

**CHAPTER 118. REDUCTIONS OF MAJOR WATER USE IN A
COMMONWEALTH BASIN DROUGHT EMERGENCY AREA**

- Sec.
- 118.1. Definitions.
- 118.2. Purpose.
- 118.3. Scope.
- 118.4. Contingency plans—public water supply agencies.
- 118.5. Contingency plans—self supplied commercial and industrial water users.
- 118.6. Implementation of reductions by self-supplied industrial and commercial water users.
- 118.7. [Reserved].
- 118.8. Procedure for exemptions or variance from water use reductions by self-supplied industrial or commercial water users.
- 118.9. County drought management task force.
- 118.10. Penalties and enforcement.

Authority

The provisions of this Chapter 118 issued under the Emergency Management Services Code, 35 Pa.C.S. §§ 7101—7707; amended under the Emergency Management Services Code, 35 Pa.C.S. § 7313, unless otherwise noted.

Source

The provisions of this Chapter 118 adopted April 26, 1985, effective April 26, 1985, 15 Pa.B. 1737, unless otherwise noted.

Cross References

This chapter cited in 4 Pa. Code § 120.13 (relating to additional water conservation and protection policies).

§ 118.1. Definitions.

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

Commonwealth Drought Coordinator—An officer of the Department appointed by the Secretary 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 is evaporated, transpired or incorporated into a product.

Department—The Department of Environmental 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 or water shortage emergency.

PEMA—The Pennsylvania Emergency Management Agency.

Public water supply agency—A “community water system” as that term is defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.3).

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, employees and agents of a partnership, association, company, corporation, municipality, municipal authority, political subdivision or an agency of Federal, State, county or municipal government.

Source

The provisions of this § 118.1 amended July 6, 2001, effective July 7, 2001, 31 Pa.B. 3520. Immediately preceding text appears at serial pages (229885) to (229886).

§ 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 in response to a state of drought or water shortage emergency within specified areas of this 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 a Governor’s proclamation of drought emergency or order issued during an emergency by the Commonwealth Drought Coordinator that directs the preparation of contingency plans and implementation of water use reductions.

Source

The provisions of this § 118.2 amended July 6, 2001, effective July 7, 2001, 31 Pa.B. 3520. Immediately preceding text appears at serial page (229886).

§ 118.3. Scope.

This chapter applies to all water uses within this Commonwealth.

Source

The provisions of this § 118.3 amended July 6, 2001, effective July 7, 2001, 31 Pa.B. 3520. Immediately preceding text appears at serial pages (229886) to (229887).

§ 118.4. Contingency plans—public water supply agencies.

(a) *Preparation and submission.*

(1) 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 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 a 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:

(1) The name, address and telephone number of the public water supply agency, and the names of officers or other persons responsible for directing operations during a drought emergency.

(2) A description of the ground and surface water sources utilized by the system, including all interconnections, and the locations and yields of the sources.

(3) Data indicating the monthly average and peak day rates of withdrawal from each source for each calendar month during the previous calendar year, or most recent 12 month period for which the data is available.

(4) Data indicating the monthly average and peak day rates of water use in the system for each calendar month during the previous calendar year, or the most recent 12 month period for which data is available.

(5) A description of criteria to be used by the agency in identifying the onset of water shortage problems in the system.

(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 such as newspaper, radio or television 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.

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

- (i) Impact of water use reductions upon:
 - (A) Public health and safety, including pharmaceutical processes.
 - (B) Food and raw fiber production, including protection of perishable raw or processed products.
 - (C) Delivery of electric generation services.
 - (D) 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.

Source

The provisions of this § 118.4 amended July 6, 2001, effective July 7, 2001, 31 Pa.B. 3520. Immediately preceding text appears at serial pages (229887) to (229888).

Cross References

This section cited in 4 Pa. Code § 119.6 (relating to procedure for exemptions or variance from the prohibition of nonessential uses of water).

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

(a) *Preparation and submission.*

(1) 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 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) 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 within the designated drought emergency area in excess of an average of 500,000 gallons per day in any 30 day period shall develop, adopt and submit a drought contingency plan to the Commonwealth Drought Coordinator.

(3) During the effective period of the Governor's proclamation of drought emergency, the Commonwealth Drought Coordinator may order the owner or operator of any commercial or industrial facility not included in paragraph (2) whose source of water is located within the designated drought emergency area, to develop, adopt and submit a drought contingency plan to the Commonwealth Drought Coordinator within the time frame specified in the order.

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

(1) The name, address and telephone number of the owner or operator of the facility and officers or other persons responsible for directing actions undertaken under the drought contingency plan.

(2) A description of the ground and surface water sources utilized by the facility, including interconnections with public water supply agencies, and the locations and yields of those sources.

(3) A description of the processes utilizing water at the facility.

(4) Data regarding the monthly average and peak day rate of total withdrawal and use and the monthly average and peak day rate of consumptive water use at the facility during the previous calendar year or most recent 12 month period for which the data is available.

(5) A description of the method, location and rates of waste water disposal from the facility.

(6) A description of measures previously undertaken to conserve water 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 can be undertaken at the facility in response to drought or water shortage conditions to achieve a phased reduction of total withdrawal and use by amounts of 5%, 15%, 25%, 35% and 50% of the rates of water withdrawal and use existing during nondrought periods.

Source

The provisions of this § 118.5 amended May 17, 1985, effective May 10, 1985, 15 Pa.B. 1825; amended July 6, 2001, effective July 7, 2001, 31 Pa.B. 3520. Immediately preceding text appears at serial pages (229888) to (229889).

118-5

Cross References

This section cited in 4 Pa. Code § 118.6 (relating to implementation of reductions by self-supplied industrial and commercial water users).

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

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

- (1) The relative impact of water use reductions upon:
 - (i) Public health and safety, including pharmaceutical processes.
 - (ii) Food and raw fiber production, including protection of perishable raw or processed products.
 - (iii) Delivery of electric generation services.
 - (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 owner or operator of each self-supplied commercial or industrial facility shall implement, under the contingency plans required under § 118.5 (relating to contingency plans—self supplied commercial and industrial users) measures that are necessary to achieve the withdrawal and use reductions ordered by the Commonwealth Drought Coordinator.

(c) Notice of orders issued by the 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 and by service of the notice by mail or other means within 48 hours of issuance of the order.

Source

The provisions of this § 118.6 amended May 17, 1985, effective May 10, 1985, 15 Pa.B. 1825; amended July 6, 2001, effective July 7, 2001, 31 Pa.B. 3520. Immediately preceding text appears at serial page (229889).

§ 118.7. [Reserved].**Source**

The provisions of this § 118.7 reserved July 6, 2001, effective July 7, 2001, 31 Pa.B. 3520. Immediately preceding text appears at serial page (229889).

§ 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, the water user may apply for an exemption or variance.

(b) 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 this chapter.

(c) A self-supplied industrial or commercial water user who believes he suffers an extraordinary hardship and 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 Protection
P. O. Box 8555
Harrisburg, Pennsylvania 17105-8555

(2) The application shall contain information specifying:

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

(ii) The efforts taken by the applicant to conserve water and the extent to which water use may be reduced by the applicant without extraordinary hardship.

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

(4) The Commonwealth Drought Coordinator or a designee is authorized to render a decision regarding applications received for exemption or variance. The Commonwealth Drought Coordinator or a designee will provide the 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 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 PEMA.

(6) 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 when the circumstances require it, PEMA will have the power to grant a supersedeas.

(7) When an initial decision is appealed, PEMA will provide the applicant with an opportunity for a hearing not later than 7 business days after PEMA has received the appeal request. PEMA may appoint a hearing examiner who may be an administrative law judge of the Pennsylvania Public Utility Commission. Hearings may be held telephonically.

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

(9) PEMA will notify the applicant in writing of its final decision and the reasons for the decision regarding the appeal within 2 business days after PEMA has received a written recommendation from the hearing examiner.

(d) An exemption or variance will be granted only to the extent necessary to relieve extraordinary hardship and will require and be conditioned upon compliance with all reasonable conservation measures required by this chapter or the variance or exemption.

(e) An exemption or variance 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 a water user for a specific property, purpose or person is not transferable to another property, purpose or person without prior written approval from the Commonwealth Drought Coordinator.

Source

The provisions of this § 118.8 amended May 17, 1985, effective May 10, 1985, 15 Pa.B. 1825; amended July 6, 2001, effective July 7, 2001, 31 Pa.B. 3520. Immediately preceding text appears at serial pages (229890) to (229891).

§ 118.9. County drought management task force.

(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 other interested parties. Each county may determine the number and composition of representatives from each group that will sit on the task force.

(3) The county commissioners will coordinate, and report to the Commonwealth Drought Coordinator on, county task force activities to include, but not limited to, public information, planning, water system vulnerabilities, enforcement coordination, fire protection and other areas of public concern. The report shall be submitted either monthly or within a shorter time frame as determined by the Commonwealth Drought Coordinator.

(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.

Source

The provisions of this § 118.9 amended July 6, 2001, effective July 7, 2001, 31 Pa.B. 3520. Immediately preceding text appears at serial pages (229890) to (229891).

§ 118.10. 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 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 Pa.R. Crim.P. Nos. 400—471 and 1000—1013 (relating to summary cases; and rules of criminal procedure for the Municipal Court of Philadelphia).

Source

The provisions of this § 118.10 amended July 6, 2001, effective July 7, 2001, 31 Pa.B. 3520. Immediately preceding text appears at serial page (229891).

[Next page is 119-1.]

118-10

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