees, and the keeping, grazing, or feeding of livestock for sale of livestock or livestock products, and the on-farm processing of crops, livestock and livestock products.

8. "Compact basin commission" shall mean an interstate commission having jurisdiction with respect to the regulation of water resources within a basin in the state, created by interstate compact or federal-interstate compact, including but not limited to, the Susquehanna river basin commission and the Delaware river basin commission.

9. "Environmentally sound and economically feasible water conservation measures" shall mean those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a withdrawal, consumptive use or diversion that: (i) are environmentally sound; (ii) reflect best practices applicable to the water use sector; (iii) are technically feasible and available; (iv) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs; and (v) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors.

10. "Interbasin diversion" shall mean the transfer of water or wastewater from one New York major drainage basin to another drainage basin.

11. "Person" shall mean any individual, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

12. "Potable water" shall mean water intended for human consumption that meets the requirements for a public water system as set forth in the state sanitary code.

13. "Public water supply system" shall mean a permanently installed water withdrawal system including its source, collection, pumping, treatment, transmission, storage and distribution facilities used in connection with such system, which provides piped potable water to the public for potable purposes, if such system has at least five service connections used by year-round residents.

14. "Threshold volume" shall mean the withdrawal of water of a volume of one hundred thousand gallons or more per day, determined by the limiting maximum capacity of the water withdrawal, treatment, or conveyance system; provided that for agricultural purposes the threshold volume shall mean a withdrawal of water of a volume in excess of an average of one hundred thousand gallons per day in any consecutive thirty-day period.

15. "Water withdrawal system" shall mean any equipment or infrastructure operated or maintained for the provision or withdrawal of water including, but not limited to, collection, pumping, treatment, transportation, transmission, storage, and distribution.

16. "Withdrawal" or "withdrawal of water" shall mean the removal or taking of water for any purpose from the waters of the state.

§ 15-1503. Permits.

1. A permit application or request for a permit renewal or modification shall be made on forms prescribed by the department and shall contain all information requested by the department relative to the withdrawal, use and discharge of water, including:

- a. with respect to a public water supply system, proof of adequate authorization for the proposed project;
- b. such exhibits as may be necessary clearly to indicate the scope of the proposed project;
- c. a map of any lands to be acquired;
- d. project plans;
- e. a statement of the need for and the reasons why the proposed source or sources of supply were selected among the alternative sources which

are or may become available and the adequacy of the supply selected; and

f. a description of the applicant's proposed near term and long range water conservation program that incorporates environmentally sound and economically feasible water conservation measures, including implementation and enforcement procedures, effectiveness to date and any planned modifications for the future. For a public water supply system, the water conservation program may include but need not be limited to:

i. the identification of and cost effectiveness of distribution system rehabilitation to correct sources of lost water;

ii. measures which encourage proper maintenance and water conservation;

iii. a public information program to promote water conservation, including industrial and commercial recycling and reuse;

iv. household conservation measures; and

v. contingency measures for limiting water use during seasonal or drought shortages.

2. In making its decision to grant or deny a permit or to grant a permit with conditions, the department shall determine whether:

a. the proposed water withdrawal takes proper consideration of other sources of supply that are or may become available;

b. the quantity of supply will be adequate for the proposed use;

c. the project is just and equitable to all affected municipalities and their inhabitants with regard to their present and future needs for sources of potable water supply;

d. the need for all or part of the proposed water withdrawal cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

e. the proposed water withdrawal is limited to quantities that are considered reasonable for the purposes for which the water use is proposed;

f. the proposed water withdrawal will be implemented in a manner to ensure it will result in no significant individual or cumulative adverse impacts on the quantity or quality of the water source and water dependent natural resources;

g. the proposed water withdrawal will be implemented in a manner that incorporates environmentally sound and economically feasible water conservation measures; and

h. the proposed water withdrawal will be implemented in a manner that is consistent with applicable municipal, state and federal laws as well as regional interstate and international agreements.

3. In order to assist the development of local water conservation programs for public water supply systems, the department shall continue to publish and distribute a water conservation manual that includes beneficial near term and long range water conservation procedures which reflect local water resource needs and conditions. Such manual shall include examples of:

a. methods of identifying and determining the cost effectiveness of distribution system rehabilitation to correct sources of lost water;

b. measures which encourage proper maintenance and water conservation;

c. a public information program to promote water conservation, including industrial and commercial recycling and reuse;

d. household conservation measures; and

e. contingency measures for limiting water use during seasonal or drought shortages.

4. The department may grant or deny a permit or grant a permit with such conditions as may be necessary to provide satisfactory compliance by the applicant with the matters subject to department determination

pursuant to subdivision 2 of this section, or to bring into cooperation all persons that may be affected by the project, but it shall make a reasonable effort to meet the needs of the applicant, with due regard to the actual or prospective needs, interests and rights of others that may be affected by the project.

5. The rules and regulations adopted by the department to implement this title and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this title.

6. A new permit for a water withdrawal system and any subsequent renewal thereof shall be valid for a period of time not to exceed ten years from the date of issuance. A new permit or permit modification must be obtained from the department prior to any transfer or change of ownership of a water withdrawal system.

§ 15-1504. Water withdrawals for agricultural purposes.

1. Applicability.

a. This section applies to withdrawals of water for agricultural purposes that have been registered with the department pursuant to the requirements of title sixteen of this article or reported to the department pursuant to the requirements of title thirty-three of this article on or before February fifteenth, two thousand twelve.

b. All persons making a withdrawal of water for agricultural purposes shall annually register or report the withdrawal to the department under the provisions of this section by March thirty-first of each year.

2. When used in this section:

a. "Great Lakes basin" shall mean the watershed of the Great Lakes and the St. Lawrence River, upstream from Trois-Rivieres, Quebec, consisting in New York state of the Lake Erie-Niagara River, Lake Ontario minor tributaries, Genesee River, Seneca-Oneida-Oswego River, Black River, St. Lawrence River and Lake Champlain drainage basins.

b. "Great Lakes water" shall mean the water contained in the watershed, including the lakes and rivers, of the Great Lakes basin.

3. Registration of water withdrawals in the Great Lakes basin.

a. All persons withdrawing Great Lakes water for agricultural purposes in excess of an average of one hundred thousand gallons per day in any consecutive thirty-day period shall annually register such withdrawal with the department.

b. Each registration shall be on a form and contain such information as may be prescribed by the department and consist of a statement of and supporting documentation which shall include but not be limited to the following:

(1) The place and source of the proposed or existing withdrawal;

(2) The location of any discharge or return flow;

(3) The location and nature of the proposed or existing water use;

(4) The actual or estimated average annual and monthly volumes and rates of withdrawal; and

(5) The actual or estimated average annual and monthly volumes and rates of water loss from the withdrawal.

c. In calculating the total amount of an existing or proposed withdrawal for the purpose of determining the applicability of this subdivision, a person shall combine all separate withdrawals which the person makes or proposes to make, whether or not such withdrawals are for a single agricultural purpose or are for related but separate agricultural purposes.

d. Registrations shall be valid for a period of one year.

e. A registration may be transferred by submitting a notice of transfer to the department prior to the date of a transfer or change of ownership of a water withdrawal system associated with a registered withdrawal.

f. The department may cooperate with state soil and water conservation districts for the preparation and distribution of informational materials to persons who withdraw water for agricultural purposes, regarding the purposes, benefits and requirements of this section, and which may also provide information on complying with the registration program and on any general or applicable methods for calculating or estimating water withdrawals or water loss.

4. Water withdrawal reporting.

a. Any person who withdraws water for agricultural purposes in excess of an average of one hundred thousand gallons per day in any consecutive thirty-day period shall annually report to the department. The report shall be made on a form and contain such information as may be prescribed by the department and shall be based on the water withdrawals for the previous calendar year, and shall include but not be limited to:

(1) the water source, the location of the water source and the source capacity if known;

(2) the amount of water withdrawn for the reporting period, including the average or peak withdrawals for intervals specified by the department;

(3) a description of the use of the water withdrawn; and

(4) estimated amounts of water to be returned, if any, the locations of such returns and the method of such returns.

b. The following water withdrawals are exempt from the reporting requirements of this subdivision:

(1) a withdrawal registered with the department under subdivision three of this section;

(2) a withdrawal permitted pursuant to section 15-1501 of this title;

(3) a withdrawal reported to the department under any program that requires the reporting of substantially similar data, including withdrawals regulated by the Susquehanna River Basin Commission and the Delaware River Basin Commission;

(4) a withdrawal permitted under section 15-1527 of this title;

(5) closed loop, standing column, or similar non-extractive geothermal heat pumps; and

(6) reclaimed wastewater withdrawn for reuse.

5. Withdrawals of water for agricultural purposes registered or reported to the department under the requirements of this section shall be deemed to be in compliance with the requirements of title sixteen and title thirty-three of this article, as applicable.

§ 15-1505. Interbasin diversions and water supply to other states.

1. No person shall transport or carry through pipes, conduits, ditches or canals the waters of any fresh water lake, pond, brook, river, stream, or creek in this state or any well, subsurface or percolating waters of this state into any other state for use therein without first obtaining a permit from the department pursuant to this title.

2. No person shall make a new or increased interbasin diversion which results in a diversion in excess of one million gallons per day, as determined by the limiting maximum capacity of the treatment or conveyance system, or construct facilities or equipment therefor, until

such person has registered the diversion with the department. No later than February fifteenth, two thousand thirteen, all existing interbasin diversions in excess of one million gallons per day, as determined by the limiting maximum capacity of the treatment or conveyance system, shall be registered with the department.

3. Registration is not required for an interbasin diversion which is part of a water withdrawal system for which the department has issued a permit under this title, or which is operating pursuant to a duly authorized permit issued by the department or its predecessors.

4. Registration shall be renewed every year or whenever ownership of the facilities which create an interbasin diversion is transferred, whichever occurs first. Registration shall be made on forms prescribed by the department and shall contain all information requested by the department relative to the water withdrawal, use and discharge. Each person who is required under this section to register shall annually, on a form prescribed by the department, report all information requested by the department, including the amount of water diverted. Information on interbasin diversions shall be posted on the department's website.

5. No person shall make a new or increased interbasin diversion which results in a significant adverse impact on the water quantity of the source New York major drainage basin.

6. Diversions from the Great Lakes-St. Lawrence river basin are prohibited by the Great Lakes-St. Lawrence River Basin Water Resources Compact, as enacted in title ten of article twenty-one of this chapter. Limited exceptions for public water supply systems will only be considered when in compliance with that Compact.

§ 15-1506. Transportation of water by vessel.

1. Except as provided in subdivision three of this section, no person or public corporation shall transport or carry by vessel, more than ten thousand gallons in any one day of the waters of any freshwater lake, pond, brook, river, stream, or creek in this state without first obtaining a permit from the department.

2. If the department finds that the transport of such water is reasonable, and is not contrary to the conservation of the natural resources of the state or to other uses of the water, including health, safety and welfare of the people of the state, the permit shall be granted subject to reasonable conditions on the withdrawal and transport. Such permit shall be subject to annual renewal.

3. No permit shall be necessary for the taking of a volume of ballast water necessary for normal vessel activity, but this exemption shall not apply to the exchange of ballast water.

4. The department shall not issue permits for the transport of water by vessel which will conflict or be inconsistent with the provisions of any interstate compact, commission or charter relating to the allocation of water resources to which New York is a signatory.

§ 15-1507. Municipal water supply reservoirs on forest preserve lands.

Any public corporation, now or hereafter empowered by law to construct and operate a publicly owned system for the supply of water for drinking, domestic and public purposes to the inhabitants of any municipality, may make application for the construction and maintenance by the state of a water supply reservoir on lands owned by the state and constituting a part of the forest preserve thereof in the manner

hereinafter set forth.

§ 15-1509. Approval of plans for forest preserve reservoir projects; petition; proceedings.

1. Any publicly owned water supply project involving the construction of a reservoir on forest preserve lands must be submitted for approval to the department as provided in sections 15-1501 and 15-1503 of this article, and the procedure on such an application shall be as therein set forth except as to the additional requirements and further procedure required by this section.

2. The petition for approval of such a project must state that it is desired to construct a reservoir on state owned forest preserve lands, giving a description of the location and extent of the lands to be occupied or flooded, and shall be accompanied by a map, based on accurate surveys, showing the boundaries of such land and the high flow line of the water to be impounded thereon. The public notices of the hearing shall state that the reservoir proposed to be constructed is on state owned lands within the forest preserve.

3. In addition to the findings required by section 15-1503 of this article, the department in such cases shall also determine whether the needs of the applicant for water are such as require the proposed public use of the land involved, whether the constitutional limitation as to the amount of such land that can be used for reservoir purposes will not be exceeded, and whether the plans are such that unsanitary conditions will not be created by the proposed project.

4. If the application is approved, the department shall apportion all the expenses of the proposed project upon the municipalities which it may find to be benefited thereby, to the extent of the benefits received; it shall also fix the amount to be paid to the state by the municipalities benefited. Such amount to be paid to the state is to be computed as follows:

a. The value of the state owned timber and other forest products to be removed during the construction of the project, such amounts to be due on the cutting of such timber or other products. Such material shall become the property of the applicant on the payment of such amount to the state. The department may direct that the amount due be paid in one lump sum or may permit partial payments to be made in such amounts and at such times as may be specified.

b. A charge of six per centum per annum on the value of the state owned lands and rights used, unimproved and bare of timber. This value shall be determined by the department and be redetermined by it at intervals of ten years from the date of approval of the application. The amount of this charge for any year shall be due and payable on the first day of January of the succeeding year and shall be computed from the day of the actual entry of the applicant or the department on the state owned land for the purpose of beginning the clearing or the construction work.

c. An annual charge, to be determined, redetermined and payable as provided in paragraph b above, as a reasonable return to the state for its services rendered.

5. A statement of all these matters shall be included in the decision of the department approving the application.

§ 15-1511. Procedure on approval of application with respect to forest

preserve reservoir projects.

1. The decision of the department on an application shall be certified to the applicant. Thereafter, and at any time within five years of the date of the decision, the applicant may petition the department that it construct the reservoir and appurtenant works in accordance with the approved plans. Such petition shall be in writing and shall be accompanied by plans and specifications for the structures to be built and such other papers as may be necessary to show to the satisfaction of the department that the project in all respects conforms to the requirements of the decision of the department. The department may permit minor modifications in the plans or specifications, provided that the general features of the project as first approved are not changed.

2. If the department decides that the project which it is asked to build is in conformity with the provisions of its decision upon the original application it shall advertise for proposals for doing the work. Upon the receipt of such proposals, the department shall make a final determination of the probable cost of the project and shall require the applicant to state that it desires the work to proceed, and to show that it has available sufficient funds to defray the total cost thereof. If the applicant desires to carry out the project and the department is satisfied that sufficient funds are available for the purpose, the department shall thereupon let contracts for and proceed with the construction of the works.

3. In obtaining proposals and letting contracts for and in the prosecution of this work the department shall be governed by the provisions of title 19 of this article, insofar as they may be applicable to the provisions of this part of article 15.

§ 15-1513. Payment of cost of construction.

1. The cost of any such project shall be certified by the department to the applicant and shall be paid by the applicant within thirty days thereafter to the persons or corporations entitled thereto. Either total or partial costs may be thus certified, as the department shall determine. The applicant is hereby authorized to pay such costs from funds which have been raised, or which it is authorized to raise for the purpose of waterworks construction.

2. It shall be unlawful for the applicant to pay out, for any purpose other than those specified in this section, any funds which it shall have certified to the department to be available for defraying cost of this construction, until such time as the department shall have certified to the applicant that all construction costs have been paid.

§ 15-1515. Supervision of construction and operation.

1. All construction work which the Department of Environmental Conservation is authorized to undertake by virtue of the provisions of sections 15-1507 through 15-1519 shall be done under the direction of the Commissioner of Transportation. After the works shall have been constructed, they shall thereafter be maintained and operated for the benefit of the applicant by the Commissioner of Transportation under the direction of the Department of Environmental Conservation.

2. All costs of such supervision of construction, operation and maintenance shall be paid by the applicant in the manner specified in section 15-1513 of this article, except that the applicant shall not be charged with the salaries and expenses of such officials and regular

employees of the state who, in addition to other duties, exercise only general supervision over the work done under the provisions of sections 15-1507 through 15-1519.

3. The Department of Environmental Conservation is authorized to employ such engineers and other persons as may in its judgment be necessary to carry out the provisions of sections 15-1507 through 15-1519 and to fix the compensation for such employees. Such compensation shall be paid by the applicant.

4. Except for such expenses and salaries as are specifically exempted by subdivision 2 of this section, no moneys of the state shall be expended, nor shall the state incur any liability or indebtedness by virtue of the provisions of sections 15-1507 through 15-1519.

§ 15-1517. Reservoir to be owned by the state.

Any lands not owned by the state, but required for the purpose of the construction of the reservoir on forest preserve lands shall be acquired by the applicant, by purchase or condemnation, and conveyed by the applicant to the state, provided however that no rental shall be paid to the state for any land thus acquired. The reservoir and all dams, dikes, spillways, gate houses, pipe lines or any other works which the department shall construct on state owned land shall be the property of the state, but shall be operated solely for the benefit of the applicant. All real estate, reservoirs and appurtenant structures acquired, taken or constructed pursuant to the provisions of sections 15-1507 through 15-1519 are hereby dedicated to the uses and purposes for which acquired, taken or constructed, and the right, title and interest acquired by the state therein is so acquired subject to such use and purposes.

§ 15-1519. Reservoir to be kept in repair.

The reservoir and appurtenant works shall be kept in safe, sanitary and serviceable condition and to this end shall be repaired, remodeled or additional work done thereon at the request of the applicant or as required by the department. All such work shall be done by the department at the expense of the applicant. If the applicant shall at any time determine that its needs for an additional supply of water require the enlargement of the reservoir in order that a greater quantity of water can be stored therein or drawn therefrom, a new water supply application shall be made to the department asking for approval of the desired modifications of the original plans.

§ 15-1521. Supply of water to other public water supply systems.

On any application for a new or increased withdrawal of water for a public water supply system, the department may require or authorize the applicant to make provisions for the supply and to supply water to any area of the state which as determined by the department in its decision on that application properly should be supplied with water from the source or sources of water supply sought by the applicant. The owner or operator of any existing or proposed public water supply system within such area may apply to the department for a permit to take water from that source of water supply or from any part of the public water supply system of the applicant supplied in whole or in part from that source. If the department so requires, or if it grants a permit, it shall be the

duty of the applicant so to supply water, subject to such requirements as the department may impose. The price to be paid for the amount of water so to be taken may be agreed upon between the applicant and the taker of the water, or if they cannot agree, fair and reasonable amounts and rates shall be, after due hearings thereon, fixed by the public service commission. Any such agreement or determination of the public service commission may from time to time be modified by further agreement between the parties affected thereby or by the further order of the commission.

§ 15-1523. Indirect damages; decision and payment as to Rochester.

1. Whenever the department shall decide that the execution of any water supply project by the city of Rochester will result in damages to persons and property, the determination of and payment for which are not otherwise provided for by law, the department shall so state in its decision and it may order that such damages be determined and paid in accordance with the provisions of this section.

2. Whenever the department shall make such a decision relating to the determination and payment of damages pursuant to the provisions of this section, any person who is on the date of such decision, the owner of any real estate not taken by the applicant, or the owner of any established business, directly or indirectly decreased in value by reason of the acquiring of land for or on account of a new or additional water supply project, his heirs, personal representatives and assigns, shall have a right to damages for such decrease in value. The city of Rochester may agree with such person as to the amount of such damages, and, if such agreement cannot be made, such damages, if any, shall be determined in the manner provided in the eminent domain procedure law for the ascertaining and determining of the value of the real estate taken for such project, and the court shall not be limited in the reception of evidence to the rules regulating the proof of direct damages. The amount of such damages so agreed upon, or determined, as aforesaid, shall be paid and collected in the same manner as is provided for the payment of awards in condemnation proceedings as provided in the charter of the city of Rochester for the taking of real property.

3. A person employed in a manufacturing establishment, or in an established business, or upon any lands, who is not the owner or part owner thereof, which manufacturing establishment, or established business, is injured or destroyed, or which lands are taken or acquired under or on account of the carrying out of such project, and who has been so employed continuously for at least six months prior to the date of the decision of the department and who continues in such employment up to the time of such injury, destruction, taking or acquisition, shall have a claim for damages against the city of Rochester equal to the salary or wages paid to such employee for the six months immediately preceding the date of such decision. Such damages may be determined by agreement with the city of Rochester, or, in case such agreement cannot be made, such employee may maintain an action against the city of Rochester in the Supreme Court to recover such damages, not, however, to exceed the sum of the salary or wages paid him for the six months immediately preceding the date of the decision of the department.

4. If the department shall so approve of a project, or a part of a project, the execution of which is to be deferred, or, if for any reason such execution shall thereafter be deferred, the department shall in its decision, or in a modification thereof, fix a date, other than the date

of the decision, which shall be held to be applicable to all damages arising from the execution of such project, or of such part of a project.

5. The powers, rights, privileges and duties granted, conferred and imposed by the provisions of this section are hereby granted, conferred and imposed notwithstanding any inconsistent provision in this or any other general or special law.

§ 15-1525. Water well drillers in New York state to obtain certificates of registration.

1. No person shall engage in the business of water well drilling in the state of New York without first obtaining a certificate of registration from the department as hereinafter provided. All water well drilling shall be performed in accordance with the rules and regulations promulgated by the commissioner of health pursuant to subdivision eighteen of section two hundred six of the public health law.

2. Application for a certificate of registration shall be made upon a form prescribed and furnished by the department providing such information as the department deems necessary for the purposes of issuance of a certificate of registration.

3. The certificate of registration shall require that, before the commencement of drilling of any well or wells, the water well driller shall file a preliminary notice with the department; it shall also provide that upon the completion of the drilling of any water well or water wells, a completion report be filed with the department, giving the log of the well, the size and depth thereof, the capacity of the pump or pumps attached or to be attached thereto, and such other information pertaining to the withdrawal of water and operation of such water well or water wells as the department by its rules and regulations may require. The water well driller shall provide a copy of such completion report to the water well owner. The number of the certificate of registration must be displayed on the well drilling machinery of the registrant. The certificate of registration shall also contain a notice to the certificate holder that the business activities authorized by such certificate are subject to the provisions of article thirty-six-A of the general business law. The fee for such certificate of registration shall be ten dollars annually. The commissioner shall promulgate a water well completion report form which shall be utilized by all water well drillers in satisfying the requirements of this section and any other provision of state or local law which requires the submission of a water well completion report or water well log.

4. The department may revoke any certificate of registration for violation of any of the provisions of this section, or violation of rules made by the department pertaining thereto. A certificate of registration may be revoked by the department regardless of the criminal provisions with regard to this section found in section 71-1115.

5. a. On and after January first, two thousand three, any individual who is responsible for the on-site supervision of water well drilling activities must have passed, with at least a seventy percent score, a two-part certification exam by the national ground water association or an equivalent exam offered or approved by the commissioner. Evidence of having passed such exam shall be provided by the person responsible for the on-site supervision of water well drilling activities upon demand of any enforcement officer.

b. Notwithstanding the provisions of paragraph a of this subdivision

any individual, who is responsible for the on-site supervision of the repair or installation of water pumps, requiring the opening of the well casing, must have passed, with at least a seventy percent score, a certification exam developed by the national ground water association or the water systems council, or an equivalent exam offered or approved by the commissioner. Evidence of having passed such exam shall be provided by the person responsible for the on-site supervision of the repair or installation of water pumps, requiring the opening of the well casing, upon demand of any enforcement officer.

6. Except as otherwise provided by law, nothing in this section shall be deemed to preempt any provision of local law which requires the license or registration of water well drillers or which otherwise regulates the practice of water well drilling, provided that the provisions of such local law are at least as comprehensive as the provisions of this section.

§ 15-1527. Permit required for certain wells in Long Island counties.

1. No person or public corporation shall hereafter install or operate any new or additional wells in the counties of Kings, Queens, Nassau or Suffolk to withdraw water from underground sources for any purpose or purposes whatsoever where the installed pumping capacity of any such new well or wells singly or in the aggregate, or the total installed pumping capacity of old and new wells on or for use on one property is in excess of forty-five gallons a minute without a permit pursuant to this title.

2. Such persons or public corporations operating or proposing to operate a well or wells in excess of such capacity in any of such counties shall be subject to all the provisions of this article relating to persons or public corporations, with the same force and effect as if they were supplying or proposing to supply water to the inhabitants of a municipal corporation or other civil division of the state. In taking action on such an application the department shall have authority to impose such conditions and make such requirements and limitations as may be necessary for the protection of the interests of the applicant and of the people of the state and may issue limited or revocable permits for such wells.

3. All new well permits shall be valid for a period of time not to exceed ten years from the date of issuance. The department shall develop a permit renewal application and a time schedule for permit renewals. Well permits may be renewed, including any modifications deemed appropriate by the department, and such renewal shall be considered valid for a period specified by the department but in any case shall not exceed a period of ten years from the date of reissuance or renewal.

4. All applications for new well permits, all applications for well permit renewals, and all reopened well permits shall be evaluated, notwithstanding any other requirements of this title, according to criteria established by rule or regulation of the department which shall include but not be limited to:

- a. Specific yield of the aquifer segment in which the well is or will be screened;
- b. Requested rated capacity of well and anticipated or actual amount of withdrawal from such well, both seasonally and annually;
- c. Whether the well site or proposed well site is in an over-stressed, transitional, or unstressed area;
- d. The proposed use of the water; whether the water will be or is recharged or discharged to waste; and the likely quality of the water if

it is or will be recharged;

e. The amount of withdrawal requested and its relationship to volume of recharge occurring locally as well as the relationship of the requested withdrawal to the regional level of withdrawal and recharge;

f. The degree of consistency between the requested rate of withdrawal and any regional water management plans; and

g. If the well is to be used by a water purveyor, either public or private, or a water authority, whether such purveyor or authority has an active and on-going water conservation program, leak detection program, and metering program.

In addition, the department shall vigorously apply subdivision two of section 15-1503 of this title in its decision-making process. The department shall determine whether the watershed, which in the case of Long Island shall mean the land surface that represents the recharge catchment area recharging water for each respective well, has been adequately protected. If the well is to be used as a public water supply by a water purveyor or water authority, the department shall require as a permit condition that the water purveyor or authority prepare and submit watershed rules and regulations as described pursuant to section eleven hundred of the public health law.

5. The department shall develop a system for categorizing the counties of Kings, Queens, Nassau and Suffolk into areas that are either unstressed, transitional, or over-stressed with respect to the quality and/or quantity of the groundwater supply. For those areas which are considered to be over-stressed, as determined by the department, all valid well permits within this category shall be reopened in order to evaluate and possibly modify, add or delete any permit conditions or requirements. Special consideration shall be given to permit conditions aimed at reducing the levels of withdrawal and consumptive water use in over-stressed areas. The reopening of the well permits may be phased in over a five year period. All reopened well permits which are deemed by the department to be acceptable following review and any subsequent changes may be renewed and shall, if renewed, be valid for a period of time not to exceed ten years from the date of reissuance or renewal. Nothing in this title shall be considered to prohibit the department from revoking a permit following the review required by this title.

6. The provisions of this section shall not apply to the installation of a fire well to which no pumping equipment is permanently attached when such well is installed by a municipal corporation, fire district or duly organized fire company or fire department.

7. The provisions of this section shall apply to the use of water for agricultural purposes. The department shall, for the purposes of section 70-0116 of this chapter, make a finding of an emergency when a replacement well is needed during the growing season for a crop. Pursuant to section 70-0116 of this chapter, the department may issue an emergency authorization for the construction and operation of such replacement well.

§ 15-1528. Moratorium on the drilling of new wells in the Lloyd Sands.

1. The department is directed to identify those areas of Long Island within the counties of Kings, Queens, Nassau and Suffolk which, for the purposes of this section, shall be considered coastal communities.

2. A moratorium shall be established on the granting of new permits to drill public water supply, private water supply or industrial wells into the Lloyd Sands or to permit new withdrawals of water from the Lloyd

Sands or to permit the storage or pumping of water into the Lloyd Sands. Such moratorium shall apply to all areas that are not coastal communities, provided however that such moratorium shall apply to all areas including coastal communities for the storage or pumping of water into the Lloyd Sands. The waters of the Lloyd Sands shall be reserved for the use of coastal communities during the moratorium, however, nothing required herein shall affect the permits of wells presently screened in the Lloyd Sands and withdrawing water therefrom.

3. The moratorium shall be lifted upon a directive from the commissioner. The directive shall be based upon his finding that sufficient research has been conducted so as to provide a sound working knowledge of the details, dynamics, water volume, and levels of safe withdrawal appropriate to maintain a safe quantity of Lloyd Sands water. Further, the commissioner must find that a workable program is in place that can properly administer a well permit program for the Lloyd Sands water. Such program shall take into account both the localized and regional aspects and implications of Lloyd Sands water withdrawals, with special attention given to the prevention of water contamination and salt water intrusion. The program must ensure that a safe level of withdrawal from the Lloyd Sands is not exceeded.

4. The commissioner may grant exemptions to the moratorium upon a finding of just cause and extreme hardship. Such exemptions shall not apply to the storage or pumping of water into the Lloyd Sands. An adjudicatory hearing shall be held and findings presented to the commissioner prior to the granting of an exemption.

§ 15-1529. Approval of completed water withdrawal systems.

The construction of any new or modified water withdrawal system authorized under this title shall be under the general supervision of a person or firm licensed to practice professional engineering in the state. Upon completion of construction, such person or firm shall certify to the department that the water withdrawal system has been fully completed in accordance with the approved engineering report, plans and specifications, and the permit issued by the department pursuant to this title. The owner shall not commence operation of the new or modified water withdrawal system prior to the department receiving such certificate and prior to approval of the system by the department of health or its designee as may be required by the state sanitary code.