

Chapter 21G: MASSACHUSETTS WATER MANAGEMENT ACT

Section 1: Short title

Section 1. This chapter shall be known and may be cited as the "Massachusetts Water Management Act".

Section 2: Definitions

Section 2. As used in this chapter, the following words shall, unless the context clearly indicates otherwise, have the following meanings:—

"Annual statement of withdrawal", an annual statement of the volume of water a person is withdrawing pursuant to a registration statement or permit, filed with the department in accordance with section five or eleven and the regulations adopted thereunder.

"Commission", the water resources commission of the executive office of environmental affairs.

"Department", the department of environmental protection.

"Existing withdrawal", except as provided in section five, the average volume of water withdrawn from a particular water source during the five years prior to January, nineteen hundred and eighty-six; provided, however, that if, during such period of five years, withdrawals from the water source have been interrupted due to contamination of the water source, the periods of such interruptions shall be excluded pro rata from the computation of existing withdrawal; and, provided further, that no person shall be deemed to have an existing withdrawal unless such person files a registration statement and an annual statement of withdrawal with the department, in accordance with the provisions of section five and section six and the regulations adopted thereunder.

"New withdrawal", any withdrawal of water which is not an existing withdrawal.

"Nonconsumptive use", any use of water which results in its being discharged back into the same river basin, as defined by the water resources commission, in substantially unimpaired quality and which conforms to the definition adopted by regulation pursuant to section four.

"Permit", a permit issued by the department under section seven and authorizing the withdrawal of water in excess of the threshold volume.

"Person", any agency or political subdivision of the federal government or the commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee or agent of said person, and any group of said persons.

"Public water system", a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days of the year. Such term shall include any collection, treatment, storage, and distribution facilities under control of the operator of such a system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

"Registration statement", a statement of an existing withdrawal, filed with the department in accordance with section five and the regulations adopted thereunder.

"Safe yield", the maximum dependable withdrawals that can be made continuously from a water source including ground or surface water during a period of years in which the probable driest period or period of greatest water deficiency is likely to occur; provided, however, that such dependability is relative and is a function of storage and drought probability.

"Threshold volume", the volume of water specified in section four or the regulations adopted thereunder.

"Water", all water beneath or on the surface of the ground whether wholly or partly within the commonwealth.

"Water resources management plan", a local plan to meet water needs within a city or town, submitted by the chief elected official or designee to the commission pursuant to the regulations of the commission.

"Water resources management official", the local official, designated by the chief elected official within a city or town, responsible for submitting and administering the water resources management plan in that city or town.

"Water source", any natural or artificial aquifer or body of surface water, including its watershed where ground and surface water sources are interconnected in a single hydrological system.

"Withdrawal" or "withdrawal of water", the removal or taking of water from a water source; provided, however, that all removals or takings of water from a particular water source which are made or controlled by a single person shall be deemed to be a single withdrawal of water.

Section 3: Planning and management of water use and conservation; advisory committee; regulations

Section 3. The department and commission shall cooperate in the planning, establishment and management of programs to assess the uses of water in the commonwealth and to plan for future water needs.

The commission shall adopt principles, policies and guidelines necessary for the effective planning and management of water use and conservation in the commonwealth and for the administration of this chapter as necessary and proper to ensure an adequate volume and quality of water for all citizens of the commonwealth, both present and future. Such principles, policies and guidelines shall be designed to protect the natural environment of the water in the commonwealth; to assure comprehensive and systematic planning and management of water withdrawals and use in the commonwealth, recognizing that water is both finite and renewable; and to allow continued and sustainable economic growth throughout the commonwealth and increase the social and economic well being and safety of the commonwealth's citizens and of its work force.

There is hereby established within the department a water resources management advisory committee to provide advice and consultation to the department concerning matters covered by this chapter. The committee shall review the development of standards, rules and regulations for water resources management and shall supply recommendations concerning methods by which existing water management practices and the laws regulating them may be supplemented and improved and their administration financed.

The committee shall consist of at least eleven members appointed by the governor, one of whom shall be representative of the Associated Industries of Massachusetts, one of whom shall be a representative of the Massachusetts Municipal Association, one of whom shall be a representative of a watershed association, one of whom shall be a representative of the water works industry, one of whom shall be a representative of an agricultural association, one of whom shall be a representative of a consumer organization, one of

whom shall be a representative of an environmental organization, one of whom shall be a representative of a water well driller association, one of whom shall be a representative from a regional planning agency, and two of whom shall be representatives of the public knowledgeable in environmental and water management affairs. The members of the committee shall have no financial interest in any recommendation or studies of the committee.

Said members shall serve without compensation and shall be eligible for reappointment. In making initial appointments to said committee, the governor shall appoint two members for terms of one year, three members for terms of two years, three members for terms of three years, and three members for terms of four years. Upon the expiration of the term of any such member, his successor shall be appointed for a term of four years. Persons appointed to fill vacancies shall serve for the unexpired term of said vacancy.

Pursuant to chapter thirty A, the department, after consultation with the advisory committee and with the approval of the commission, shall adopt such regulations as it deems necessary to carry out the purposes of this chapter, establishing a mechanism for managing ground and surface water in the commonwealth as a single hydrological system and ensuring, where necessary, a balance among competing water withdrawals and uses. Within one year of the effective date of this chapter, the department shall adopt, and thereafter from time to time may amend, regulations establishing procedures and forms for filing notifications and registration statements; reasonable registration fees; a mechanism to control water in the commonwealth during water supply and water quality emergencies, and a program for the enforcement of the provisions of this chapter and the regulations adopted thereunder. Within two years of the effective date of this chapter, the department shall adopt, and thereafter from time to time may amend, regulations establishing criteria, standards and procedures for issuing permits, requirements for the content and form of permit applications, reasonable permit application fees, and requirements for monitoring, inspection and reporting of water withdrawals and usage by permitted water users'. The decision to approve or deny a permit shall take place after compliance, where applicable, with section sixty-one to sixty-two H, inclusive of chapter thirty, and sections eight B to eight D, inclusive of chapter twenty-one. All regulations adopted by the department pursuant to this chapter shall conform to, and implement, the principles, policies and guidelines established by the commission under this section.

Section 4: Withdrawal volume threshold

Section 4. The withdrawal volume threshold to be applied pursuant to sections five and seven shall be one hundred thousand gallons per day. The department may, by regulation, raise or lower the threshold volume established in this section upon a finding that such different threshold is necessary and adequate to protect the public health, safety and welfare. The department shall not require any approval, other than that provided for in section thirty-nine C of chapter forty, for withdrawals less than such threshold volume.

The department may, by regulation, establish, for any particular water source, a lower threshold volume than that generally applicable in the commonwealth upon findings that such water source is in need of special protection because of the nature or volume of demands made upon it, and that the reduced threshold is therefore necessary and adequate to protect the public health, safety and welfare.

The department shall, no later than January first, nineteen hundred and ninety-one, and no less than every five years thereafter, initiate rulemaking procedures in accordance with chapter thirty A, to review and reassess the necessity and adequacy of the volume threshold in effect.

For the purposes of determining whether a withdrawal is in excess of the threshold volume, any withdrawal of water for a nonconsumptive use, as defined by regulation adopted by the department, shall

not be counted in the volume of water withdrawn; provided, however, that any person withdrawing or proposing to withdraw water for a nonconsumptive use shall file, in accordance with regulations adopted by the department, a notification stating the amount being or to be withdrawn and demonstrating that the use is or will be nonconsumptive.

Section 5: Registration statements; filing

Section 5. Each person making an existing withdrawal in excess of the threshold volume shall file a registration statement in accordance with the regulations adopted by the department, on or before January first, nineteen hundred and eighty-eight; provided, however, that, if the department lowers the threshold volume pursuant to section four, it shall, by regulation, provide a procedure and deadline for persons making existing withdrawals, in excess of the new threshold volume, from water sources to which the new threshold volume is applicable, to file registration statements. Each registrant shall file an annual statement of withdrawal in accordance with regulations adopted by the department. No person shall continue an existing withdrawal in excess of the threshold volume after the applicable deadline for filing registration statements unless such person has complied with the requirements of this section and the regulations adopted hereunder. The department may assist any person making withdrawals in the collection of data and the filing of said registration statement.

Each person making an existing withdrawal below the threshold volume, but in excess of 10,000 gallons per day, may, on or before July first, nineteen hundred and ninety-one, file a registration statement in accordance with regulations adopted by the department. All such voluntary registrations shall have the same standing as above threshold registrations and shall be subject to the same reporting and renewal requirements, and verifications standards, required by the department for above threshold registration statements.

The department shall, by regulation, specify a schedule of expiration dates applicable to each water source from which there are existing withdrawals for which registration statements can be filed. All initial registration statements filed for existing withdrawals from the water source shall authorize such withdrawals until the next applicable expiration date thus specified; provided, however, that no registration statement shall authorize the continuation of existing withdrawals for a term greater than ten years.

The department shall, by regulation, establish a procedure for recognizing, as an existing withdrawal, a volume of water in excess of the average volume of water withdrawn from a particular water source during the period from January first, nineteen hundred and eighty-one to January first, nineteen hundred and eighty-six if such volume of water is within the normal variation of withdrawals made by the registrant; provided that the department shall not use such procedures to recognize, as existing withdrawals, such volumes of water which together exceed the safe yield of the water source from which the withdrawals are being made. Nothing in this section shall be deemed to prohibit any person making an existing withdrawal from obtaining a permit pursuant to section eleven.

Upon the expiration of any initial or renewal registration statement under this section, the registrant shall be entitled, upon the filing of a renewal registration statement, to continue existing withdrawals specified in the registration statement for a period of ten years.

Section 6: Contents of registration statements

Section 6. The regulations issued by the department shall specify the form and required contents of a registration statement and the terms under which an existing withdrawal may be continued by a person

other than the original registrant. At a minimum, such regulations shall specify that the registration statement must contain the following:

- (1) The use for which the water is being withdrawn;
- (2) An identification of the water source from which the withdrawal is being made, in sufficient detail to describe the water source adequately;
- (3) The location of the withdrawal;
- (4) The existing withdrawal; provided, however, that persons whose volume of withdrawals varies seasonally according to a substantially established pattern shall describe that variation;
- (5) Conservation measures instituted, or to be instituted, by the registrant; and
- (6) The point or points at which the water is to be discharged after use.

Section 7: Issuance of permits; criteria and standards

Section 7. The department shall, by regulation, specify, for each water source from which withdrawals are to be permitted, a date upon which its regulations establishing criteria, standards and procedures for issuing permits shall become effective. No person may, after the effective date thus specified, make a new withdrawal of more than the threshold volume of water from any water source, or construct any building or structure which may require that person to make such a new withdrawal of water unless such person obtains a permit in accordance with regulations adopted by the department.

In adopting regulations establishing criteria and standards for obtaining permits, the department shall assure, at a minimum, that the following factors are considered:—

- (1) The impact of the proposed withdrawal on other water sources which are hydrologically interconnected with the water source from which the withdrawal is to be made;
- (2) The anticipated times of year when withdrawals will be made;
- (3) The water available within the safe yield of the water source from which the withdrawal is to be made;
- (4) Reasonable protection of water uses, land values, investments and enterprises that are dependent on previously allowable withdrawals;
- (5) The use to be made of the water proposed to be withdrawn and other existing, presently permitted or projected uses of the water source from which the withdrawal is to be made;
- (6) Any water resources management plan for any city or town in which the affected water source is located;
- (7) Any state water resources management plan adopted by the commission;
- (8) Reasonable conservation practices and measures, consistent with efficient utilization of the water;
- (9) Reasonable protection of public drinking water supplies, water quality, wastewater treatment capacity, waste assimilation capacity, groundwater recharge areas, navigation, hydropower resources, water-based recreation, wetland habitat, fish and wildlife, agriculture, and flood plains; and
- (10) Reasonable economic development and the creation of jobs in the commonwealth.

Section 8: Permit applications; contents

Section 8. The regulations adopted by the department shall specify the form and required contents of a permit application. At a minimum, such regulations shall specify that the application must contain:—

- (1) The need for the proposed withdrawal;
- (2) The reasons for the withdrawal and the use of the water to be withdrawn;
- (3) A description of the water source from which the withdrawal is proposed;
- (4) The location of the withdrawal;
- (5) The volume, frequency and rate of water the applicant proposes to withdraw;
- (6) The length of time for which the permit is sought;
- (7) The effect of the proposed withdrawal on public drinking water supplies, water quality, wastewater treatment, waste assimilation, groundwater recharge areas, navigation, hydropower resources, water-based recreation, wetland habitats, fish and wildlife, agriculture, and flood plains;
- (8) The alternatives, if any, to the proposed withdrawal including a study of cost factors, feasibility and environmental effects of such alternatives; and
- (9) Conservation measures instituted, or to be instituted, by the applicant.

The regulations adopted by the department shall allow the applicant to submit, in support of the permit application, a negotiated agreement with any other owner of property conveying by deed an easement restricting that property owner's right to withdraw from the water source from which the applicant proposes to make withdrawals. The department shall consider such easement in making its findings relative to the sufficiency of the water available within the safe yield of the water source from which the withdrawal is to be made.

The regulations issued by the department may specify the conditions under which the department will approve the transfer of a permit.

Section 9: Processing permit applications; notice of proposed withdrawal

Section 9. All applications for permits shall be submitted to the department in conformance with the rules and on the forms adopted under sections seven and eight for the processing of permit applications. A copy of the application shall be filed in the office of the water resources management official of the city or town in which the withdrawal is proposed. Thereafter, an applicant shall cause a notice of the proposed withdrawal to be published in a newspaper of general circulation in the city or town in which the withdrawal is proposed, and in other cities and towns where the same water source is located. Such a notice shall state the location of the water source from which the withdrawal is to be made, and the volume of water to be withdrawn, and shall state further that a copy of the application is available for inspection at the office of the water resources management official of the city or town in which the withdrawal is proposed, and that any party wishing to comment on the grant of the withdrawal permit may file a written statement with the water resources management official within thirty days of the date of publication of the notice. The applicant shall send copies of the notice, return receipt requested, to the owners of record of all properties abutting the property on which the withdrawal is proposed and all properties abutting such properties. The applicant shall file with the department an affidavit that copies of the notice were sent in accordance with this section.

Upon receipt of such an affidavit, the department shall send copies of the notice to all persons making withdrawals, pursuant to a registration statement or permit, from the water source from which the proposed withdrawal is to be made.

The applicant may file with the department, in support of the application, certificates from the water resources management official that:— (1) the proposed withdrawal is not inconsistent with the local water resources management plan; and (2) no statement of opposition has been received within thirty days of the date of publication of the notice of the proposed withdrawal. The department shall rule on any completed withdrawal application, for which the requirements of sections sixty-one to sixty-two H, inclusive, of chapter thirty and the regulations adopted thereunder have been met within thirty days of the time such certificates are filed. If such certificates are not filed by the applicant, or if the secretary of environmental affairs issues a certificate, pursuant to section sixty-two A of said chapter thirty stating that an environmental impact report is required for the permit application, the department shall rule on any completed withdrawal application within ninety days of the completion of compliance with the requirements of sections sixty-one to sixty-two H, inclusive, of chapter thirty and the regulations adopted thereunder.

In order for an application to be considered completed the department may require additional information to be submitted before ruling on the permit application. No application shall be deemed completed unless it contains all information required by regulation or requested by the department.

The deadlines established in this section for ruling on withdrawal applications may be extended for a reasonable period of time, not to exceed nine months, by the department in individual cases upon a finding that additional time is necessary to give proper consideration to an application.

Failure by the department to rule on a completed application within the time specified in this section or within the time specified in any extension made pursuant to this section shall be deemed to be an approval of the application.

Section 10: Recommendations

Section 10. The department shall, by regulation, establish a procedure to be followed in obtaining recommendations from local officials or bodies, regional planning agencies, or others including any comments received by the water resources management official pursuant to section nine, for use by the department in making findings under section eleven; provided, however, that failure of any local official or body or regional planning agency to make timely recommendations in accordance with such procedures shall not bar the department from ruling on any application if it determines that it has an adequate basis for making the findings required by regulation.

Section 11: Issuance of permits; conditions; findings

Section 11. In accordance with rules adopted under section seven, the department may issue permits for any new withdrawal of water if it determines that the withdrawal will conform to the regulatory standards established. The department may attach to any permit whatever conditions it deems necessary to further the purposes of this chapter or to assure compliance with its regulations. If the department finds that the combined volume of existing, permitted and proposed withdrawals exceeds the safe yield of a water source or that existing, permitted or proposed water withdrawals are otherwise in conflict, it shall deny all applications for permits for withdrawals from that water source.

The department shall make written findings of fact in support of its decision and shall state with specificity the reasons for issuance or denial of the permit and for any conditions of approval imposed and

may, in the case of any denial of a permit, advise the applicant in negotiating an agreement pursuant to section eight, so as to allow the permit to be granted. Every permit issued pursuant to this chapter may include provisions:—

- (1) fixing the term of the permit;
- (2) fixing the maximum allowable withdrawal expressed in terms of an average annual daily withdrawal;
- (3) identifying and limiting the use or uses to which the water may be put;
- (4) requiring the applicant to meter the water being withdrawn and report the amount and quantity of the water being withdrawn;
- (5) governing the operation and maintenance of the specific facilities, equipment or premises;
- (6) allowing the department to enter the applicant's facilities or property to inspect and monitor the withdrawal;
- (7) permitting the department to modify, suspend or terminate the permit, after notice and hearing, for violations of its conditions, of this chapter, or of regulations adopted or orders issued by the department, and when deemed necessary for the promotion of the purposes of the chapter.

The department shall, by regulation, specify a schedule of expiration dates applicable to each water source from which withdrawals are to be permitted. All permits for withdrawals from that water source shall be valid until the next expiration date thus specified; provided that no permit issued under this section shall be valid for a term greater than twenty years. Each person to whom a permit has been issued pursuant to this section shall file an annual statement of withdrawal, in accordance with regulations adopted by the department.

No permit shall be issued under this section after January first, nineteen hundred and ninety-four unless the city or town in which the water is to be used has obtained approval from the commission of its water resources management plan.

Section 12: Adjudicatory hearing; judicial review

Section 12. Any person aggrieved by a decision of the department with respect to a permit application or an addition to an existing withdrawal may request an adjudicatory hearing before the department under the provisions of chapter thirty A. Any such decision shall contain a notice of this right to request a hearing and shall specify a time limit of twenty-one days, within which aggrieved persons may request such a hearing. If no such request is timely made, the decision shall be deemed assented to. If a timely request is received, the department shall, within a reasonable time, act upon the request in accordance with the provisions of chapter thirty A. A person aggrieved by a final decision in an adjudicatory hearing held under the provisions of this section shall be entitled to judicial review thereof in the superior court, in accordance with chapter thirty A; provided, however, that in any action seeking judicial review pursuant to this section, the court in which such action is pending may appoint a master to investigate and report on any scientific or hydrological issue relevant to a question of law presented in the case.

Section 13: Examination of activities involving water withdrawal

Section 13. For the purpose of determining compliance with this chapter or any regulations adopted thereunder, the duly authorized agents and employees of the department may at all reasonable times enter and examine any property, facility, operation or activity involving the withdrawal of water. The owner,

operator or other person in charge of the property, facility, operation or activity, upon presentation of proper identification and purpose for inspection by the agents or employees of the department, shall give such agents and employees free and unrestricted entry and access. Such agents and employees are authorized to make such inspection, conduct such tests, reviews, studies, monitoring or sampling or examine books, papers and records pertinent to any matter relevant to the administration or enforcement of this chapter as it deems necessary.

Notwithstanding the provisions of any law to the contrary, any information, record, or particular part thereof, obtained by the department pursuant to the provisions of this chapter, shall, upon request, be kept confidential and not be considered to be a public record when it is deemed by the department that such information, record or report relates to secret processes, methods of manufacture or production, or that such information, record or report, if made public, would divulge a trade secret.

Section 14: Enforcement orders; civil administrative penalties; actions by attorney general; punishment

Section 14. The department may issue such orders as are reasonably necessary to aid in the enforcement of the provisions of this chapter. The orders shall include, but shall not be limited to, orders modifying, suspending or revoking permits, well driller certifications under section 20 of this chapter, and orders requiring persons to cease any activity which is in violation of the provisions of this chapter or any regulation adopted hereunder. The department may, in its order, require compliance with such terms and conditions as are reasonably necessary to effect the purposes of this chapter. If the department finds, in accordance with the procedures established in section sixteen of chapter twenty-one A and the regulations adopted thereunder, that any person is not in compliance with any order issued pursuant to this section, it shall assess a civil administrative penalty on such person as provided in said section sixteen of said chapter twenty-one A and the regulations adopted thereunder. The penalty may be assessed whether or not the violation was willful. In determining the amount of the civil penalty, the department shall consider the willfulness of the violation, damage or injury to the water resources and other water users, the cost of restoration of the water resources, the cost to the commonwealth of enforcing the provisions of this chapter against such person and other relevant factors.

In addition to collecting any civil penalties recoverable under this section, the department may request the attorney general to bring an action in the superior court to restrain, prevent or enjoin any conduct prohibited by this chapter or to compel action to comply immediately and fully with any order issued by the department. Except in cases of emergency where, in the opinion of the court, immediate abatement of the unlawful conduct is required to protect the public interest, the court may in its decree fix a reasonable time during which the person responsible for the unlawful conduct may abate and correct the violation. The expense of the proceeding shall be recoverable from the violator in such manner as may now or hereafter be provided by law.

It shall be unlawful for any person to:—

- (1) Violate or assist in the violation of any of the provisions of this chapter or of any rules and regulations adopted hereunder;
- (2) Fail to comply with any order by the department;
- (3) Make a water withdrawal contrary to the terms and conditions of the chapter, or of any regulation adopted or permit or order issued hereunder; or
- (4) Attempt to obtain a permit by misrepresentation or failure to disclose all relevant facts.

Any person who engages in unlawful conduct as defined in this section shall, upon conviction, for each separate offense, pay a fine of not less than one thousand dollars, nor more than ten thousand dollars or be imprisoned for a period of not more than one hundred and eighty days, or both, or shall be subject to a civil penalty not to exceed twenty-five thousand dollars per day for each day such offense occurs or continues. Each day of continued violation of any provision of this chapter or of any regulation adopted or permit or order issued hereunder shall constitute a separate offense.

Section 15: Water emergency declaration

Section 15. Any city or town or any water company, public agency or authority of the commonwealth or its political subdivisions which is the operator of a public water system may petition the department for a declaration of a state of water emergency pursuant to this section. The department may require such city, town or operator to submit for review and approval by the department, a plan designed to bring about an expeditious end to the state of water emergency. Such plan may include provisions for taking actions authorized in section sixteen and provisions for restraining the use of water on public or private premises by shutting off the water at the meter or at the curb cock or by other means, and the department may require any further provisions it deems appropriate and feasible, including, but not limited to:

- (1) an approved water resources management plan;
- (2) a leak detection program;
- (3) a program for auditing water use;
- (4) a program for overall system rehabilitation;
- (5) conservation programs for public and private buildings;
- (6) bans or restrictions on certain water uses;
- (7) a moratorium on the issuance of building permits;
- (8) a plan for establishing priority for distribution of water among competing uses; and
- (9) drought management or contingency plans.

Upon receiving a petition pursuant to this section, the department may declare a state of water emergency if it finds that there exists or impends a water supply shortage of a dimension which endangers the public health, safety or welfare. The department shall limit the applicability of any state of water emergency to the city or town submitting a petition pursuant to this section or the geographical area served by the public water system operator submitting a petition pursuant to this section. The department may amend the declaration or terminate the state of water emergency upon a finding that the public health, safety or welfare is no longer endangered by a water supply shortage in part or all of the area to which the emergency had been made applicable. The state of water emergency shall be in effect for no more than six months in the aggregate in any twelve month period unless the department determines that a longer state of emergency is required to protect the public health, safety or welfare.

Section 16: State of water emergency; eminent domain; authorization; notice

Section 16. During a state of water emergency, declared under section fifteen, if the department has approved a plan designed to bring about an expeditious end to the emergency, a water company, public agency or authority of the commonwealth or its political subdivisions which is the operator of a public water system affected by the emergency may, for such periods of time as may be approved by the

department, not to exceed six months cumulatively in any twelve month period, take by eminent domain under chapter seventy-nine the right to use any land for the time necessary to use such water, or purchase water from another public water system; provided, however, that during a state of water emergency affecting the water system of the Massachusetts Water Resources Authority, such power of eminent domain may be exercised by the division of watershed management of the metropolitan district commission. Any operator of a public water system may, for such periods of time as may be approved by the department, sell to any water company, public agency or authority of the commonwealth or its political subdivisions, which has been authorized to make purchases of water pursuant to this section, such volumes of water as may be available for sale from time to time.

No taking, purchase or sale shall be made pursuant to this section unless the department issues an order, pursuant to section seventeen, authorizing the taking, purchase or sale. Nothing in this section shall exempt the operator of a public water system from any provision of this chapter or of any regulations issued hereunder.

No taking, purchase or sale shall be made pursuant to this section unless, in the case of cities, the city council has voted to authorize the taking, purchase or sale, or, in the case of towns and water supply and fire and water districts, the taking, purchase or sale has been authorized by a vote of the voters at a town meeting or a district meeting, or, in the case of water companies, notice of such taking, purchase or sale, including a copy of plans and specifications, has been given to the city council or to the board of selectmen of the city or town, as the case may be, in which the affected water source is located, by certified mail at least ten days prior thereto.

Pursuant to any taking, purchase or sale made pursuant to this section, temporary pipes and other works may be installed in any city or town, provided that the installation or repair of such pipes or other works or along any highway shall be accomplished with the least possible hindrance to public travel, and shall be subject to the direction and approval of the officers or departments in charge of the maintenance of said highway where applicable.

Section 17: State of water emergency; orders

Section 17. During a state of water emergency declared under section fifteen, the department, to the extent not in conflict with applicable federal law or regulation but notwithstanding any general or special law, local law or contractual agreement to the contrary, shall be empowered to issue orders, applicable within or outside the area in which a water emergency exists to:—

- (1) Establish priorities for the distribution of any water or quantity of water use;
- (2) Permit any person engaged in the operation of a water supply system to reduce or increase by a specified amount or to cease the distribution of that water; to distribute a specified amount of water to certain users as specified by the department; or to share any water with other water supply systems;
- (3) Direct any person to reduce, by a specified volume, the withdrawal or use of any water; or to cease the withdrawal or use of any water;
- (4) Require the implementation of specific water conservation measures; and
- (5) Mandate the denial, for the duration of the state of water emergency, of all applications for withdrawal permits within the areas of the commonwealth to which the state of water emergency applies.

The commission shall adopt guidelines for use by the department in issuing orders under this section.

The department shall consult with the appropriate executive agency overseeing the activities of any person affected by this section.

Section 18: Registration and permit application fee schedules

Section 18. The department shall, by regulation, establish reasonable registration and permit application fee schedules which shall be based upon, and not exceed, a reasonable portion of the estimated cost of processing, monitoring, administering and enforcing the registration statements and permits. The department shall collect registration and permit application fees in accordance with the fee schedule adopted pursuant to this section.

Section 19: Public water system rates; propriety

Section 19. Nothing in this chapter shall limit the authority of the department of telecommunications and energy to rule on the propriety of any rates charged by any public water system subject to its jurisdiction; provided, however, that in making such a ruling the department of telecommunications and energy may consider any fees required by registration adopted pursuant to section eighteen; and, provided further, that such ruling shall not impose any condition inconsistent with the provisions of any order issued by the department or the terms and conditions of a permit issued under this chapter or the regulations adopted hereunder. Compliance with any requirement imposed by the department of telecommunications and energy shall not exempt any public water supply systems from requirements of this chapter or the regulations adopted hereunder.

Section 20: Persons engaged in business of digging or drilling wells; certification; reports

Section 20. No person shall engage in the business of digging or drilling wells within the commonwealth unless he has filed a certification with the department. Each person intending to engage in said business shall certify annually with said department and upon payment of a fee determined annually by the department shall be issued a certificate indicating that he is so certified. Said certification shall be sufficient authority for any said person to engage in the business of digging or drilling wells anywhere within the commonwealth and no further licensing or certification shall be required; provided, however, that nothing contained herein shall prohibit the appropriate local authority in any city or town from requiring any person engaged in the digging or drilling of private wells to obtain a site permit in accordance with terms and conditions which ensure health and safety and said city or town may charge said person a reasonable fee for said site permit as determined by the city or town.

Pursuant to chapter thirty A, the department shall adopt such regulations as it deems necessary to carry out the purposes of this section. Such regulations shall not be subject to section 3 of this chapter. Within thirty days after completion of any well by digging or drilling, the person engaged in the business of digging or drilling wells shall submit a report to the department setting forth such information as may be required under said rules and regulations.