

PROPOSED RULEMAKING

PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

[4 PA. CODE CH. 118] Reductions of Major Water Use

The Pennsylvania Emergency Management Agency (PEMA) proposes to amend Chapters 118, 119, 119a and 120 (relating to reductions of major water use in the Delaware River Basin Drought Emergency Area; prohibition of nonessential water uses in a Commonwealth drought emergency area; Philadelphia Drought Water Emergency Plan; and local water rationing plans). The proposed amendments to Chapter 118 will make its provisions applicable Statewide, rather than just in the Delaware River Basin. The proposed amendments to Chapter 119 include proposed changes to the definition section and to the list of exceptions to the nonessential water use bans. The provisions of Chapter 119a are proposed to be eliminated and to be incorporated into Chapter 119. The proposed amendments to Chapter 120 are primarily procedural. Overall, the proposed amendments will move the Commonwealth toward full-time drought preparedness and management. Implementation of actual emergency provisions of the regulations, including the nonessential water use bans, will only be effective during a declared drought emergency and within the declared drought emergency area.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Mark L. Goodwin, Chief Counsel, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110-9364, (717) 651-2010. Information regarding submitting comments on these proposed amendments appear in Section I of this Preamble. This proposal is available electronically through the PEMA website at <http://www.pema.state.pa.us>. It is also available on the Department of Environmental Protection (DEP) website at <http://www.dep.state.pa.us> by choosing "Subjects" then "Drought Information" and then clicking on "Drought Regulations."

C. *Statutory Authority*

The rulemaking is proposed under Pennsylvania Emergency Management Services Code (code), 35 Pa.C.S. § 7313(3), which grants PEMA the authority to adopt rules and regulations as may be deemed necessary to carry out the provisions of the code.

D. *Background and Purpose*

The drought experience of 1998-99 offered insight into many ways in which the drought emergency regulations found at Chapters 118, 119, 119a and 120 have become outdated with the passage of nearly 20 years since they were initially written and nearly 10 years since they were last revised. Technology and social trends have advanced

in ways that earlier drafters of the regulations could not have envisioned. As an example, irrigation practices have advanced with new technologies, and it may now be more efficient to irrigate in many cases with automated irrigation systems than to water with a hand-held hose.

Overall, the Commonwealth's experience with droughts has also shown the potential for more efficient ways to manage water use during drought emergencies. Experience has shown, for example, that a permanent Commonwealth Drought Coordinator (CDC), with authority to approve drought plans prior to a drought, rather than during an emergency, would enable the Agency to focus more closely on drought emergency operations, and at the same time would provide for more meaningful reductions in and more efficient use of available water resources.

The proposed amendments will move the Commonwealth toward full-time drought preparedness and management. Implementation of actual emergency provisions of the regulations, including the nonessential water use bans, will only be effective during a declared drought emergency and within the declared drought emergency area, as is presently the case. However, the revised regulations will be effective at all times, rather than only during declared drought emergencies. They will also be effective Statewide, rather than only in the declared emergency area. This will enable the designation of a permanent CDC within the DEP. The proposed amendments will authorize the CDC to receive and approve drought management plans on an ongoing basis from water users across this Commonwealth, thus allowing more opportunity to provide education and technical assistance to water users to guide them in the development of their individual drought plans. It will also allow more time for the CDC and DEP staff to adequately review plans and to approve them prior to an actual emergency. This is in concert with new provisions in the regulations that require certain classes of water users, such as golf courses, to operate according to an approved plan during an emergency.

Drafts of the proposed amendments were made available at informational meetings held during April 2000 in Harrisburg, Bethlehem and Pittsburgh. Notices of the meetings and the availability of the draft amendments also were published in newspapers of general circulation across this Commonwealth and in the *Pennsylvania Bulletin* with a public comment period that ended April 30, 2000. The public comments received have been taken into consideration in the drafting of these proposed amendments to the drought regulations.

E. *Summary of Regulatory Requirements*

1. *Discussion of Proposed Amendments to Chapter 118*

The Chapter 118 regulations were originally written to apply only to the Delaware River Basin portion of the Commonwealth. References to the Delaware River Basin are being removed from the regulations to make them applicable Statewide. Many of the activities involved in submittal and review of drought contingency plans, as required by the regulations, included duplications of effort by both PEMA and the CDC. To the extent practicable, references to PEMA with regard to those activities are being removed from the regulations, and authority and responsibility for those activities are being delegated to

the CDC, as agent for PEMA. In a similar manner, the current authorities and responsibilities of the Pennsylvania Emergency Management Council in the appeal process, are being assigned to PEMA and further delegated to the extent practicable to the Pennsylvania Public Utility Commission's administrative law judges or others.

In § 118.1 (relating to definitions), the terms "consumptive water," "designated drought emergency area" and "water user" have been added, and the definition of "Commonwealth Drought Coordinator" has been revised, consistent with Chapters 119 and 120.

In § 118.2 (relating to purpose), the requirement for drought contingency plans has been limited to only those public water suppliers serving more than 50 customer connections.

In § 118.3 (relating to scope), the scope has been revised to include the entire Commonwealth, rather than just the Delaware River Basin.

In § 118.4 (relating to contingency plans—public water supply agencies), revisions will allow the CDC as well as the Governor's Emergency Proclamation to order preparation of drought contingency plans by public water suppliers, including those whose sources or service areas may be located within the emergency area. Plans approved by the CDC within 3 prior years will meet the requirement. Provisions and criteria for variances from the plans are added to the requirements.

Revisions to § 118.5 (relating to contingency plans—self supplied commercial and industrial users) will allow the CDC as well as the Governor's Emergency Proclamation to order preparation of drought contingency plans by large self-supplied industrial and commercial water users.

Revisions to § 118.6 (relating to implementation of reductions) include criteria to guide the CDC's consideration of equitable reductions when ordering the implementation of industrial/commercial contingency plans.

Revisions to § 118.8 (relating to procedure for exemptions or variance from water use reductions) clarify and improve the due process protections provided to those parties who request variances due to extraordinary hardship.

Revisions to § 118.9 (relating to implementation period) establish requirements for establishment and operations of county drought management task forces.

2. Discussion of Proposed Amendments to Chapter 119

Chapter 119 contains the bans on nonessential water use, which are effective during a declared drought emergency. Many revisions are being proposed in Chapter 119. As in Chapter 118, to the extent practicable, responsibilities and authorities are being assigned from the Council to PEMA and delegated from PEMA to the CDC. These procedures again affect plan or variance submissions, reviews, approvals and appeals.

The effective emergency area is being expanded to include the complete service area of any public water supply agency whose source of water is located in the declared emergency area. This will eliminate problems experienced previously when public water supply service areas extended beyond an emergency county into a non-emergency county with the result that only a part of the service area was subject to emergency restrictions.

In § 119.1 (relating to definitions) the definitions have been added or revised to clarify the meanings of athletic field, effective conservation, irrigation contractor, newly

seeded and sodded grass, paved surface, and professional landscaper and for consistency with Chapters 118 and 120.

In § 119.4, revisions are added to specifically address athletic fields, which were previously considered part of the "lawn" section. Regulations are provided separately for normal athletic fields and sand-based fields, because the sand-based fields (similar to golf greens) require more frequent and greater quantities of watering. Irrigation of sand-based fields will require metering and reporting and must be done according to a plan approved by the CDC. Normal athletic fields will be limited to watering one time per week; while sand-based fields will be limited to 1 1/2 inches of water per week.

The golf course regulations in § 119.4 (relating to prohibition of nonessential water uses) have been rewritten. As with the sand-based athletic fields, irrigation of golf courses will require metering and reporting and must be done according to a plan approved by the CDC. The golf courses will be required to reduce their watering to 70% of the average daily quantity of water used, by month, in the previous 5 years, within lower and upper limits.

The grass and landscape/nursery regulation in § 119.4 is being modified primarily to recognize the efficiencies in using automated irrigation systems, compared to the "hand-held bucket and hose" techniques allowed in the current regulations.

Fountains or waterfalls necessary to sustain fish life will be allowed to operate under the § 119.4 revisions; water will be allowed to be used to replenish fish ponds and water gardens to sustain fish and aquatic life.

Revisions in the mobile equipment and paved surface regulations in § 119.4 recognize the need to wash equipment or areas related to food vending and hauling. The use of a hand-held hose with automatic shutoff nozzle will be allowed, up to 2 minutes, for washing personal cars. This process will generally require less water than the "bucket" method allowed in the current regulations.

The fire hydrant regulations previously contained in Chapter 119a are being incorporated into § 119.4; while Chapter 119a, which dealt specifically with the County/City of Philadelphia, is being eliminated.

In § 119.6 (relating to procedure for exemptions or variance from the prohibition of nonessential uses of water), the revisions provide that a public water supply agency whose sources are not in jeopardy, although located within a declared emergency county, may request a variance from the nonessential use bans, if the agency is following a drought contingency plan that was approved by the CDC within the previous 3 years.

Section 119.6 variance procedures are modified to improve due process.

Section 119.7 (relating to implementation period) is being rescinded to make the regulations effective full-time; although restrictions will only be effective during a declared drought emergency.

3. Discussion of Proposed Amendments to Chapter 119a

This chapter, which applies specifically to the County/City of Philadelphia, is being eliminated and the section on fire hydrants is being incorporated into § 119.4.

4. Discussion of Proposed Amendments to Chapter 120

This chapter applies solely to public and municipal water supply systems and allows either the municipality or the water supply agency to institute water rationing if the bans on nonessential water uses effected through

Chapter 119 are insufficient to protect local water supplies. The suggested revisions to this chapter are primarily procedural in nature, some of them reflecting the proposed assignments and delegations of authority from the Council or PEMA, or both, to PEMA or the CDC, or both. Revisions are included to improve due process and notification provisions.

Section 120.1 (relating to definitions) has been revised for consistency with Chapters 118 and 119 definitions.

Section 120.2 (relating to purpose) revisions authorize the CDC to approve water rationing plans, as an agent of PEMA.

In § 120.9 (relating to excess use charges), the appeal processes reflect the intended use of Pennsylvania Public Utility Commission administrative law judges as hearing officers.

Section 119.10 is being rescinded, as unnecessary. It is not envisioned that a rationing plan would be suspended. Water supply recovery would result in repeal rather than suspension of the rationing plan.

In § 120.14 (relating to notification of termination), the repeal process has been clarified and simplified.

F. *Benefits, Costs and Compliance*

Benefits

The proposed amendments to the regulations will benefit the public by protecting water resources during a declared drought emergency and will prevent water supply shortages by curtailing nonessential water use. The procedures will be streamlined for adoption of drought contingency plans and local water rationing plans.

The exact fiscal impact of the proposed amendments cannot be calculated. For most affected persons or businesses, the impact will be positive in terms of reducing possible economic hardship. Paperwork will be reduced by the proposed amendments to Chapter 119 by reducing the number of variance applications prepared by individuals, business and industry. Additionally, DEP and PEMA will not have to process as many applications.

The benefits of the proposed amendments in conserving a natural resource are impossible to quantify. Reductions in water use, although inconvenient to many users, will serve to extend available supplies, thus insuring that water is available for public health and safety needs and economic productivity. The availability of existing supplies will be extended by reducing the daily withdrawal of water from sources, providing an opportunity for replenishment over time should there be adequate precipitation. Extending water supplies also provides an opportunity for water suppliers to develop alternative sources of water.

Savings will generally accrue to all the regulated community, to the extent that property and employment is protected by the revisions. These savings will occur in the form of reduced damage to or loss of grass or landscape materials, for not only the athletic field and golf course owners, but other businesses and homeowners as well. All the revisions have been designed to better protect property, health and employment. Jobs in the golf, landscape/nursery, mobile washing, and food processing and vending industries will be better protected. Athlete safety will be enhanced on athletic fields. Actual or estimated values for these savings, which will only accrue during an actual declared drought emergency, are not available.

Savings may likewise accrue to local governments or school districts, to the extent that they own or maintain

athletic fields, golf courses and landscape/nursery materials. Health, safety and employment will be better protected for them also.

Savings will accrue to DEP through reduced time required for processing requests for variances from the nonessential water use bans. The revisions are designed to resolve most of the problems in the current regulations that lead to requests for variances. In the 1999 drought, nearly 250 variance requests were processed, requiring approximately 1 man-hour each.

Compliance Costs

In general, the revisions will not result in additional costs to the regulated community. Exceptions may include golf course and sand-based athletic field owners. In both of these cases, the revisions will require metering of irrigation water used during drought emergencies, and in the case of golf courses, metering of 5 prior years' irrigation water use will also be required. Meter installation costs for athletic fields should be less than \$250. For golf courses, meter installation should be in the \$700—\$1,500 range, depending upon the size and type of meters required. Meter reading costs for athletic fields should be minimal. For golf courses, meter reading on a daily basis by grounds keepers should not impose any significant additional costs. Automatic recorders may be installed, if desired, to avoid the need for manual daily reading.

Because the revisions are designed to make the regulations clearer, and more efficient, and many of the compliance problems experienced with the current regulations are being addressed in the revisions, costs to local enforcement agencies should be reduced. Local governments may experience additional costs associated with municipally-owned athletic fields or golf courses, as previously described.

The primary cost to DEP will be in staff time to review and approve irrigation plans submitted by approximately 800 golf courses and 50 sand-based athletic fields. Approximately 0.5 to 2.5 hours per plan may be required for review and approval. This represents a one-time resource commitment of up to 2000 man-hours. Semi-automation of the process may reduce this requirement significantly, perhaps to as little as 250-500 man-hours.

Compliance Assistance Plan

DEP provides guidance, sample plans and technical assistance to public water suppliers for developing drought contingency plans, water rationing plans and water conservation plans and programs. Similar materials will be developed for industrial/commercial water users to aid them in development of drought contingency plans, to the extent practicable.

Web-based, self-instructional application forms will be developed for submitting golf course and athletic field drought operations plans, and technical assistance will be provided as appropriate.

Paperwork Requirements

Owners of golf courses and sand-based athletic fields will be required to submit a drought operations plan for approval by the CDC, prior to irrigation of those facilities within a declared drought emergency area. The regulations will allow submittal and approval of the plans prior to the declaration of an emergency, at the option and advantage of the owner.

During declared drought emergencies only, owners of golf courses and sand-based athletic fields within the declared emergency area will be required to report irriga-

tion usage to the CDC, on a monthly basis. Owners of golf courses should also record usage for a 5-year period prior to a drought emergency. This information will be included in their application for approval of a drought operations plan.

Owners of public water supply systems and large self-supplied industrial or commercial water users whose sources or service areas are located within a declared emergency area may be required by the Governor or the CDC to submit drought contingency plans, during the declared emergency. The regulations provide for the submittal and approval of the plans prior to an emergency, again at the option and advantage of the owner.

G. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by PEMA to determine whether the regulations effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 24, 2000, PEMA submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Veterans Affairs and Emergency Preparedness Committee and Senate State Government Committee. In addition to submitting the proposed amendments, PEMA has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by PEMA in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify PEMA within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by PEMA, the General Assembly and the Governor of objections raised.

I. *Public Comment*

Written Comments—Interested persons are invited to submit comments, suggestions or objection regarding the proposed amendments to Mark L. Goodwin, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110-9364. Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by PEMA by December 4, 2000.

Electronic Comments—Comments may be submitted electronically to PEMA at mgoodwin@state.pa.us and must also be received by the Agency by December 4, 2000. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

DAVID L. SMITH,
Director

Fiscal Note: 30-55. (1) General Fund; (2) Implementing Year 2000-01 is Unknown; (3) 1st Succeeding Year 2001-02 is Unknown; 2nd Succeeding Year is Unknown; 3rd Succeeding Year is Unknown; 4th Succeeding Year is Unknown; 5th Succeeding Year is Unknown; (4) 1999-00

Program—Not Applicable; 1998-99 Program—Not Applicable; 1997-98 Program—Not Applicable; (7) Various appropriations in the Department of Environmental Protection; (8) recommends adoption. Any additional cost that the Commonwealth incurs due to this rulemaking is expected to be minimal and would be absorbed in the Department of Environmental Protection budget.

Annex A

TITLE 4. ADMINISTRATION

PART V. EMERGENCY MANAGEMENT AGENCY

CHAPTER 118. REDUCTIONS OF MAJOR WATER USE IN [THE DELAWARE RIVER BASIN] A COMMONWEALTH DROUGHT EMERGENCY AREA

§ 118.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

[**Any water**—Any type of water, including fresh water, brackish water, waste water or reclaimed waste water.

Brackish water—Water containing more than 1000 parts per million of dissolved salts.

Commission—The Delaware River Basin Commission, created by the Delaware Basin Compact (32 P. S. §§ 815.101—815.106).]

Commonwealth Drought Coordinator—An officer of the Department appointed by the Secretary [, in consultation with the Governor and PEMA,] of the Department to carry out responsibilities established in the Pennsylvania Drought Contingency Plan to coordinate Commonwealth **planning, preparedness and response** action to a drought or water shortage emergency.

Consumptive water—Water that in the process of being used or is evaporated, transpired or incorporated into a product.

[**Council**—The Pennsylvania Emergency Management Council, created by 35 Pa.C.S. §§ 7101—7707 (relating to emergency management services) and section 2 of the act of November 26, 1978 (P. L. 1332, No. 323).

Delaware River Basin—The area of drainage into the Delaware River and its tributaries, including the Delaware Bay.]

Department—The Department of Environmental [Resources] Protection of the Commonwealth.

Designated drought emergency area—The area of this Commonwealth described in the Governor's proclamation or executive order declaring a state of drought and water shortage emergency.

[**Fresh water**—Water withdrawn from a surface or groundwater source, or from a public water supply system, located within the Delaware River Basin, which has not been previously used, other than brackish water and water from a nonpotable source. The term does not include water collected directly from precipitation in rain barrels or cisterns.]

PEMA—The Pennsylvania Emergency Management Agency [, created by 35 Pa.C.S. §§ 7101—7707 (relating to emergency management services) and section 2 of the act of November 26, 1978 (P. L. 1332, No. 323).]

Public water supply agency—A [person, partnership, association, corporation, municipality or municipal authority, district or other entity supplying or authorized to supply water to the public] “community water system” as that term is defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.3).

[*Reclaimed water*—Waste water which has been treated to allow reuse.

Secretary—The Secretary of the Department.

Waste water—Water which has been previously used for industrial, municipal, domestic or other purposes, and has not been returned to the surface or groundwater sources.

Water from a nonpotable source—Water from the surface or groundwater source which the Department determines is not used for public or private drinking water supply, and is not capable of being rendered suitable for drinking water supply by standard and economically feasible methods of treatment.]

Water user—

(i) An individual, partnership, association, company, corporation, municipality, municipal authority, political subdivision or an agency of Federal, State, county or municipal government.

(ii) The term includes the officers, employes and agents of a partnership, association, company, corporation, municipality, municipal authority, political subdivision or an agency of Federal, state, county or municipal government.

§ 118.2. Purpose.

This chapter provides for the preparation and implementation of contingency plans by public water supply agencies providing service to 50 or more customer connections, and by major commercial and industrial water users, to reduce water use [by public water supply agencies, and by major commercial and industrial water users,] in response to [the] a state of drought and water shortage emergency within specified areas of this [Commonwealth’s portion of the Delaware River Basin] Commonwealth. The objective of this chapter is to conserve water, to balance demand with limited available supplies, and to assure that sufficient water is available to serve essential health, safety and economic needs. This chapter is intended to implement the Pennsylvania Drought Contingency Plan, and [to assist in implementing the conservation orders promulgated by the Commission under Article 10 of the Delaware River Basin Compact (32 P. S. § 815.101)] a Governor’s proclamation of drought emergency that directs by directing the preparation of contingency plans and implementation of water use reductions [in a manner comparable to other Delaware River Basin States and consistent with the requirements of the Commission].

§ 118.3. Scope.

This chapter applies to all water uses within this [Commonwealth’s portion of the Delaware River Basin, which are included in the Governor’s Proclamation or Executive Order as being included in that area declared to be in a state of drought or water shortage emergency. The area may encompass all or part of the following counties: Berks, Bucks, Carbon, Chester, Delaware, Lackawanna, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, Pike, Schuylkill, and Wayne, or it may be limited to specific designated areas within the Delaware River Basin] Commonwealth.

§ 118.4. Contingency plans—public water supply agencies.

(a) *Preparation and submission.*

(1) [By May 27, 1985] Within the time frame specified in the Governor’s proclamation of drought emergency or order issued during an emergency by the Commonwealth Drought Coordinator each public water supply agency which provides service to 50 or more customer connections and which has either a source of water or a service area within the designated drought emergency area shall develop, adopt, and submit a drought contingency plan meeting the requirements set forth in this section.

(2) Each public water supply agency shall submit three copies of the drought contingency plan to the Commonwealth Drought Coordinator, for distribution to PEMA, the Department and other interested Commonwealth agencies, including the Pennsylvania Public Utility Commission if applicable. Each public water supply agency shall submit a copy of the drought contingency plan to the counties in which the public water supply agency serves water.

(3) If a public water supply agency has previously prepared and submitted to the [Department] Commonwealth Drought Coordinator a drought contingency plan containing the information required by this section and the plan was approved by the Commonwealth Drought Coordinator, or his designee, not more than 3 years prior to the Governor’s proclamation of drought emergency, the plan may be deemed to satisfy the requirements of this section; however, the public water supply agency may affirm, modify or amend the plan as it deems appropriate, through submittal of a modified or amended plan to the Commonwealth Drought Coordinator for approval.

(b) *Contents.* Drought contingency plans for public water supply agencies shall, at a minimum, contain the following:

* * * * *

(6) A plan of actions which will be taken by the public water supply agency to respond to drought or water shortage conditions, including public notice, a water conservation program, development of emergency supplies, and rationing. The plan shall provide for actions to be taken to achieve a phased reduction of total system withdrawal and use [by the amounts of 5.0%, 15%, 25%, 35% and 50% of the rates of water withdrawal and use existing during nondrought periods].

(7) A procedure for the granting of variances or exemptions to the provisions of a plan to address extraordinary hardships which may exist as a re-

sult of a plan, including a provision for appeal as specified in § 120.9(d) (relating to excess use charges). For purposes of this section, "extraordinary hardship" means a permanent damage to property, including perishable raw or processed product, or other personal or economic loss which is substantially more severe than the sacrifices borne by other water users subject to public water supply agency's drought contingency plan. The procedure shall include, when appropriate, consideration of:

(i) **Relative impact of water use reductions upon:**

(A) **Public health and safety, including pharmaceuticals.**

(B) **Food and raw fiber production, including consideration for protection of perishable raw or processed products.**

(C) **Provision of essential public utility services; and the maintenance of employment.**

(ii) **The measures and efforts previously undertaken to conserve water or to provide for water storage and releases, and the ability of users to implement additional conservation measures.**

(c) **Implementation of contingency plans by public water supply agencies.** Each public water supply agency which has either a source of water or a service area within the designated drought emergency area shall implement its approved drought contingency plan during the effective period of the Governor's proclamation of drought emergency.

§ 118.5. **Contingency plans—self supplied commercial and industrial users.**

(a) *Preparation and submission.*

(1) **[By May 27, 1985, each]** Within the time frame specified in the Governor's proclamation of drought emergency or order issued during an emergency by the Commonwealth Drought Coordinator, the owner or operator of a commercial or industrial facility which withdraws ground or surface water **[from the Delaware River Basin]** within the designated drought emergency area in excess of an average of 100,000 gallons per day in any 30 day period shall develop and adopt, and have available for inspection at the facility, a drought contingency plan under this section.

(2) **[By May 27, 1985,]** Within the time frame specified in the Governor's proclamation of drought emergency or order issued during an emergency by the Commonwealth Drought Coordinator the owner or operator of a commercial or industrial facility which withdraws ground or surface water **[from the Delaware River Basin]** within the designated drought emergency area in excess of an average of 500,000 gallons per day in a 30-day period shall develop, adopt and submit a drought contingency plan to the Commonwealth Drought Coordinator.

(3) **[The]** During the effective period of the Governor's proclamation of drought emergency, the Commonwealth Drought Coordinator, **[Council or PEMA,]** may direct the owner or operator of **[another]** any commercial or industrial facility **[subject to this section]** not included in paragraph (2) whose source of water is located within the designated drought emergency area, to **[file]** develop, adopt

and submit a drought contingency plan **[within a reasonable time with]** to the Commonwealth Drought Coordinator **within a reasonable time.**

(b) *Contents.* Drought contingency plans for self-supplied commercial and industrial facilities shall, at a minimum, contain the following:

* * * * *

(6) A description of **[conservation]** measures previously undertaken to **[reduce]** conserve water **[use]** at the facility **or to provide for water storage and releases**, and potential measures which could be implemented to reduce water use under emergency conditions. The descriptions should include information regarding the impacts of the measures on the production, employment^[,] and economics of the facility, **including consideration for protection of perishable raw or processed products.**

(7) A plan of actions which **[will]** can be undertaken at the facility in response to drought and water shortage conditions to achieve a phased reduction of total withdrawal and use by amounts of **[5.0]** 5%, 15%, 25%, 35% and 50% of the rates of water withdrawal and use existing during **[non-drought]** nondrought periods.

§ 118.6. **Implementation of reductions by self-supplied industrial and commercial water users.**

(a) As necessary to respond to drought and water shortage conditions, **during the effective period of the Governor's proclamation of drought emergency**, the **[Council]** Commonwealth Drought Coordinator may order equitable reductions of water withdrawal and use by **[public water supply agencies and]** self-supplied industrial and commercial facilities **within the designated drought emergency area**. In determining the amount of equitable reductions, the **[Council]** Commonwealth Drought Coordinator will consider the following, in priority order:

(1) **[The measures and efforts previously undertaken by public water supply agencies, and self-supplied industrial and commercial facilities, to conserve water, and the ability of users to implement additional conservation measures.**

(2) **[The]** The relative impact of water use reductions upon **[public]**:

(i) **Public health and safety, including pharmaceuticals.**

(ii) **[food]** Food and raw fiber production, **including consideration for protection of perishable raw or processed products.**

(iii) **[provision]** Provision of essential public utility services^[, and the maintenance].

(iv) **Maintenance** of employment.

(2) **The measures and efforts previously undertaken by self-supplied industrial and commercial facilities to conserve water or to provide for water storage and releases, and the ability of users to implement additional conservation measures.**

(b) Each **[public water supply agency and the]** owner or operator of each self-supplied commercial or industrial facility shall implement, under the contingency plans required under § **[§ 118.4 and]** 118.5 (relating to

contingency plans—[public water supply agencies and contingency plans] self supplied commercial and industrial users) measures that are necessary to achieve the withdrawal and use reductions ordered by the [Council] Commonwealth Drought Coordinator.

(c) Notice of orders issued by the [Council] Commonwealth Drought Coordinator to implement reductions will be provided to affected users by notice published in the *Pennsylvania Bulletin* and in newspapers of general circulation in the affected area [or] and by service of the notice by mail or other means [within 48 hours of issuance of the order].

§ 118.7. Penalties and enforcement.

A person who violates this chapter, fails to carry out duties and responsibilities imposed by this chapter, or impedes or interferes with [action] actions undertaken or ordered under this chapter shall be subject to the penalties under 35 Pa.C.S. § 7707. Violation of any provision of this chapter is a summary offense enforceable by proper law enforcement authorities or private citizens in accordance with 234 Pa. Code Chapters 50 and 6000 (relating to summary cases;) and 6000 (relating to) Rules of Criminal Procedure for the Municipal Court of Philadelphia).

§ 118.8. Procedure for exemptions or variance from water use reductions by self-supplied industrial or commercial water users.

(a) If compliance with water use reductions ordered under this chapter would result in extraordinary hardship upon a self-supplied industrial or commercial water user, [he] the water user may apply for an exemption or variance.

(b) For purposes of this [chapter] section, extraordinary hardship means a permanent damage to property, including perishable raw or processed product or other personal or economic loss which is substantially more severe than the sacrifices borne by other water users subject to this chapter.

(c) A [person or business entity believing] self-supplied industrial or commercial water user who believes he suffers an extraordinary hardship and [desiring] desires to be wholly or partially exempt from the reductions ordered under this chapter may apply for an exemption or variance under the following procedures:

(1) The applicant shall submit a written request with full documentation supporting the need for the requested relief to:

Commonwealth Drought Coordinator
c/o Department of Environmental [Resources]
Protection
P. O. Box [1467] 8555
Harrisburg, Pennsylvania [17120] 17105-8555

* * * * *

(3) The Commonwealth Drought Coordinator or a designee, will review the application in consultation with [the staff of PEMA and] other appropriate Commonwealth agencies, and may request the applicant to provide within a reasonable time additional information as necessary to review the application.

(4) The Commonwealth Drought Coordinator or a designee [as agent for PEMA and Council] is autho-

rized to render a decision regarding applications received for exemption or variance. The Commonwealth Drought Coordinator or a designee will provide the applicant [and other interested parties] notice in writing of the decision and the reasons for the decision. [Where] When possible, the Commonwealth Drought Coordinator or a designee will provide a written decision within 7 working days, or if perishable products are involved, within 1 working day of submission of an application or [of] will request additional information as necessary to review the application. When appropriate, the Commonwealth Drought Coordinator may issue a Statewide exemption or variance to similarly situated water users. A notice of the decision will be published in the *Pennsylvania Bulletin*. Unless appealed under this section, the decision of the Commonwealth Drought Coordinator or a designee, shall be considered a final action on the application.

(5) A person aggrieved by a decision of the Commonwealth Drought Coordinator, or a designee, may, within 30 days of written notice of the decision or publication of notice of the decision in the *Pennsylvania Bulletin*, appeal the decision to [the Council] PEMA.

(6) An appeal from an initial decision of the Commonwealth Drought Coordinator [may], or a designee will not act as [a] an automatic supersedeas, but, upon cause shown and [where] when the circumstances require it, [the Drought Coordinator and the Council, or both,] PEMA will have the power to grant a supersedeas.

(7) When an initial decision is appealed, [the Commonwealth Drought Coordinator] PEMA will provide the applicant with an opportunity for a hearing. [The Commonwealth Drought Coordinator may act as the hearing examiner, or] PEMA may appoint a hearing examiner who may be an administrative law judge of the Pennsylvania Public Utility Commission. Hearings may be held telephonically. [A hearing will be conducted under 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).]

(8) The hearing examiner will provide the record of the hearing, if any, and a recommendation to PEMA [and Council] for review and adoption.

(9) [The Council] PEMA will notify the applicant in writing of its final decision and the reasons for the decision regarding the appeal.

* * * * *

(e) An exemption or variance [approved by the Council] may be modified or rescinded by the Commonwealth Drought Coordinator if public health, safety and welfare require further reduction in water use.

(f) An exemption or variance granted to [an applicant] a water user for a specific property, purpose or person is not transferable to another property, purpose or person without prior written approval from [PEMA and Council] the Commonwealth Drought Coordinator.

§ 118.9. [Implementation period] County drought management task force.

[This chapter shall be implemented upon declaration by the Governor of a drought or water shortage emergency, and shall remain in effect during the period of the emergency until terminated by action of the Governor, or by order of PEMA. Notice of the termination of the drought emergency and the reversion of this chapter to a standby status shall be submitted to the Legislative Reference Bureau for suggested publication in the Pennsylvania Bulletin.

(a) Within the time frame specified in the Governor's proclamation of drought emergency, the county commissioners of all counties located within the designated drought emergency area shall establish a drought management task force within their county.

(1) The county task force shall coordinate and monitor all drought reporting and water conservation measures undertaken within their county as necessary to ensure the provision of safe and reliable drinking water sources.

(2) The county task forces shall be comprised of county emergency management officials, public water supply agency representatives, elected officials, health officials, fire officials, law enforcement officials, affected business and industry representatives, and others as the county may determine.

(3) The county commissioners will coordinate, and report to the Commonwealth Drought Coordinator on county task force activities to include public information, planning, water system vulnerabilities, enforcement coordination, fire protection and other areas of public concern.

(b) For the duration of the drought emergency, each county drought management task force shall prepare and submit to the Commonwealth Drought Coordinator a monthly report describing the severity and impact of drought conditions. The report is due the first day of each month and shall describe the drought impact on the public, business and industry and the agriculture community. The report will identify steps taken to implement water conservation and public education.

(c) The county drought management task force meetings shall be open to the public and shall comply with state public meeting sunshine requirements.

§ 118.10. [Effective date] (Reserved).

[This chapter shall take effect immediately upon adoption by the council.]

[Pa.B. Doc. No. 00-1906. Filed for public inspection November 3, 2000, 9:00 a.m.]

[4 PA. CODE CH. 119]

Prohibition of Nonessential Water Uses in a Commonwealth Drought Emergency Area

Editor's Note: For the preamble relating to this document, see 30 Pa.B. 5735 (November 4, 2000).

Fiscal Note: 30-56. (1) General Fund; (2) Implementing Year 2000-01 is Unknown; (3) 1st Succeeding Year 2001-02 is Unknown; 2nd Succeeding Year 2002-03 is Unknown; 3rd Succeeding Year 2003-04 is Unknown; 4th Succeeding Year 2004-05 is Unknown; 5th Succeeding Year 2005-06 is Unknown; (4) 1999-00 Program—Not Applicable; 1998-99 Program—Not Applicable; 1997-98 Program—Not Applicable; (7) Various appropriations in the Department of Environmental Protection; (8) recommends adoption. Any additional cost that the Commonwealth incurs due to this rulemaking is expected to be minimal and would be absorbed in the Department of Environmental Protection budget.

Annex A

TITLE 4. ADMINISTRATION

PART V. EMERGENCY MANAGEMENT AGENCY

CHAPTER 119. PROHIBITION OF NONESSENTIAL WATER USES IN A COMMONWEALTH DROUGHT EMERGENCY AREA

§ 119.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

[Aesthetic uses—The use of water for ornamental or decorative purposes, such as fountains, reflecting pools and waterfalls.]

Any water—[Any type of water, including fresh water, brackish water, waste water or reclaimed waste water.] Water from any source including publicly or privately owned surface or groundwater sources such as springs, wells, streams, or ponds, including fresh water, brackish water, wastewater and water collected directly from precipitation in rain barrels, cisterns or similar containers.

* * * * *

Athletic field—A surface used for organized professional or amateur sports, including racing, contained within marked boundary lines or barriers. The term does not include foul, out-of-bounds or out-of-play areas.

Beneficial use—Use of water that is necessary to serve essential health, safety and economic needs, including the maintenance of human, animal and plant life.

* * * * *

[Commission—The Delaware River Basin Commission, created by the Delaware River Basin Compact (32 P. S. §§ 815.101—815.106).]

Commonwealth Drought Coordinator—An officer of the Department appointed by the secretary, to carry out responsibilities established in the Pennsylvania Drought Contingency Plan to coordinate Commonwealth planning, preparedness and response action to a drought or water shortage emergency.

[Council—The Pennsylvania Emergency Management Council created by 35 Pa.C.S. §§ 7101—7707 (relating to emergency management services).]

Department—The Department of Environmental [Resources] Protection of the Commonwealth.

Effective conservation—Use of water at the minimum rate necessary for the intended purpose, in a manner that does not result in the use of water for purposes that are prohibited by this chapter and in a manner that does not allow application or runoff of water onto areas that are prohibited by this chapter.

Fresh water—Water withdrawn from a surface water or groundwater source, or from a public water supply system, located within this Commonwealth [, which has not been previously used,] other than wastewater or brackish water [and water from a nonpotable source]. The term does not include water collected directly from precipitation in rain barrels [or], cisterns or similar containers.

Irrigation contractor—A person who is engaged in the business of design, installation or repair of irrigation equipment as a source of income.

Mobile equipment—A public, private or commercial automobile, truck, bus, trailer, cart, wagon, railroad car, camper, boat or [another] other type of similar equipment.

Newly seeded or sodded grass area—A grass area from which all growth was removed or tilled under and to which new seed or sod was applied within the previous 12 months.

Nurseries—Facilities which are used to grow or keep plants, trees, shrubs, vines, bulbs, cuttings, grafts, flowering annual plants, aquatic plants, seeds, turf, grass, sod or tubers for propagation, distribution or sale.

PEMA—The Pennsylvania Emergency Management Agency [of the Commonwealth created by 35 Pa.C.S. §§ 7101—7707].

Paved surfaces—Any surface, such as streets, roads, sidewalks, driveways, garages, parking areas, tennis courts, decks and patios, which has been covered with concrete, asphalt, tile, wood or other similar materials, but not including walls or vertical surfaces of buildings.

Professional landscaper—A person who is engaged in the business of installing or maintaining landscape materials as a full-time job.

Public water supply agency—A [person, partnership, association, corporation, municipality or municipal authority, district or other entity supplying or authorized to support water to the public] “community water system” as that term is defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.3).

[**Reclaimed water**—Waste water which has been treated to allow reuse.]

Sand-based athletic field—An athletic field with a man-made root zone that contains a minimum of 60% of sand, by weight, in the top 4 to 12 inches of the root zone.

Secretary—The Secretary of the Department.

Waste water—Water which has been previously used for industrial, municipal, domestic or other purpose, and has not been returned to [the] a surface water or groundwater source.

[**Water from a nonpotable source**—Water from a surface water or groundwater source which the Department determines is not used for public or private drinking water supply, and is not capable of being rendered suitable for drinking water supply by standard and economically-feasible methods of treatment.]

* * * * *

§ 119.3. Scope.

[(a)] This chapter applies to all water uses within [areas of] this Commonwealth [which are included in the Governor’s Proclamation or Executive Order that declares a state of drought or water shortage emergency].

[(b) Nonessential water uses within the County for Philadelphia shall be governed by regulations designed to achieve substantially equivalent conservation of water adopted by the City of Philadelphia Water Department and approved by the Council.]

§ 119.4. Prohibition of nonessential water uses.

Whenever the Governor declares by [Proclamation or Executive Order] proclamation a state of drought or water shortage emergency in an area of this Commonwealth, the following water uses shall be deemed nonessential and are prohibited within areas that have been declared to be in a state of drought or water shortage emergency, including within any public water supply agency’s service area for which a source of water is located within the emergency area. Nothing in paragraphs (1)—(4) allows a prohibited use of water as either a direct or indirect effect of the exceptions contained therein.

(1) The use of water for watering of [lawns] grass, except:

(i) Water may be applied to grass areas approved prior to or during the emergency as part of a sewage or storm water treatment system utilizing spray irrigation which system was approved in a permit issued by the Department prior to the drought emergency proclamation.

(ii) [Water may be applied at the minimum rate necessary to maintain grass tennis courts.

(iii)] Water may be used [at the minimum rate necessary] to establish and maintain newly seeded and sodded grass areas when applied between the hours of 5 p.m. [to] and 9 a.m. [by means of a bucket, can or hand held hose equipped with an automatic shut-off nozzle] by any means designed and operated to assure effective conservation. [Sprinklers may not be used for this purpose.]

[(iv) Water may be used at the minimum rate necessary to establish and maintain newly seeded or sodded nonresidential grass areas exceeding 10,000 square feet when applied between the hours of 5 p.m. and 9 a.m., by any means designed and operated to assure effective conservation of the water.

(v)] (iii) Water may be [used] applied by a professional landscaper [at the minimum rate necessary on] to establish and maintain newly seeded and

sodded grass areas [**greater than 10,000 square feet**] during [**regular**] working hours by any means designed and operated to assure effective conservation [**of the water**].

(iv) Water may be used by professional landscapers or irrigation contractors for the purpose of testing newly installed or repaired irrigation equipment for a period not to exceed 15 minutes per irrigation zone.

(v) Water may be applied for the purpose of grub control one time during the effective period of the Governor's proclamation of drought emergency.

(vi) Water may be used, in a manner that ensures effective conservation.

(2) The use of water for watering athletic fields, except:

(i) Water may be applied to athletic field grass areas approved prior to or during the emergency as part of a sewage or stormwater treatment system utilizing spray irrigation, which system was approved in a permit issued by the Department prior to the drought emergency proclamation.

(ii) Water may be applied to maintain grass tennis courts, by means of a bucket, can or hand-held hose equipped with an automatic shutoff nozzle or by means of an irrigation system that is designed and operated to restrict the timing or total volume of water, when applied between the hours of 5 p.m. and 9 a.m. in a manner that ensures effective conservation.

(iii) Water may be applied to athletic field grass areas, other than sand-based athletic field grass areas, by a means and in a manner that ensures effective conservation, between 5 p.m. and 9 a.m. during 1 night per calendar week, beginning 2 weeks prior to use of the athletic field for practice, regular season play or other organized use and continuing through the end of the same practice or regular season or other organized use, in accordance with a schedule that has been submitted, at least 7 days prior to implementation, to the Commonwealth Drought Coordinator, the local law enforcement agency and, if applicable, to the public water supply agency from which the water is obtained.

(iv) Water may be applied to sand-based athletic field grass areas in accordance with a plan approved by the Commonwealth Drought Coordinator. Approval of the plan shall be in accordance with the following:

(A) The quantities of water applied shall be measured by means of a volumetric meter, and reports of weekly total water use shall be submitted electronically to the Commonwealth Drought Coordinator on a monthly basis during the emergency, in a form acceptable to the Commonwealth Drought Coordinator.

(B) Water may be applied at an average daily rate that does not exceed 54,300 gallons per acre per week.

(C) Water shall be applied by a means and in a manner that ensures effective conservation.

(D) All meters and meter records shall be available for inspection by representatives of the local

law enforcement agency or of the Commonwealth Drought Coordinator, at all times.

(E) A copy of the approved plan shall be submitted to the local law enforcement agency and, if applicable, to the public water supply agency from which the water is obtained, prior to implementation.

(F) Noncompliance by the water user with any term or condition of the approved plan shall cause the plan to be void, and any further use of water under this exception shall be prohibited.

(v) Water may be applied to establish and maintain newly seeded or sodded grass areas by means and in a manner that ensures effective conservation.

(vi) Water may be applied to athletic field nongrass areas to control dust during an athletic event, by means and in a manner that ensures effective conservation, if dust control is necessary to protect health or safety.

(vii) Water may be used by professional landscapers or irrigation contractors for the purpose of testing newly installed or repaired irrigation equipment for a period not to exceed 15 minutes per irrigation zone.

[(2)] (3) The use of fresh water for irrigation and watering of outdoor gardens, landscaped areas, trees, shrubs and other outdoor plants except that fresh water may be:

(i) Used for [**agricultural**] irrigation for the production of food and fiber, and the maintenance of livestock and poultry [**or the production of nursery stock**].

(ii) Applied by means of a **bucket, can, hand-held hose** equipped with an automatic shut-off nozzle, or an **irrigation system that is designed and operated to restrict the timing or total volume of water and to restrict the application to specific plantings and that ensures effective conservation**, when applied between the hours of 5 p.m. and 9 a.m. **Sources of water, other than fresh water, shall be used to the extent available.**

(iii) [**Applied by means of a hand-held container or hand-held hose equipped with an automatic shut-off nozzle at the minimum rate necessary to establish and maintain newly planted gardens, trees, shrubs or other outdoor plants. Sources of water, other than fresh water, shall be used when available.**

(iv)] Used by [**commercial**] nurseries [**at the minimum rate necessary**] to maintain stock, by a means that ensures effective conservation, only to the extent that sources of water other than fresh water adequate to supply needs are not available or feasible to use.

[(v)] (iv) Used by [**arboretums and**] public gardens of National, State or regional significance [**at the minimum rate necessary**], or **arboretums** to preserve specimens, by a means that ensures effective conservation, only to the extent that sources of water other than fresh water adequate to supply needs are not available or feasible to use.

(v) Used by a professional landscaper or irrigation contractor during working hours, by a means that ensures effective conservation.

[(vi) Used at the minimum rate necessary to implement revegetation following earthmoving, where revegetation is required under an approved erosion and sedimentation control plan adopted under State law or regulation, to the extent that sources of water, other than fresh water, adequate to supply needs are not available or feasible to use. Revegetation use shall comply with applicable best conservation management practices for revegetation prescribed by the Department and county conservation districts.

(3)] (4) The use of [fresh] water for watering [a] any portion of golf courses, except [that fresh water may be used:

(i) To water tees and greens during the hours of 5 p.m. and 9 a.m.

(ii) To syringe heat sensitive grasses during daytime stress periods at the minimum rate necessary.

(iii) As part of a necessary overseeding or resodding operation during the months of August, September and October at the minimum rate necessary.] Water may be applied to greens, tees and fairways in accordance with a plan approved by the Commonwealth Drought Coordinator no earlier than 3 years prior to the month of use during an emergency. Approval of the plan shall be in accordance with the following:

(i) The quantities of water applied shall be measured by means of a volumetric meter, and reports of daily total water use shall be submitted electronically to the Commonwealth Drought Coordinator on a monthly basis during the emergency, in a form acceptable to the Commonwealth Drought Coordinator.

(ii) Water may be applied at an average daily rate that does not exceed 70% of the calendar month basis quantity. The basis quantity shall be determined for each calendar month, as follows:

(A) Metered water use for the same calendar month, for each of the 5 years previous to submittal of the plan to the Commonwealth Drought Coordinator, shall be averaged, after deducting all water that was used for purposes other than irrigation of greens, tees and fairways.

(B) To the extent that metered data is not available for any year prior to _____ (*Editor's Note: The blank refers to a date 1 year after the effective date of this proposal.*) or the date of installation of the current irrigation system, whichever is later, an application rate of 41,000 gallons per week per acre of greens, tees and fairways currently irrigated may be used in lieu of metered data.

(C) The basis quantity may not be less than 30,000 gallons per week per acre nor more than 54,000 gallons per week per acre.

(iii) Except as provided in subparagraphs (vi) and (vii), water shall be applied between the hours of 5 p.m. and 10 a.m.

(iv) Meters and meter records shall be available for inspection by representatives of the local law enforcement agency or of the Commonwealth Drought Coordinator, at all times.

(v) A copy of the approved plan shall be submitted to the local law enforcement agency and, if applicable, to the public water supply agency from which the water is obtained, prior to implementation.

(vi) Water may be applied between the hours of 10 a.m. and 5 p.m. with a hand-held hose equipped with an automatic shutoff nozzle, to syringe heat-sensitive grasses on tees, greens and fairways, in a manner that ensures effective conservation and so that water is applied to no grass area for a period exceeding 15 minutes in any 1 day.

(vii) Water may be used by professional landscapers or irrigation contractors during regular work hours for the purpose of testing newly installed or repaired irrigation equipment for a period not to exceed 15 minutes per irrigation zone.

(viii) Noncompliance by the water user with any term or condition of the approved plan shall cause the plan to be void, and any further use of water under this exception shall be prohibited.

[(4)] (5) The use of water for washing paved surfaces, [such as streets, roads, sidewalks, driveways, garages, parking areas, tennis courts and patios,] except water may be used:

(i) For prewashing in preparation [of asphalt street or driveway] for recoating and sealing.

(ii) At the minimum rate necessary for the maintenance of tennis courts composed of clay or similar materials, by means of a bucket, can or hand-held hose equipped with an automatic shutoff nozzle.

(iii) At the minimum rate necessary for sanitation of the premises of [eating and drinking places] raw or processed food, pharmaceutical or vaccine processing, storage or vending establishments, including restaurants and grocery stores.

(iv) At the minimum rate necessary for the sanitation of the premises of waste handling, storage and disposal facilities.

[(5)] (6) The use of water for ornamental purposes, including fountains, artificial waterfalls and reflecting pools, except:

(i) Fountains or waterfalls may be operated to perform the primary and necessary aeration function for a pond that supports fish life.

(ii) Water may be used to top off ornamental water gardens or fish ponds to the minimum extent necessary to maintain fish and aquatic life.

[(6)] (7) The use of water for washing or cleaning of mobile equipment [, including automobiles, trucks, trailers and boats,] except that:

(i) An individual may wash personally owned or leased vehicles by buckets [only.] and may use a hand-held hose equipped with an automatic shutoff nozzle to prerinse and rinse (total spray period not to exceed 2 minutes), in accordance with the following schedule:

(A) Odd street addresses on first and third Saturdays of the month.

(B) Even or no street addresses on the second and fourth Saturdays of the month.

(ii) Water may be used by commercial car washes at the minimum rate necessary to ensure an effective wash.

(iii) Water may be used for cleaning of construction, emergency, public transportation or government vehicles if necessary to preserve the proper functioning and safe operation of the vehicle.

(iv) Water may be used for cleaning and sanitizing equipment used for hauling or vending raw or processed food, pharmaceuticals or vaccines for human or livestock use, or for handling waste products.

[(iv)] (v) Water may be used for the cleaning of new and used cars which are part of a dealer's sales inventory in accordance with the following restrictions:

(A) A vehicle may be washed in preparation for sale at the time the vehicle is received from the manufacturer or prior owner.

(B) A vehicle shall be washed no more than once every 7 days, to be determined as follows:

(I) Odd street addresses on Tuesdays.

(II) Even or no street addresses on Wednesdays.

[(III) No street address on Thursdays.]

(C) A vehicle may be washed following sale immediately prior to delivery to the purchaser.

(D) A vehicle may be washed only by a means designed and operated to assure effective conservation of water or **[by bucket or hand-held hose equipped with an automatic shut-off nozzle]** in accordance with the procedures, excluding schedule, described in clause **(B)(I)**.

[(v)] (vi) Water may be used by professional mobile wash businesses, at the minimum rate necessary, for the washing of commercial, government or other vehicles as part of normal business practices.

(vii) A nonprofit service organization or club may wash vehicles in conjunction with a fundraising activity in accordance with the procedures described in subparagraph (i), without restriction as to schedule.

[(7)] (8) The serving of water in restaurants, clubs or eating places, unless specifically requested by the individual.

[(8)] (9) The use of water to fill and top off swimming pools, except that water may be used to fill and top off:

(iii) Other pools only if approved by the public water supply **[system]** agency from which the water is withdrawn. If water is obtained from other sources, permission from the owner of the source is required.

(10) The use of water from a fire hydrant—including sprinkler caps—for any purpose, except for the following permissible uses:

(i) Firefighting.

(ii) Testing of fire fighting apparatus or conducting water flow tests for fire insurance classification or reclassification, if approved by the public water supply agency from which the water is obtained.

(iii) Flushing sewers, water mains or hydrants when needed to protect public health and safety, if approved by the public water supply agency from which the water is obtained.

(iv) The watering of urban gardens in the city of Philadelphia after obtaining a water department and licenses and inspection permit.

(v) The filling of tank trucks at designated facilities with the approval of the public water supply agency from which the water is obtained, or if the city of Philadelphia, after obtaining a water department and licenses and inspection permit.

(vi) Recreational use of sprinkler caps in the city of Philadelphia, under the recreational fire hydrant program at authorized locations and at times supervised by the city police, fire, recreation and park facilities.

(11) The use of any water that is not for a beneficial use.

§ 119.5. Penalties and enforcement.

A water user who violates this chapter, fails to implement the duties and responsibilities imposed by this chapter or impedes or interferes with **[action]** actions undertaken or ordered under this chapter, shall be subject to the penalties provided under 35 Pa.C.S. § 7707 (relating to penalties). Violation of a provision of this chapter is a summary offense enforceable by proper law enforcement authorities or private citizens under 234 Pa. Code Chapters 50 and 6000 (relating to summary cases; and Rules of Criminal Procedure for the Municipal Court of Philadelphia). **In the city of Philadelphia, this chapter shall be enforced by the departments of water, police, and licenses and inspection.**

§ 119.6. Procedure for exemptions or variance from the prohibition of nonessential uses of water.

* * * * *

(b) If a public water supply agency can demonstrate that compliance with the prohibition of non-essential use of water is unnecessary due to adequate water supply and it is following a drought contingency plan approved by the Commonwealth Drought Coordinator in accordance with § 118.4 (relating to contingency plans—public water supply agencies), the public water supply agency may apply for an exemption throughout all or portions of its service area. In reviewing the applications, the Commonwealth Drought Coordinator shall give primary consideration to any impacts that approval of the application may have on the overall resources of the watershed or river basin and on the ability of law enforcement agencies locally or throughout the drought emergency area to enforce these or other emergency regulations. The consideration may, alone, be cause for denial.

[(b)] (c) For purposes of this section, extraordinary hardship means a permanent damage to property, **including perishable raw or processed product**, or other personal or economic loss which is substantially more severe than the sacrifices borne by other water users subject to the prohibition of nonessential use of water.

[(c)] (d) A water user **[that believes it suffers an extraordinary hardship and desires to be wholly or partially exempt from the prohibitions or nonessential use of water]** or public water supply agency may apply for an exemption or variance under the following procedures:

(1) The water user or public water supply agency shall submit a written application with full documentation supporting the need for the requested relief to:

Commonwealth Drought Coordinator
 c/o Department of Environmental Protection
 Post Office Box [8761] 8555
 Harrisburg, Pennsylvania 17105-8555

(2) The application from a water user shall contain information specifying:

* * * * *

(3) The application from a public water supply agency shall contain information specifying:

(i) The nature of the hardship claimed and the reason for the requested exemption or variance.

(ii) The adequacy of the supply.

(iii) Evidence of compliance with an approved drought contingency plan.

[(3)] (4) The Commonwealth Drought Coordinator or a designee will review the application in consultation with [the staff of PEMA and] other appropriate Commonwealth agencies, and may request the [water use] applicant to provide within a reasonable time additional information as necessary to review the application.

[(4)] (5) The Commonwealth Drought Coordinator, or a designee, as agent for PEMA [and the Council], is authorized to render a decision regarding applications received for exemption or variance. The Commonwealth Drought Coordinator, or a designee, will provide the [water user and other interested parties] applicant notice in writing of the decision and the reasons for the decision. When possible, the Commonwealth Drought Coordinator, or a designee, will provide a written decision within 7 working days, or if perishable products are involved, within 1 working day, of submission of an application or [of] will request additional information as necessary to review the application. When appropriate, the Commonwealth Drought Coordinator may issue a Statewide exemption or variance to similarly situated water users. A notice of the decision will be published in the *Pennsylvania Bulletin*. Unless appealed under this section, the decision of the Commonwealth Drought Coordinator, or a designee, shall be considered a final action on the application.

[(5) A water user] (6) A person aggrieved by a decision of the Commonwealth Drought Coordinator, or a designee may, within 30 days of written notice of the decision, or publication of notice of the decision in the *Pennsylvania Bulletin*, appeal the decision to [the Council] PEMA.

[(6)] (7) An appeal from an initial decision of the Commonwealth Drought Coordinator, or a designee, will not act as an automatic supersedeas, but, upon cause shown and [where] when the circumstances required it, [the Commonwealth Drought Coordinator or the Council, or both], PEMA will have the power to grant a supersedeas.

[(7)] (8) When an initial decision is appealed, [the Council] PEMA will provide the [water user with] applicant an opportunity for a hearing. [The Council will] PEMA may appoint a [presiding officer to act as the hearing officer] hearing examiner, who may be an administrative law judge of the Pennsylvania

Public Utility Commission. [Hearings will be conducted under 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).] Hearings may be held telephonically.

[(8)] (9) The hearing examiner will provide the record of the hearing, if any, and a recommendation to PEMA [and Council] for review and adoption.

[(9) The Council] PEMA, will notify the [water user] applicant in writing of its final decision and the reasons for the decision regarding the appeal.

[(d)] (e) An exemption or variance will only be granted to [a water user] an applicant to the extent necessary to relieve extraordinary hardship and will be conditioned upon compliance with all reasonable conservation measures required by this chapter or the variance or exemption.

[(e)] (f) An exemption or variance [approved by the Council] may be modified or rescinded by the Commonwealth Drought Coordinator if public health, safety and welfare require further reduction in water use.

[(f)] (g) An exemption or variance granted to a water user for a specific property, purpose or person is not transferable to another property, purpose or water user without prior written approval from [PEMA and the Council] the Commonwealth Drought Coordinator.

§ 119.7. [Implementation period] (Reserved).

[This chapter shall be implemented upon declaration by the Governor of a drought or water shortage emergency, and shall remain in effect during the period of the emergency until terminated by action of the Governor or by concurrent resolution of the General Assembly. Notice of the termination of the drought emergency and the reversion of this chapter to a standby status will be submitted to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.]

[Pa.B. Doc. No. 00-1907. Filed for public inspection November 3, 2000, 9:00 a.m.]

[4 PA. CODE CH. 119a]

Philadelphia Drought Water Emergency Plan

Editor's Note: PEMA is proposing to delete the current version of 4 Pa. Code Chapter 119a as it appears in the *Pennsylvania Code* at §§ 119a.1—119a.5, pages 119a-1—19a-3, serial pages (229901)—(229903).

Fiscal Note: 30-57. (1) General Fund; (2) Implementing Year 2000-01 is Unknown; (3) 1st Succeeding Year 2001-02 is Unknown; 2nd Succeeding Year 2002-03 is Unknown; 3rd Succeeding Year 2003-04 is Unknown; 4th Succeeding Year 2004-05 is Unknown; 5th Succeeding Year 2005-06 is Unknown; (4) 1999-00 Program—Not Applicable; 1998-99 Program—Not Applicable; 1997-98 Program—Not Applicable; (7) Various appropriations in the Department of Environmental Protection; (8) recommends adoption. Any additional cost that the Commonwealth incurs due to this rulemaking is expected to be minimal and would be absorbed in the Department of Environmental Protection budget.

Annex A

TITLE 4. ADMINISTRATION

PART V. EMERGENCY MANAGEMENT AGENCY

CHAPTER 119a. (Reserved)

§§ 119a.1—119a.5. (Reserved).

[Pa.B. Doc. No. 00-1908. Filed for public inspection November 3, 2000, 9:00 a.m.]

[4 PA. CODE CH. 120]

Local Water Rationing Plans

Editor's Note: For the Preamble which applies to this document, see 30 Pa.B. 5735 (November 4, 2000).

Fiscal Note: 30-58. (1) General Fund; (2) Implementing Year 2000-01 is Unknown; (3) 1st Succeeding Year 2001-02 is Unknown; 2nd Succeeding Year 2002-03 is Unknown; 3rd Succeeding Year 2003-04 is Unknown; 4th Succeeding Year 2004-05 is Unknown; 5th Succeeding Year 2005-06 is Unknown; (4) 1999-00 Program—Not Applicable; 1998-99 Program—Not Applicable; 1997-98 Program—Not Applicable; (7) Various appropriations in the Department of Environmental Protection; (8) recommends adoption. Any additional cost that the Commonwealth incurs due to this rulemaking is expected to be minimal and would be absorbed in the Department of Environmental Protection budget.

Annex A

TITLE 4. ADMINISTRATION

PART V. EMERGENCY MANAGEMENT

CHAPTER 120. LOCAL WATER RATIONING PLANS

§ 120.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Applicant—The governing body of a political subdivision[, a purveyor] or a public water supply agency which experiences a local water shortage in the service area covered by its plan.

Commonwealth Drought Coordinator—An officer of the Department appointed by the Secretary of the Department, to carry out, as agent of PEMA, responsibilities established in the Pennsylvania Drought Contingency Plan to coordinate Commonwealth planning, preparedness and response action to a drought or water shortage emergency.

[Council—The Pennsylvania Emergency Management Council].

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Designated drought emergency area—The area of this Commonwealth described in the Governor's proclamation or executive order declaring a state of drought and water shortage emergency.

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Plan—Local Water Rationing Plan—A drought response plan for the equitable allocation of limited water supplies, submitted by a public water supply agency [, purveyor]

or the governing body of a political subdivision and approved by the [Council] Commonwealth Drought Coordinator.

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Public water supply agency—A [person, partnership, association, corporation, municipality or municipal authority, district or other entity supplying or authorized to supply water to the public] “community water system” as that term is defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.3).

[Purveyor—The owner or operator of a public water supply agency, including, public utilities, municipalities, municipal authorities, associations and other organizations which supply water to the public including the officers, employees and agents of the owner or operator.]

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Service area—The geographical area serviced by a [purveyor] public water supply agency.

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[Special emergency area—The area described in the Governor's Proclamation declaring a state of drought and water shortage emergency.]

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§ 120.2. Purpose.

This chapter establishes procedures for the [Department, PEMA and the Council] Commonwealth Drought Coordinator, as agent for PEMA, to review and approve plans [for] by public water supply agencies [, purveyors] or [municipalities] political subdivisions in response to a [declared local] state of drought or water shortage [or drought] emergency that has been declared by the Governor within specified areas of this Commonwealth.

§ 120.3. Objective of a plan.

The objective of a plan is to balance the daily demands placed upon a [local] public water supply [system] agency with the requirement to maintain a sufficient water supply to meet the long term needs that may be placed upon the public water supply [system] agency during a period of water shortage or drought emergency. In particular, the water conservation measures of a plan are intended to:

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§ 120.4. Responsibility to monitor local water supply and implement water conservation measures.

(a) Each public water supply agency[, purveyor] or governing body of each political subdivision [in] which has a source of water or a service area within an area affected by drought conditions or a local water shortage shall monitor the level of its water supply and estimate the availability of future water supply sources, the rate of present and anticipated water usage and the effectiveness of water conservation measures being implemented by them.

(b) Each public water supply agency[, purveyor] or governing body of each political subdivision [in] which has a source of water or a service area within an

area affected by drought conditions or a local water shortage shall take prompt action to implement water conservation measures. These measures may include:

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(4) Implementing a plan as provided in §§ 120.5 and 120.6 (relating to implementation of plans; and implementation of further water usage reductions).

§ 120.5. Implementation of plans.

(a) *Plan.*

(1) Each public water supply agency [, purveyor] or governing body of a political subdivision is authorized to develop a plan. A plan [may] shall contain provisions to:

(i) Prohibit nonessential water use, if the restrictions do not conflict with [similar regulations already promulgated by the Council for the same geographical area covered by the proposed plans] Chapter 119 (relating to prohibition of nonessential water uses in a Commonwealth drought emergency area).

(ii) Establish equitable water rationing provisions for residential, nonresidential, [health care facilities] and other water users together with appropriate implementing procedures.

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(2) "Guidelines for the Development of a Local Water Rationing Plan" and a "Model Local Water Rationing Plan" may be obtained from the Department. Public water supply agencies are encouraged to contact the Department's Bureau of [Water Resources Management] Watershed Conservation, Post Office Box [8761] 8555, Harrisburg, Pennsylvania 17105-8761, (717) [541-7800] 772-4048, for specific assistance in developing a system-specific plan.

(b) *Review and approval by [Council] Commonwealth Drought Coordinator.* The [Council] Commonwealth Drought Coordinator will [consider] review local water rationing plans submitted [to it] for review and approval in accordance with the following procedures:

(1) The public water supply agency [, purveyor] or governing body of the affected political subdivision shall apply in writing to the [Council] Commonwealth Drought Coordinator for approval of its plan. The written request for approval shall include the following elements:

(i) A plan as approved by the public water supply agency [, purveyor] or governing body of the affected political subdivision.

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(iii) An express request for approval of the plan by the [Council] Commonwealth Drought Coordinator.

(iv) The signature of an authorized representative of the public water supply agency [, purveyor] or governing body of the affected political subdivision.

(2) [The written request for approval of the plan shall be sent to the Commonwealth Drought Coordinator for initial review and approval.] If the plan includes a service area which is not included in a

currently effective Governor's proclamation, the following procedures will be followed:

(i) The Commonwealth Drought Coordinator will determine whether or not the request, together with other available information, establishes the existence of a water shortage emergency that will require the Governor to issue a proclamation declaring a state of local drought and water shortage emergency for the affected area, and will make a recommendation to PEMA.

[(3) Having determined] If PEMA concurs in the existence of a local water shortage emergency, PEMA will submit to the Governor a proposed proclamation to declare a state of local drought and water shortage emergency for the affected area described in the proclamation.

[(4)] (iii) After the Governor signs the proclamation, PEMA will [, within not more than 72 hours immediately following the determination, call the Council into emergency session to review the written request for approval of the plan] notify the Commonwealth Drought Coordinator that the plan may be approved and put into effect.

(3) [For plans] Any plan that [cover] covers emergency service areas already included [under] in a [previously signed] currently effective Governor's proclamation [, the council may meet in a regularly scheduled or emergency session as determined by PEMA] will go into effect upon its approval by the Commonwealth Drought Coordinator.

[(5) At a regular or emergency session, the Commonwealth Drought Coordinator, or a designee, will brief the Council on the water shortage conditions that warrant the adoption of the plan. The Council will consider and adopt plans subject to the conditions or modifications as approved by the Council. The plan will become effective on the date of its approval by the Council, unless otherwise stated.]

(c) *Mandatory implementation of plans.*

(1) After the Governor has issued a proclamation declaring a state of local drought and water shortage emergency for an area of [the] this Commonwealth, [the Governor or the Council] the Commonwealth Drought Coordinator may direct a public water supply [, purveyor] agency or governing body of a political subdivision that is located within or has a source of water within the [declared] designated drought emergency area to prepare and submit a plan to the [Council] Commonwealth Drought Coordinator for review and approval.

(2) The public water supply agency [, purveyor] or governing body of a political subdivision shall submit its plan to the [Council] Commonwealth Drought Coordinator, in accordance with the procedures described in subsection (b), within 10 calendar days after receiving written notification from the [Council] Commonwealth Drought Coordinator that the adoption and implementation of a plan by that public water supply agency [, purveyor] or political subdivision is necessary to deal with the circumstances of the drought and water shortage emergency. [The Governor's Proclamation that declares a state of local drought and water shortage emergency may also order public

water supply agencies, purveyors or governing bodies of political subdivisions located within the declared drought emergency area to prepare and submit their plans to the Council within 30 calendar days after the issuance of the proclamation. The plan that is submitted by the public water supply agency, purveyor or political subdivision shall contain all or portions of the "Model Local Water Rationing Plan" as directed by the Council.

(3) At regular or emergency session, the Commonwealth Drought Coordinator, or a designee, will brief the Council on the adoption of the submitted plan. The Council will consider and adopt the plan subject to conditions or modifications as approved by the Council. The plan will become effective on the date of its approval by the Council, unless otherwise stated.]

(d) *Approval of a plan.* Upon approval by the [Council] Commonwealth Drought Coordinator of a plan submitted under subsection (b) or (c), the Commonwealth Drought Coordinator [Department] will:

(1) [Issue] Require the applicant to issue a notice to [a] at least one newspaper serving the area covered by the plan, which will advise residential and nonresidential water customers or other persons doing business in the emergency service area of the approval of the plan and its effective date.

(2) Transmit to the Legislative Reference Bureau for [suggested] publication in the *Pennsylvania Bulletin*, a written notice which states the approval of the plan by the [Council] Commonwealth Drought Coordinator and its effective date.

(3) [Post or require the posting of] Require the applicant to post a copy of the plan in at least one public building; for example, a library, or a city, town or municipal building within the emergency service area for the review of the water customers affected by the implementation of the plan.

(4) Require the applicant to make copies of the plan available to the water customers affected by the implementation of the plan, upon request, either electronically or in hard copy.

(e) *Constructive notice.* The actions described in subsection (d) constitute constructive notice under 45 Pa.C.S. § 904 (relating to constructive notice) to all residential and nonresidential water customers or other persons doing business within the emergency service area for the purpose of enforcing the plan adopted and approved by the [Council] Commonwealth Drought Coordinator.

§ 120.6. Implementation of further water usage reductions.

(a) If a public water supply agency [, purveyor] or governing body of an affected political subdivision determines that it is necessary to further decrease the water usage of its residential [or], nonresidential or other water customers, [or both,] it may request the Commonwealth Drought Coordinator to consider and approve revisions or amendments, or both, to its plan in accordance with the procedure in § 120.5(b) (relating to implementation of plans).

(b) [After consultation with PEMA the] the Commonwealth Drought Coordinator may approve the requested revisions or amendments, or both, to the plan.

(c) [An emergency session of the Council will only be called to review those requested revisions for amendments, or both, to a plan that are deemed to be extraordinary or significant in nature as determined by PEMA and the Commonwealth Drought Coordinator.

(d)] Constructive notice of approved revisions or amendments, or both, to a plan will be provided in accordance with the notification procedures described in § 120.5(d) [(relating to implementation of plans)].

§ 120.7. Enforcement of plans.

(a) The public water supply agency [, purveyor] or governing body of a political subdivision shall have primary responsibility for monitoring the compliance of residential [and], nonresidential and other water customers with its plan.

(b) The public water supply agency [, purveyor] or governing body of a political subdivision shall institute procedures to monitor closely water supplies and current water usage to determine if water reductions are being attained consistent with the water conservation figures established in its plan. A public water supply agency [, purveyor] or governing body of a political subdivision shall [establish a mechanism to] regularly advise the water customers of the effects of the water rationing program.

(c) Each public water supply agency [, water purveyor] or governing body of a political subdivision is authorized to alter meter reading schedules to assure compliance with its plan.

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§ 120.8. Service interruptions.

(a) A plan shall include provisions for the implementation of temporary service interruptions. This action would be necessary to achieve water use reductions to prevent a public water supply [system] agency from depleting its water supply to the point that vital service demands, such as public health and safety, firefighting and health care facilities, cannot be met.

(b) The following governs the implementation of service interruptions:

(1) To effectuate compliance with a plan, the public water supply agency [or purveyor] is authorized and required to plan and implement service interruptions to all or part of its water supply system, as the public water supply agency [or purveyor] deems appropriate, when one or more of the following conditions are determined by the public water supply agency [or purveyor] to exist as to its water supply system:

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(2) If the public water supply agency [or purveyor] determines that service interruptions are necessary, the public water supply agency [or purveyor] shall notify its water customers through the public media, such as newspapers, radio, telephone and television, serving the water customers in its service area at least 1 day prior to the service interruptions, that a planned service interruption is to be imposed. In addition, the public water supply agency [or purveyor] shall notify the local coordinator of emergency management; PEMA; the Commonwealth Drought Coordinator; the regional office of the Depart-

ment of Environmental [**Resources**] **Protection**; and the Pennsylvania Public Utility Commission, Bureau of [**Safety and Compliance**] **Fixed Utility Services**, if the public water supply agency [**or purveyor**] is subject to the jurisdiction of the Pennsylvania Public Utility Commission. The notice shall:

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(3) If the public water supply agency [**or purveyor**] imposes planned service interruptions as authorized and required by a plan, it shall provide for the continued delivery of water to health care facilities within the service area affected by the interruptions, by means of adequate, alternative delivery measures that may be necessary.

(4) If the public water supply agency [**or purveyor**] implements temporary service interruptions, it shall [**make provision**] **provide**, by any means possible, for the continued delivery of the water, as may be necessary, for the proper operation of sewage collection, treatment and disposal systems and facilities.

§ 120.9. Excess use charges.

(a) *Excess use charges.*

(1) Excess use charges are a positive means of securing compliance with a plan. If a [**purveyor**] **public water supply agency** elects to include excess use charges in a plan, the maximum excess use charge authorized to be imposed is as follows:

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(b) *Water allotments.* A residential or nonresidential water customer who exceeds the water allotments established by the plan shall be subject to **an excess use charge. [the following:**

(1)] Public water supply agencies [**or purveyors**] in the emergency service area are authorized to collect an excess-use charge based on the amount by which a water customer's use exceeds the water allotment established in the plan. The charges will be specified in the plan.

[(2)] (c) Disposition of excess use charges. [Monies] Moneys collected by public water supply agencies [**or purveyors**] through excess use charges may not be accounted for as income to the public water supply agency [**or purveyor**], but shall be placed in a reserve account. The disposition of funds placed in the reserve account shall be governed as follows:

[(i)] (1) Funds collected by a public utility or a municipal corporation rendering services beyond its corporate limits shall be used to offset drought related costs as directed by orders and procedures adopted by the Pennsylvania Public Utility Commission.

[(ii)] (2) Funds collected by [**a municipal authority or a municipal corporation or other purveyor rendering services within its corporate limits**] any public water supply agency not covered in paragraph (1), shall be used to offset drought-related costs [**as directed by the Council**].

[(c)] (d) Additional penalties. In addition to the excess use charge, noncompliance with the plan may result in the following:

(1) For the first excess use, the public water supply agency [**or purveyor**] will warn the water customer

that its water use may be discontinued if the water customer continues its noncompliance practices.

(2) For the second excess use, the public water supply agency [**or purveyor**] may interrupt or shut off service to the water customer for a period not to exceed 48 hours per incident. As an alternative, the public water supply agency [**or purveyor**] may install a flow restriction in the water customer's service line for the duration of the water shortage emergency. The cost incurred by the public water supply agency [**or purveyor**] to interrupt or shut off and reinstate service, or to install and remove a flow restriction, shall be assessed to the water customer by the public water supply agency [**or purveyor**].

[(d)] (e) Appeal of decision or action. A water customer aggrieved by a decision or action taken by a public water supply agency [**or purveyor**] under the authority of this section may proceed in accordance with the following:

(1) Each public water supply agency [**or purveyor**] shall adopt procedures which provide an opportunity for the water customer to rebut the finding of a violation or to present evidence of circumstances beyond the water customer's control which resulted in the violation. Each public water supply agency [**or purveyor**] shall keep a record of the evidence presented by the water customer concerning the disputed violations and shall provide the water customer with a written notice of its final decision and action in the case.

(2) A water customer aggrieved by the final decision or action of a water supply [**purveyor**] **agency** may file an appeal with the **Pennsylvania Public Utility Commission, if the water supply agency is regulated by the Public Utility Commission, and in all other instances with the** Court of Common Pleas in the county the water service is provided, in accordance with **[the provisions and procedures of] 2 Pa.C.S. §§ 551—555 and 751—754 (relating to the Local Agency Law).**

§ 120.10. [Temporary suspension of water rationing provisions] (Reserved).

[(a) Water rationing provisions may be suspended for the service area of a public water supply agency or purveyor if meteorologic and hydrologic conditions create a significant improvement in the water supply of the public water supply agency or purveyor.

(b) A significant improvement shall be defined as an improvement in the ability of the public water supply agency or purveyor to supply the water demands of its water customers which is not attributable to conservation or rationing efforts and which is evidenced in the case of public water supplies using:

(1) Surface water sources, by reservoirs filled to capacity or containing at least 60 days of storage.

(2) Groundwater sources, by a recovery of the water table sufficient to allow the public water supply agency or purveyor to reasonably predict supplies which will meet demand for at least 60 days.

(3) Both surface water and groundwater sources, by recovery sufficient to allow the public water supply agency or purveyor to reasonably predict

that the combined sources can provide water to meet demand for at least 60 days.

(c) If a public water supply agency or purveyor or an applicant determines that a significant improvement in water supply has occurred, the public water supply agency or purveyor or applicant may apply for a temporary suspension of water rationing provisions through the following process:

(1) The applicant shall send to the Commonwealth Drought Coordinator an application for temporary suspension, which describes the improvement in water supply conditions in sufficient detail to demonstrate that there has been a significant improvement in the water supply.

(2) The applicant shall send a copy of the application to each public water supply agency or purveyor and local government in the emergency service area of the affected plan. The applicant shall also notify the public water supply agency or purveyors and local governments in the affected emergency service area that they shall file objections to the temporary suspension with the Commonwealth Drought Coordinator within 7 days of the Commonwealth Drought Coordinator's receipt of the application.

(3) An application to temporarily suspend water rationing provisions shall become effective 7 days after it is received by the Commonwealth Drought Coordinator unless it is objected to by PEMA, the Commonwealth Drought Coordinator, a purveyor or a local government in the emergency service area of the affected plan. If objections are filed with the Commonwealth Drought Coordinator or PEMA, the Council will consider the objections and act upon the application in the interest of effective drought response.

(4) The applicant shall publicize the temporary suspension of water rationing provisions in the manner reasonably calculated to notify persons in the affected service area.

(d) The applicant has the responsibility to immediately notify the Commonwealth Drought Coordinator if the water supply situation changes so that the applicable conditions described in subsection (b) no longer exist. Upon the notification, the Commonwealth Drought Coordinator, after consulting with PEMA, may terminate the suspension and reinstate the water rationing provisions. The applicant shall publicize the reinstatement of water rationing provisions in a manner reasonably calculated to notify persons in the affected service area.]

§ 120.11. Enforcement by political subdivision ordinance.

(a) A political subdivision may adopt an ordinance to enforce the various provisions of [its] a plan within the jurisdictional boundaries of the political subdivision, if the following actions precede the adoption of the ordinance:

(1) The plan has been [political subdivision has prepared and submitted its plan to the Council] plan has been submitted to the Commonwealth Drought Coordinator in accordance with § 120.5 (relating to implementation plans).

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(3) The [Council] Commonwealth Drought Coordinator has approved the [political subdivision's] plan and [has provided] constructive notice of the plan as described in § 120.5(d) has been provided to residential and nonresidential water customers or other persons doing business within the emergency service area of the plan.

(b) After the actions in subsection (a) have occurred, a political subdivision may adopt and publish an ordinance in accordance with its applicable county, city, borough or township code. The purpose of the ordinance shall be to [restrict nonessential water use by residential and nonresidential water customers or other persons or to impose water conservation measures] implement the plan within the jurisdictional boundaries of the political subdivision. The ordinance may include, adopt, incorporate or otherwise enact one or more sections, provisions or portions of the [political subdivision's] approved plan.

(c) [A] Any person who violates a local water rationing/conservation ordinance adopted by a political subdivision, in accordance with the procedures specified in subsections (a) and (b), shall be subject to the fines and penalties that apply to violations of that ordinance as prescribed in the county, city, borough or township code under which the ordinance was adopted.

§ 120.13. Additional water conservation and protection policies.

Nothing in a plan or this chapter limits or affects the power or authority of a political subdivision to adopt or enforce ordinances, rules, restrictions and orders for water conservation and protection of essential supplies, [if] provided that the ordinances, rules, restrictions and orders [are not inconsistent] do not conflict with [the requirements of] this chapter and Chapters 118 and 119 (relating to reductions of major water use in [the Delaware River Basin] a Commonwealth drought emergency area; and prohibition of nonessential water uses in a Commonwealth drought emergency area), and river basin commission orders or plans.

§ 120.14. Repeal of a plan.

[(a)] A plan may be amended or repealed only by action of the [Council] Commonwealth Drought Coordinator upon the written request of [a local government or a public water supply agency or a purveyor] the public water supply agency or governing body of a political subdivision that developed and submitted the plan. A request for amendment or repeal of a plan shall document the conditions justifying the amendment or repeal, be signed by an authorized representative of the [local government or a public supply agency or a purveyor] applicant and be [filed with] submitted to the Commonwealth Drought Coordinator for approval.

[(b)] A plan covering the service area of a single public water supply agency or purveyor may be repealed if concurred in by both the purveyor and the local government affected and approved by the Council.

(c) A plan covering service areas of several purveyors may be:

(1) Amended to delete one or several service areas if concurred in by each purveyor and municipality affected and approved by the Council.

(2) Repealed in its entirety if requested by the water purveyors and all municipalities in the emergency service area of the plan and approved by the Council.]

§ 120.15. Notification of termination.

[Whenever conditions within a public water supply system permit the repeal of the plan, the Department will send a notice of the termination of the plan to the Legislative Reference Bureau for suggested publication in the *Pennsylvania Bulletin*.] Upon approval of the repeal of a plan in accordance with § 120.14 (relating to repeal of a

plan), the Commonwealth Drought Coordinator will require the applicant to issue a notice to at least one newspaper serving the area covered by the plan, which will advise residential and nonresidential water customers or other persons doing business in the emergency service area of the repeal of the plan and its effective date. The Commonwealth Drought Coordinator will also transmit to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, a written notice which states that the plan has been repealed by the Commonwealth Drought Coordinator and its effective date.

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