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310 CMR 36.00: MASSACHUSETTS WATER RESOURCES MANAGEMENT PROGRAM

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36.01: Authority

310 CMR 36.00 is promulgated by the Department pursuant to the authority granted by M.G.L. c. 21G, § 3 and by M.G.L. c. 30A, §§ 2 and 3. 310 CMR 36.00 should be read together with the Massachusetts Water Management Act, M.G.L. c. 21G, which has many important

provisions not repeated in 310 CMR 36.00.

36.02: Purpose

The Commonwealth's water resources are public resources that require sustainable management practices for the well-being and safety of its citizens, protection of the natural environment and for economic growth. 310 CMR 36.00 is intended to establish enforceable standards, criteria and procedures that will enable the Department to comprehensively manage withdrawals above the threshold volume throughout the Commonwealth to ensure an appropriate balance among competing water withdrawals and uses and the preservation of the water resource.

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The Department's current understanding of the impacts of water withdrawals and other human influences on the sustainability of water resources has been informed by technical studies and the MA Executive Office of Energy and Environmental Affairs (EOEEA) Sustainable Water Management Initiative (SWMI). SWMI was convened by EOEEA and involved its environmental agencies, the Department of Environmental Protection, the Department of Fish and Game and the Department of Conservation and Recreation, and public water suppliers, environmental organizations, scientists, policy-makers and planners. SWMI's goal was to develop an approach to sustainable management of the Commonwealth's water resources that balances human and ecological water needs based on the best available science. In November 2012, EOEEA and the environmental agencies issued the *Final Framework Summary for the Massachusetts Sustainable Water Management Initiative,* which provides recommendations for the permitting of water withdrawals under 310 CMR 36.00, including safe yield, streamflow criteria, and permit tiers. These SWMI recommendations informed the 2014 amendments to 310 CMR 36.00.

36.03: Definitions

As used in 310 CMR 36.00, the following terms shall have the following meanings:

Abutter means an owner of land that shares a common boundary or corner with the parcel of land on which a proposed withdrawal is located, including land located directly across a street, road or way. Determination of ownership and common boundary shall be made with reference to the current local tax assessors' records and maps. A street, road or way is not an abutter.

Abutter of Abutter means the owner of a parcel of land that shares a common boundary or corner with land owned by an abutter, including land located directly across a street, road or way. Determination of ownership and common boundary shall be made with reference to the current local tax assessors' records and maps. A street, road or way is not an abutter of abutter. Railroad rights-of-way shall receive notice as abutters or abutters of abutters, but are not abutters for the purpose of determining abutters of abutters.

Act means the Massachusetts Water Management Act, M.G.L. c. 21G.

Annual Statement of Withdrawal means a report filed on a form provided by the Department in accordance with 310 CMR 36.00 stating the volume of raw water withdrawn during the prior year and any other information required by the Department pursuant to a registration statement or permit.

Aquifer means a geologic formation, group of formations or part of a formation that is capable of yielding a significant amount of water, as determined by the Department.

August Median Flow means the median of the August median flows for the period of record described by the U.S. Geological Survey in *Indicators of Streamflow Alteration, Habitat Fragmentation, Impervious Cover, and Water Quality for Massachusetts Stream Basins* (Weiskel *et al*., 2010, USGS SIR 2009-5272).

August Net Groundwater Depletion means the unimpacted median monthly flow for August minus 2000-2004 groundwater withdrawals plus 2000-2004 groundwater returns described by the U.S. Geological Survey in *Indicators of Streamflow Alteration, Habitat Fragmentation,*

Impervious Cover, and Water Quality for Massachusetts Stream Basins (Weiskel *et al*., 2010, USGS SIR 2009-5272).

Authorized Withdrawal means:

(a) that volume of water that is registered, permitted or both; or

(b) that volume of water for which a nonconsumptive use statement has been accepted by the Department.

(c) The volume of an authorized withdrawal in a registration statement or permit is expressed as an annual average daily volume calculated by dividing the total annual withdrawal by the number of days of operation during the year.

36.03: continued

Baseline means the volume of water withdrawn during calendar year 2005 plus 5%, or the average annual volume withdrawn from 2003 through 2005 plus 5%, whichever is greater, provided that:

(a) baseline cannot be less than a permittee's registered volume;

(b) baseline cannot be greater than the permitee's authorized volume for 2005; and

(c) if, during the period from 2003 to 2005, the permittee's withdrawals from the water source were interrupted due to contamination of the source or construction of a treatment plant, the Department will use best available data to establish a baseline volume from the water source.

For permittees with withdrawals in only one water source, baseline will be calculated for the withdrawals in that water source. For permittees with withdrawals in more than one water source, the Department will calculate a separate baseline for withdrawals from each water source, and a system-wide baseline based on the volume of water withdrawn from all water sources, using the methodology outlined above.

Biological Category is defined at 310 CMR 36.14(1)(a).

Bioperiod means specified periods during the year that correspond to fish life stages or critical biological processes (*e.g.*, spawning, incubation, rearing, growth, migration, overwintering) based on *Characteristics and Classifications of Least Altered Streamflows in Massachusetts* (Armstrong *et al.*, 2008, USGS SIR 2007-5291).

Coldwater Fish Resources means waters that the MA Division of Fisheries and Wildlife has identified support cold water fish.

Commission means the Water Resources Commission of the Executive Office of Energy and Environmental Affairs.

Commissioner means the Commissioner of the Department of Environmental Protection.

Department means the Department of Environmental Protection.

EOEEA Agencies means the MA Executive Office of Energy and Environmental Affairs (EOEEA), the Department of Fish and Game and the Department of Conservation and Recreation.

Existing Withdrawal means the average volume of water withdrawn from a particular water source between January 1, 1981 and December 31, 1985 provided:

(a) That if, during such period of five years, withdrawals were interrupted due to contamination of the water source, the periods of such interruptions were excluded *pro rata* from the computation of existing withdrawal;

(b) That a registration statement was filed with the Department in accordance with M.G.L. c. 21G, §§ 5 and 6, and 310 CMR 36.04 and 36.06, and has been renewed and maintained in accordance with 310 CMR 36.07 through 36.10; and

(c) That an annual statement of withdrawal has been filed with the Department in accordance with 310 CMR 36.11.

Feasible means capable of implementation taking into consideration the anticipated environmental improvement, cost, available technology and the permittee's legal authority to

implement the alternative or action.

Firm Yield means a simulated estimate of the water volume available in a reservoir or reservoir system during drought conditions, as approved by the Department. Firm yield is determined using the response of the reservoir to the drought of record. If the applicant has a drought management plan that details specific steps to be taken in response to droughts and the means to measure results, the Department will consider the response of the source(s) to the best approximation of a one-in-20 year drought. The reservoir system's firm yield derived from this analysis will then become the basis for permitting maximum annual withdrawals from the reservoir(s).

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Fluvial Fish means fish living in a stream or river that are dependent upon flow during one or more stages in their life cycle.

Groundwater Withdrawal Category is defined at 310 CMR 36.14(1)(b).

MEPA means the Massachusetts Environmental Policy Act, M.G.L. c. 30, §§ 61 through 62H, implemented by 301 CMR 11.00: *MEPA Regulations*.

Minimization means measures that reduce withdrawals from, or return groundwater to, the subbasin or river basin from which a withdrawal is made, or other management measures intended to improve streamflow.

Mitigation means activities undertaken that offset the impacts of ground or surface water withdrawals by improving streamflow or aquatic habitat.

New Withdrawal means any withdrawal of water that is not authorized by a registration.

Nonconsumptive Use means any use of water which results in its being discharged back into the same water source at or near the withdrawal point in substantially unimpaired quality and quantity.

Nonconsumptive Use Notification Statement means a report filed with and approved in writing by the Department, describing the volume of water withdrawn and demonstrating that the use is nonconsumptive.

Permit means a permit issued by the Department under M.G.L. c. 21G, § 7, authorizing a new withdrawal.

Permit Tier means a tier to which a permit application is assigned based on the size of the requested withdrawal volume relative to the applicant's baseline, and the potential for any increase in withdrawal above the applicant's baseline to contribute to a change in the biological category or groundwater withdrawal category of the subbasin(s) from which the withdrawal is made.

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

Public Water Supplier means a person that operates a public water system.

Public Water System means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days of the year.

Q_{90} means a statistical flow value that is exceeded 90% of the time over the period of record. The annualized Q_{90} flow is the mean of the monthly Q_{90} flows.

Raw Water means water that is withdrawn from a source prior to treatment or distribution.

Redundant Well means a well/wellfield constructed after November 7, 2014, and used only to withdraw groundwater pursuant to a registration, provided:

(a) that is constructed to address a public health and safety concern or provide a net environmental benefit;

(b) that is located within the same Natural Resources Conservation Service Hydrologic Unit Code 12-digit Scale Watershed (HUC-12) as the original source in the registration; and

36.03: continued

(c) that withdrawals from which, in combination with withdrawals from the withdrawer's registered wells/wellfields within the HUC-12, shall not exceed the annual average withdrawals for the three years prior to filing a permit application for the redundant well.

Registrant means any person who holds a registration statement accepted by the Department and maintains the registration statement in accordance with 310 CMR 36.07 through 36.11, including a voluntary registration statement.

Registration Statement means a renewable statement of an existing withdrawal filed on or before January 1, 1988 with the Department in accordance with M.G.L. c. 21G, § 5, and 310 CMR 36.06, and renewed and maintained in accordance with 310 CMR 36.07 through 36.11.

Replacement Well means a new well(s)/wellfield installed to replace or supplement an approved well(s)/wellfield where the proposed new well(s)/wellfield will be situated within 250 feet of the original well(s)/wellfield and have a pumping rate equal to or less than that of the original well(s)/wellfield. Replacement wells must be installed in the same unconsolidated geologic formation as the original approved well(s)/wellfield. Criteria used to determine the location of replacement wells shall include but not be limited to the following: the extent to which negative environmental impacts caused by the existing well can be minimized; the degree to which replacement wells alter the existing groundwater hydraulics or Zone II boundaries; and the degree to which significant potential contamination threats can be lessened. Replacement wells shall not significantly alter the existing groundwater hydraulics or Zone II boundaries. Replacement wells are subject to the new source approval requirements as set forth in 310 CMR 22.00: *Drinking Water*.

For the purposes of M.G.L. c. 21G and 310 CMR 36.00, a well will only be considered to be a replacement well if the total water produced by the original source and all its replacement sources does not exceed the approved pumping rate of the original source.

Safe Yield means the maximum dependable withdrawals that can be made continuously from a water source including ground or surface water during a period of years in which the probable driest period or period of greatest water deficiency is likely to occur; provided, however, that such dependability is relative and is a function of storage and drought probability. The Department's method for calculating and applying safe yield is described at 310 CMR 36.13.

Seasonal Groundwater Withdrawal Category is defined at 310 CMR 36.14(1)(c).

Secretary means the Secretary of the Executive Office of Energy and Environmental Affairs.

Streamflow Criteria are defined at 310 CMR 36.14.

Subbasin means the 1,395 subbasins delineated by the U.S. Geological Survey in *Indicators of Streamflow Alteration, Habitat Fragmentation, Impervious Cover, and Water Quality for Massachusetts Stream Basins* (Weiskel *et al.*, 2010, USGS SIR 2009-5272), unless otherwise specifically provided.

Threshold Volume means an average daily withdrawal volume of 100,000 gallons for any period of three consecutive months, from a total withdrawal of not less than 9,000,000 gallons.

Unimpacted Median Monthly Flow means the estimated near natural median monthly

streamflow over a simulated 44-year period generated by *The Massachusetts Sustainable Yield Estimator: A decision support tool to assess water availability at ungaged stream locations in Massachusetts* (Archfield *et al*., 2009, USGS SIR 2009-5227).

Voluntary Registration Statement means a renewable statement of an existing withdrawal below the threshold volume, but in excess of 10,000 gallons per day, from a single water source, filed on or before July 1, 1991 with the Department in accordance with M.G.L. c. 21G, § 5, and 310 CMR 36.06, and renewed and maintained in accordance with 310 CMR 36.07 through 36.11.

36.03: continued

Water means all water beneath or on the surface of the ground whether wholly or partly within the Commonwealth.

Water Resources Management Official means the local official, designated by the chief elected official within a city or town, or the chief elected official in that city or town if no water resources management official has been designated, responsible for submitting and administering the water resources management plan in that city or town.

Water Resources Management Plan means:

(a) a local plan to meet water needs within a city or town, developed pursuant to planning guidance issued by the Commission, submitted by the water resources management official to the Commission, and approved by the Commission; or

(b) absent planning guidance from the Commission, a local plan to meet water needs within a city or town deemed complete by the Commission.

Water Source means any natural or artificial aquifer or body of surface water, including its watershed where ground and surface water are interconnected in a single hydrological system. For the purposes of 310 CMR 36.00, water sources are the river basins delineated by the Commission at 313 CMR 4.03: *Delineation of River Basins*.

Water Supply Emergency Plan means a plan prepared by a public water supplier in accordance with 310 CMR 36.40(5).

Well means a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than its largest surface diameter.

Withdrawal Point means any well or intake structure used to withdraw water from a water source.

Withdrawal or Withdrawal of Water means the removal or taking of water for any purpose from a water source.

36.04: Withdrawals Requiring a Registration Statement

(1) Except as provided in 310 CMR 36.05, any person with an existing withdrawal in excess of the threshold volume from a single water source was required to file a registration statement with the Department on or before January 1, 1988.

(2) Any person with an existing withdrawal below the threshold volume, but in excess of 10,000 gallons per day, from a single water source was allowed to file a voluntary registration statement with the Department on or before July 1, 1991.

(3) Where two or more withdrawal points were controlled by the same person, a single registration statement per water source containing documentation on each withdrawal point was to be filed with the Department.

(4) For the purposes of calculating the total existing withdrawal volume from each water source, the specific withdrawal volumes of all withdrawal points controlled by that person shall be combined, to obtain the total consumptive withdrawal volume.

(5) For purposes of calculating the total existing withdrawal volume from a water source, transfers of water from a different water source shall not be included.

36.05: Exemptions

The following withdrawals are exempt from the registration and permit requirements of M.G.L. c. 21G and 310 CMR 36.00, but may otherwise be regulated by 310 CMR 36.00.

36.05: continued

(1) Nonconsumptive Use. A withdrawal or any portion of a withdrawal that constitutes a nonconsumptive use, as approved in writing by the Department in accordance with 310 CMR 36.35.

(2) Withdrawals in Compliance with Federal Superfund and/or Massachusetts Contingency Plan Requirements. A withdrawal that is in compliance with written instructions of an On-scene Coordinator pursuant to 33 CFR Part 153: *Control of Pollution by Oil and Hazardous Substances, Discharge Removal* and 40 CFR Part 300, Subchapter J: *Superfund, Emergency Planning, and Community Right-to-know Programs*, Subparts B and C, or a withdrawal conducted as an Immediate Response Action in compliance with M.G.L. c. 21E and the regulations promulgated thereunder at 310 CMR 40.0000: *Massachusetts Contingency Plan*.

(3) Withdrawals of Brackish or Saline Water. A withdrawal where the water to be withdrawn is brackish or saline due to the influence of the ocean, as defined by the following ranges of specific conductivity, shall be exempt from the need to obtain a permit pursuant to M.G.L. c. 21G and 310 CMR 36.00.

(a) Fresh water: less than 1,000 umhos/cm;
(b) Brackish water: at least 1,000 but less than 10,000 umhos/cm;
(c) Saline water: at least 10,000 but less than 100,000 umhos/cm.

Where there is the potential for the withdrawal to be of fresh water in excess of the threshold volume, the person making or planning to make the withdrawal shall submit a written request to the Department for a determination of applicability of M.G.L. c. 21G to the withdrawal. Such request shall be accompanied by a proposed sampling plan, for written approval by the Department, that will provide data representative of the withdrawal the person is making or plans to make.

36.06: Filing a Registration Statement

(1) Registration statements must be submitted on forms established by the Department and filed in accordance with the requirements of 310 CMR 4.00: *Timely Action Schedule and Fee Provisions* and 310 CMR 36.00.

(2) Every registration statement must contain, at a minimum:

(a) documentation of the actual or estimated amounts of water withdrawn;
(b) the use for which the water is being withdrawn;
(c) an identification of the water source and specific part of a water source from which the withdrawal is being made, in sufficient detail to describe the water source adequately;
(d) the locations of all withdrawal points;
(e) the volume of the withdrawal; provided however, that persons whose volume of withdrawals varies seasonally according to an established pattern shall describe that variation;
(f) conservation measures instituted, or to be instituted, by the registrant;
(g) the point or points at which the water is discharged after use; and
(h) any other information requested by the Department relative to the withdrawal, use and discharge.

(3) Any registrant who must estimate the amount of its withdrawal shall do so in accordance with guidelines established by the Department.

36.07: Registration Conditions

(1) The registrant shall comply at all times with the requirements and conditions imposed by the Department, M.G.L. c. 21G, and 310 CMR 36.00, and all other applicable state and federal statutes and regulations.

(2) The Department may impose, at a minimum, the following conditions on a registered withdrawal:

(a) the installation of flow meters within a specified time; and

36.07: continued

(b) the accurate recording and reporting annually of the quantity of the water that is being withdrawn.

(3) All registrants shall file the annual statement of withdrawal as specified in 310 CMR 36.11.

(4) All registrants wishing to renew registration statements shall file a renewal registration request as specified in 310 CMR 36.10.

36.08: Modification of a Registration

(1) The Department may modify a registration statement in its sole discretion or at the request of the registrant to:

(a) add a replacement well or replacement surface water intake on a registered surface water withdrawal point;

(b) remove a withdrawal point that has been abandoned in accordance with 310 CMR 22.25: *Abandonment of Water Supply Sources*; or

(c) for a cranberry cultivation registration, add or change conditions, when appropriate, that reflect the implementation of best management practices, including the use of tailwater recovery, water control structures, sprinkler irrigation systems, land smoothing, and construction of dikes.

(2) Any request by a registrant to modify a registration statement shall be made on forms provided by the Department and shall include the applicable fee established in 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.

36.09: Transfer of Registration Statement

(1) Any person who has an unexpired registration statement may request a transfer of the Registration Statement, in whole or in part, to another person by submitting a request to the Department at least 30 days before the date of transfer. The request shall include a copy of a written agreement between the registrant and the transferee that transfers responsibility for the registration, and a certification by the transferee that there will be no significant change in use, source, location of the withdrawal, or discharge of the registered volumes. The transferee must agree to accept all the provisions and conditions of the registration statement and the agreement must state a specific date for transfer of responsibility between them.

(2) The Department may deny a requested transfer and require a permit if the Department determines that the proposed transfer will result in a significant change in the use, source, location of the withdrawal, discharge of the registered volumes, or otherwise result in a significant modification of the registration.

(3) Registrations for cranberry cultivation verified using the results of the Cranberry Water Use Study may be transferred as provided in 310 CMR 36.09 only if the transfer is for continued cranberry cultivation. Cranberry registrations may not be transferred for any other uses unless the registered volume has been verified based on actual water use at the bog(s) to be transferred.

(4) Each request for a transfer of a registration shall include the applicable fee established in 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.

(5) If the registrant transfers an operation that is dependent on the registered withdrawal and does not transfer the registration, the transferee of the operation shall not make any withdrawal in excess of the threshold volume unless and until the transferee obtains a permit.

36.10: Registration Renewal Requests

(1) No person shall continue a registered withdrawal after the registration expires unless that person has filed a timely registration renewal request with the Department.

36.10: continued

(2) Registration Statements initially became effective on January 1, 1988. All Registration Statements have a ten-year term. Requests to renew a registration statement must be submitted on forms provided by the Department and be received by the Department six months prior to the expiration date. Each request for a renewal must include the applicable fee established in 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.

(3) The Department shall accept any request to renew a registration statement that complies with the provisions of 310 CMR 36.06, 36.07, 36.10 and 36.11 and is timely filed. Upon the filing of a request for renewal by the date established in 310 CMR 36.10(2), and demonstration of compliance with the requirements of the expiring registration statement, such person shall be entitled to continue the existing withdrawal for a period of ten additional years.

(4) No person who fails to file a request to renew a registration statement or is notified that the Department has denied a request for renewal shall continue to withdraw water in an amount over the threshold volume after the registration statement expires unless and until that person obtains a permit from the Department.

36.11: Annual Statement of Withdrawal for Registrations

Each registrant shall complete and submit to the Department an annual statement of withdrawal on a form provided by the Department by the date specified on the form. The Department may terminate a registration if a registrant fails to file a complete and accurate annual statement of withdrawal in a timely manner.

36.13: Safe Yield

(1) Safe yield of a water source is calculated as 55% of the drought basin yield plus the reservoir storage volume, if any, for that water source. For the purposes of calculating safe yield:

(a) drought basin yield is the annualized Q_{90} streamflows in a water source based on averaging estimated near natural monthly Q_{90} streamflows. It is an estimation of the water that would be available in an unimpacted river basin during the probable driest period that is likely to occur; and

(b) reservoir storage volume is the modeled volume of water remaining in reservoir storage at the end of a simulated one-year drought comprised of annualized monthly Q_{90} flows, calculated as available storage minus any registered or permitted withdrawals and any required release volume; and

(c) reservoir storage volume is capped at the firm yield of the reservoir.

(2) Should registered volumes for a water source, taking into account any determinations made by the Department pursuant to 310 CMR 36.27(4), exceed safe yield, no additional volumes of water will be available through permitting. Where such registered volumes do not exceed safe yield there is no presumption that withdrawals will be permitted. The allocation of water available for permitting within the safe yield will be determined, and may be limited by, application of streamflow criteria, statutory and regulatory requirements, and site-specific considerations pursuant to M.G.L. c. 21G and 310 CMR 36.00.

(3) Safe yield, reservoir storage volume(s), total registered volumes and currently permitted volumes for each water source will be published on the Department's website.

(4) In a water source where reservoir storage volume is a factor in determining safe yield, reservoir storage volumes are available only to those permittees with legal access to the reservoir(s).

(5) For water sources where an estimate of near natural annualized Q_{90} streamflow is not applicable because the water source is groundwater-driven (the southern portion of South Coastal, Cape Cod, Islands, and portions of Buzzards Bay), safe yield is determined through analysis of water available during the probable driest period through groundwater recharge for each water source.

36.14: Streamflow Criteria

(1) Streamflow criteria are established by the categories described at 310 CMR 36.14(1)(a) through (c), which describe the modeled 2000-2004 existing conditions at the subbasin scale across a gradient of alteration from least to most altered for five bioperiods: early summer (May-June), late summer (July through September), fall (October and November), winter (December through February) and spring (March and April). The streamflow criterion for each category is the upper limit of the ranges shown at 310 CMR 36.14(1)(a) through (c). Withdrawals that contribute to a subbasin changing to a more altered category do not meet streamflow criteria and will only be permitted if the permittee demonstrates that there is no feasible alternative available to meet demonstrated water needs, and the permittee undertakes mitigation commensurate with the impacts of the withdrawal to the greatest extent feasible.

(a) Biological Category for each subbasin is based on the simulated 2000-2004 existing condition of aquatic habitat using fluvial fish community characteristics as the surrogate indicator variable. Each biological category represents the percent alteration within the range of these fluvial fish community characteristics as a function of the following subbasin parameters:

1. impervious cover;
2. cumulative groundwater withdrawal as a portion of the unimpacted August median flow;
3. stream channel slope; and
4. percent wetland within the stream buffer area.

Simulated Alteration of Fluvial Fish Community Characteristics.

Biological Category 1: 0% to 5%
Biological Category 2: >5% to 15%
Biological Category 3: >15% to 35%
Biological Category 4: >35% to 65%
Biological Category 5: >65%

(b) Groundwater Withdrawal Category for each subbasin is based on the ratio of the 2000-2004 groundwater withdrawal volume to the unimpacted median monthly flow for August and represents conditions during the late summer bioperiod (July through September). Each groundwater withdrawal category represents the range of this ratio that would result in the biological category of the same number under conditions of low (1%) impervious cover.

Simulated Groundwater Withdrawal Ratio for the Late Summer Bioperiod.

Groundwater Withdrawal Category 1: 0% to 3%
Groundwater Withdrawal Category 2: >3% to 10%
Groundwater Withdrawal Category 3: >10% to 25%
Groundwater Withdrawal Category 4: >25% to 55%
Groundwater Withdrawal Category 5: >55%

(c) Seasonal Groundwater Withdrawal Categories for each subbasin are based on the ratio of the 2000-2004 groundwater withdrawal volume to the unimpacted median monthly flow for the four other bioperiods below.

Seasonal Groundwater Withdrawal Ratios for Additional Bioperiods

	Fall (Oct-Nov)	Winter (Dec-Feb)	Spring (March-April)	Early Summer (May-June)
Seasonal Category 1:	0% to 3%	0% to 3%	0% to 3%	0% to 3%
Seasonal Category 2:	>3% to 5%	0% to 3%	0% to 3%	>3% to 5%
Seasonal Category 3:	>5% to 15%	>3% to 10%	>3% to 10%	>5% to 15%
Seasonal Category 4:	feasible mitigation and improvement/no numeric criteria			
Seasonal Category 5:	feasible mitigation and improvement/no numeric criteria			

(2) Streamflow criteria have not been established for groundwater-driven water sources (the southern portion of South Coastal, Cape Cod, Islands, and portions of Buzzards Bay).

36.16: Withdrawals Requiring a Permit

(1) Unless exempted by 310 CMR 36.05, the following withdrawals require a permit:
(a) for persons with no registration or permit for withdrawals within the water source, a withdrawal that exceeds the threshold volume;

36.16: continued

(b) for persons with a registration for withdrawals within the water source, a withdrawal of more than the threshold volume in excess of a registered volume;
(c) for persons with a permit for withdrawals within the water source, any unregistered withdrawal in excess of the volume authorized in the permit; and
(d) redundant wells.

(2) No person may commence construction of any building or structure or commence any other activity that may require that person to make a withdrawal described in 310 CMR 36.16(1) without first applying for and obtaining a permit for that withdrawal from the Department.

(3) Water withdrawals used for the following activities are presumed to withdraw less than the threshold volume and do not require a permit, unless the Department determines otherwise.
(a) Cranberry Cultivation.
1. Each person not certified by the Natural Resource Conservation Service as using best management practices and who irrigates less than or equal to 4.66 acres of bogs in excess of any registered acreage within one water source;
2. Each person certified by the Natural Resource Conservation Service as employing best management practices and who irrigates less than or equal to 9.3 acres of bogs in excess of any registered acreage within one water source;
(b) Golf Courses.
1. Irrigation of less than 23 acres for a golf course during the period of initial vegetation grow-in or 36 months from planting, whichever period is longer;
2. Irrigation of less than 35 acres of golf course with mature established turf.

36.17: Effective Dates and Expiration Dates for Permitting by Water Source

(1) For each water source, the date on which these regulations took effect (effective date), the date on which the first set of permits did or will expire (first expiration date), and the expiration date for the second set of permits (second expiration date) are as follows:

Water Source	Effective Date	First Expiration Date	Second Expiration Date
Hudson Basin	August 31, 1988	August 31, 2008	August 31, 2032*
Blackstone Basin	February 28, 1989	February 28, 2009	February 28, 2033*
Charles Basin	February 28, 1989	February 28, 2009	February 28, 2033*
Ipswich Basin	August 31, 1989	January-March 2015*	August 31, 2029
North Coastal Basin	August 31, 1989	August 31, 2009	August 31, 2033*
Boston Harbor Basin	February 28, 1990	February 28, 2015*	February 28, 2030
Taunton Basin	February 28, 1990	February 28, 2015*	February 28, 2030
South Coastal Basin	August 31, 1990	August 31, 2015*	August 31, 2030
Cape Cod Basin	November 30, 1990	November 30, 2014*	November 30, 2030
Islands Basin	February 28, 1991	February 28, 2015*	February 28, 2031
Buzzards Bay Basin	May 31, 1991	May 31, 2015*	May 31, 2031
Concord Basin	August 31, 1991	August 31, 2015*	August 31, 2031
Ten Mile Basin	November 30, 1991	November 30, 2015*	November 30, 2031
Deerfield Basin	February 29, 1992	February 29, 2016*	February 28, 2032

Housatonic Basin	May 31, 1992	May 31, 2016*	May 31, 2032
Farmington Basin	August 31, 1992	August 31, 2016*	August 31, 2032
Westfield Basin	November 30, 1992	November 30, 2016*	November 30, 2032
Millers Basin	February 28, 1993	February 28, 2017*	February 28, 2033
Chicopee Basin	May 31, 1993	May 31, 2017*	May 31, 2033
Quinnebaug Basin	August 31, 1993	August 31, 2017*	August 31, 2033
Connecticut Basin	November 30, 1993	November 30 2017*	November 30, 2033

*Expiration date extended by four years by St. 2010, c. 240, as amended by St. 2012, c. 238, collectively known as the Permit Extension Act.

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Water Source	Effective Date	First Expiration Date	Second Expiration Date
Nashua Basin	February 28, 1994	February 28, 2018*	February 28, 2034
French Basin	May 31, 1994	May 31, 2018*	May 31, 2034
Shawsheen Basin	August, 31, 1994	August 31, 2018*	August 31, 2034
Merrimack Basin	November 30, 1994	November 30, 2018*	November 30, 2034
Parker Basin	February 28, 1995	February 28, 2019*	February 28, 2035
Narragansett Basin	May 31, 1995	May 31, 2019*	May 31, 2035

*Expiration date extended by four years by St. 2010, c. 240, as amended by St. 2012, c. 238, collectively known as the Permit Extension Act.

(2) Except for the Hudson, Blackstone, Charles and North Coastal basins, subsequent expiration dates for each water source will automatically reset in 20-year increments calculated from the second expiration date listed at 310 CMR 36.17(1). For the Hudson, Blackstone, Charles and North Coastal basins, the third expiration date will be August 31, 2048, February 28, 2049, February 28, 2049 and August 31, 2049 respectively, and subsequent expiration dates for those water sources will automatically reset in 20-year increments calculated from their third expiration date.

(3) The Department may establish a new expiration date for a water source by amending 310 CMR 36.00 at any time. Any such amendment shall provide six months notice of the new expiration date for the water source.

36.18: Applying for a New or Renewed Permit

(1) Each person required to obtain or renew a permit shall file a permit application on forms and in a manner prescribed by the Department. Each application shall be filed according to the procedures outlined in 310 CMR 36.00. Each application shall contain the information required by 310 CMR 36.18 through 36.24 that is applicable to the requested withdrawal.

(a) For new permits, applications may be submitted to the Department at any time.

(b) For permit renewals, at least 12 months, but no sooner than 14 months, prior to the permit expiration date, a permit holder who wishes to renew a permit shall submit an application for renewal.

(c) An application is filed when it is received by the Department.

(2) Where two or more withdrawal points within one water source are controlled by the same person, the permit applicant shall file a single application containing information on each withdrawal point.

(3) For the purposes of calculating the total requested permit volume from each water source, the applicant shall combine the proposed withdrawal from each withdrawal point in that water source so as to arrive at a total proposed water withdrawal from that particular water source. The applicant's requested permit volume shall not include any volumes registered or determined by the Department to be nonconsumptive.

(4) For new permits, prior to or on the same date that the applicant submits a permit application to the Department, the applicant shall submit a copy of the application to the water resources management official in the city or town where the withdrawal point is located.

(5) For new permits, applicants shall submit an Environmental Notification Form to the EOEEA, pursuant to 301 CMR 11.00: *MEPA Regulations*, no later than ten days after filing an application with the Department, or shall provide evidence of compliance with the requirements of 301 CMR 11.00: *MEPA Regulations* as described in 310 CMR 36.24.

(6) Applicants shall provide all additional information requested by the Department subsequent to filing a permit application, within the time specified in the Department's request.

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(7) The terms and conditions of a permit will continue in force and effect beyond the expiration date pursuant to M.G.L. c. 30A, § 13, if:

(a) the permittee has made a timely application for a permit renewal in accordance with 310 CMR 36.18 through 36.24; and

(b) the Department does not renew the permit or issue a new permit or interim permit on or before the expiration date of the expiring permit, and does not issue a decision denying the renewal application.

(8) Permits administratively continued under 310 CMR 36.18(7) shall remain fully effective and enforceable until the effective date of a permit renewal, interim permit or new permit, or until the renewal application is denied.

36.19: Determining Permit Tier for an Application

(1) Groundwater Withdrawals - The Department will determine the permit tier for each application that includes groundwater withdrawals based on:

(a) the applicant's baseline withdrawal volume(s);

(b) any requested withdrawal volume above the baseline(s); and

(c) an evaluation of the potential change in the biological category or groundwater withdrawal category during the late summer bioperiod (July through September) in the subbasin(s) from which the withdrawal is made; and

(d) for proposed withdrawals determined by the Department not to follow an annual demand curve with highest average daily withdrawals occurring during the late summer bioperiod (July through September), an evaluation of the potential change in seasonal groundwater withdrawal category during the bioperiod when the withdrawal will have the maximum impact on streamflow in the subbasin(s).

Each application that includes a groundwater withdrawal or a withdrawal from both ground and surface water will be assigned as follows:

Permit Tier 1

The applicant requests no withdrawal greater than baseline.

Permit Tier 2

The applicant requests a withdrawal greater than baseline, but the requested withdrawal will not result in a change in the biological category, groundwater withdrawal category or seasonal groundwater withdrawal category of the subbasin(s) from which it is made.

Permit Tier 3

The applicant requests a withdrawal greater than baseline, and the requested withdrawal will result in a change in the biological category, groundwater withdrawal category or seasonal groundwater withdrawal category of the subbasin(s) from which it is made.

(2) Surface Water Withdrawals - Applications for permits that include only a surface water withdrawal will be assigned as follows:

Permit Tier 1

The applicant requests no withdrawal greater than baseline.

Permit Tier 2

The applicant requests a withdrawal greater than baseline.

(3) Applications for permits for water withdrawals in the groundwater-driven water sources (the southern portion of South Coastal, Cape Cod, Islands, and portions of Buzzards Bay) will be assigned as follows:

Permit Tier 1

The applicant requests no withdrawal greater than baseline.

Permit Tier 2

The applicant requests a withdrawal greater than baseline.

36.20: Site-specific Evaluation

(1) Data Refinements: Any person may submit, for review and approval by the Department, refinements to the following data used in determining the biological category and groundwater withdrawal category for any subbasin within a water source:

(a) Calculation of the August groundwater pumping volume during the 2000-2004 study period:

1. wells that were assumed to be in use, but were not;
2. wells that were pumping at significantly different rates than assumed; or
3. significant reductions in groundwater withdrawals since the 2000-2004 study period due to:
   a. wells that have been abandoned; or
   b. a public water supply that has transferred withdrawals from its own withdrawal points to a different source(s).

(b) Adjustments to the delineated subbasin boundaries:

1. subbasin drainage boundaries that do not coincide with documented groundwater boundaries; or
2. subbasin boundaries occurring within water bodies rather than at outlet points.

(c) Hydrologic/Geologic Considerations:

1. confined aquifers; or
2. pumping that causes documented groundwater impacts across subbasin boundaries.

(d) Refinements, demonstrated through groundwater modeling, to the assumed 1:1 August pumping to August stream depletion ratio.

(2) Schedule for Submitting Data Refinements:

(a) For the Hudson, Blackstone, Charles, Ipswich, North Coastal, Boston Harbor, Taunton, South Coastal, Cape Cod, Islands, Buzzards Bay, Concord, Ten Mile, Deerfield, Housatonic and Farmington Basins, proposed data refinements must be submitted to the Department by November 7, 2015. Data submitted will be reviewed by the Department for inclusion in the next scheduled five-year review for permits in these water sources.

(b) For water sources not listed in 310 CMR 36.20(2)(a), proposed data refinements must be submitted to the Department at least 12 months prior to the First Expiration Date for the water source listed in 310 CMR 36.17(1). Permit renewal applicants may submit proposed data refinements with the permit renewal application or as a separate submission.

Water Source	Data Refinement Submission Date
Westfield Basin	November 30, 2015
Millers Basin	February 28, 2016
Chicopee Basin	May 31, 2016
Quinnebaug Basin	August 31, 2016
Connecticut Basin	November 30, 2016
Nashua Basin	February 28, 2017
French Basin	May 31, 2017
Shawsheen Basin	August 31, 2017
Merrimack Basin	November 30, 2017
Parker Basin	February 28, 2018
Narragansett Basin	May 31, 2018

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(c) Applicants for new permits whose applications are filed subsequent to the first expiration date in a water source may submit proposed data refinements for the subbasin(s) in which the proposed withdrawals are located with the permit application.

(3) Data refinements, reviewed and approved by the Department, will be incorporated into the determination of biological category and groundwater withdrawal category for the affected subbasin(s) prior to determining the permit tier for applications with withdrawal point(s) in the affected subbasin(s), or prior to the five-year review of permits with withdrawal point(s) in the affected subbasin(s), as applicable.

(4) Site-specific Fish Community Assessment:

(a) A tier 1 applicant with a withdrawal point(s) located in a subbasin(s) having more than 25% August net groundwater depletion may conduct a site-specific fish community assessment for the purpose of demonstrating that the fluvial fish relative abundance in such subbasin(s) exceeds the expected number of fish for that groundwater withdrawal category as determined by the measurement standard in 310 CMR 36.20(4)(d).

(b) An applicant that conducts a site-specific fish community assessment will not be required to implement the otherwise required minimization activities prior to the Department's determination in 310 CMR 36.20(4)(d).

(c) A site-specific fish community assessment shall be subject to the following procedure and requirements:

1. the applicant shall propose for the Department's approval, in consultation with the EOEEA agencies, a geographically referenced point within the subbasin at which the withdrawal will have its maximum impact on streamflow for the duration of the assessment;

2. the applicant shall propose for the Department's approval, in consultation with the EOEEA agencies, a calculation of the upstream impervious cover, simulated flow alteration, percent wetland in the buffer, and channel slope in accordance with the methods used in USGS SIR 2011-5193 and based on the approved geographically referenced point;

3. the applicant shall conduct the site-specific fish community assessment in accordance with a fish sampling and collection protocol approved by the MA Division of Fisheries and Wildlife (Division);

4. the fish sampling and collection protocol shall, at a minimum, require that fish community sampling be conducted by the applicant once per year for five years at three locations and include the methods, times of year, and effort requirements for such sampling;

5. the sampling and collection shall be conducted in accordance with the protocol; and

6. the applicant shall obtain a separate fish collection permit from the Division as described at 321 CMR 2.02(4): *Categories of Permits*, which will include the fish sampling and collection protocol approved by the Division and will require the applicant to submit annual monitoring reports to the Division and the Department.

(d) At the conclusion of the five-year monitoring period, the Department, in consultation with the EOEEA agencies, will determine whether the applicant has demonstrated that the average fluvial fish relative abundance for that location over the five-year monitoring period is greater than the average fluvial fish relative abundance in the 75th percentile for the fish sampling locations within the same groundwater withdrawal category as derived from the fish community sampling information found in USGS SIR 2011-5193.

(e) If the Department, in consultation with the EOEEA agencies, determines that the

applicant has met the measurement standard in 310 CMR 36.20(4)(d), the applicant will not be required to implement the otherwise required minimization measures for the remainder of the term of the permit.

36.21: Contents of a Permit Application

(1) All permit applications shall include, at a minimum:
(a) the reason(s) for the withdrawal, and the proposed water use (*e.g.*, residential, industrial, agricultural), including a detailed projection of the applicant's water needs during the proposed permit term;

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(b) identification of the water source in which the withdrawal is located;
(c) the specific location of each of the applicant's withdrawal point(s) within the water source;
(d) for new withdrawal points, any required pumping test results and analysis;
(e) the volume, frequency and rate of water to be withdrawn from each withdrawal point, the anticipated times of year of the withdrawals, and any projected changes in volume, frequency, rate or time of year over the proposed term of the permit;
(f) the maximum daily rate at which water can be withdrawn from each withdrawal point;
(g) the length of time for which the permit is sought, which may not extend beyond the next expiration date for the water source from which the water will be withdrawn;
(h) the amount and location of any water discharged by the applicant, and any permit number(s) issued for such discharge by the Department or the U.S. Environmental Protection Agency; and
(i) the applicable fee as specified in 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.

(2) All permit applications shall also include:
(a) a copy of any Environmental Notification Form filed, if applicable;
(b) a detailed evaluation of the potential effect of the withdrawal on:
1. public drinking water supplies;
2. water quality;
3. wastewater treatment;
4. waste assimilation;
5. groundwater recharge areas;
6. navigation;
7. hydropower resources;
8. water-based recreation;
9. wetland resource areas;
10. fish and wildlife;
11. agriculture;
12. floodplains; and
13. other withdrawal points;
(c) a detailed water conservation program and implementation timetable based on water conservation standards established by the Commission, or where the Commission has not established such standards, other industry-specific best management practices appropriate to the permitted water use.

(3) Groundwater Withdrawals. All permit applications for groundwater withdrawals shall also include the following information required according to the applicable permit tier as specified in 310 CMR 36.21(3)(a) through (c):
(a) Permit Tiers 1, 2 and 3.
1. If a withdrawal point is located in a subbasin where a coldwater fish resource is located, the applicant shall consult with the Department and EOEEA agencies on ways to minimize impacts of the withdrawal on the coldwater fish resource by optimizing the pumping regime of the applicant's withdrawal points and shall submit an implementation plan as described in 310 CMR 36.22(4).
2. All groundwater applicants with withdrawal point(s) in a subbasin(s) having August net groundwater depletion of 25% or greater shall submit a minimization plan as described in 310 CMR 36.22(5).

(b) Permit Tiers 2 and 3. In addition to the requirements of 310 CMR 36.21(3)(a), the applicant shall:

1. determine the withdrawal volume above baseline that must be offset through mitigation taking into account adjustments for water conservation, groundwater discharge and certain NPDES surcharges, on forms prescribed by the Department;
2. in consultation with the Department and EOEEA agencies,
   a. identify measures commensurate with impacts of the volume to be offset that the applicant will evaluate in its mitigation plan; and
   b. if a withdrawal point is located in a subbasin where a coldwater fish resource is located, identify measures that will offset impacts to coldwater fish resources that the applicant will evaluate in its mitigation plan; and

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3. submit a mitigation plan as described in 310 CMR 36.22(6).

(c) Permit Tier 3. In addition to the requirements in 310 CMR 36.21(3)(a) and (b), the applicant shall demonstrate that there is no feasible alternative source that is less environmentally harmful as described in 310 CMR 36.22(7).

(4) Surface Water Withdrawals. All permit applications for surface water withdrawals shall also include the following information required according to their permit tier as specified in 310 CMR 36.21(4)(a) and (b):

(a) Permit Tier 1 and 2.

1. If a withdrawal point is located in a subbasin where a coldwater fish resource is located, the applicant shall consult with the Department and EOEEA agencies on ways to minimize impacts of the withdrawal on the coldwater fish resource by optimizing use of the applicant's source(s) and shall submit an implementation plan as described in 310 CMR 36.22(4) and (8).

2. An applicant proposing an alternative to the Department's seasonal limits on nonessential outdoor water use described at 310 CMR 36.28(4)(c)4. shall provide, for the Department's review and written approval, a summer management plan that includes proposed nonessential outdoor water use restrictions and corresponding environmental triggers or offsets that can include, but are not limited to:

a. reservoir elevations;
b. streamflow triggers;
c. fisheries management plan implementation;
d. reservoir releases.

(b) Permit Tier 2. In addition to requirements of 310 CMR 36.21(4)(a), the applicant shall:

1. determine the withdrawal volume above baseline that must be offset through mitigation taking into account adjustments for water conservation, groundwater discharge and certain NPDES surcharges, on forms prescribed by the Department;

2. in consultation with the Department and EOEEA agencies,

a. identify measures commensurate with impacts of the volume to be offset that the applicant will evaluate in its mitigation plan; and

b. if a withdrawal point is located in a subbasin where a coldwater fish resource is located, identify measures that will offset impacts to coldwater fish resources that the applicant will evaluate in its mitigation plan; and

3. submit a mitigation plan as described in 310 CMR 36.22(6).

(5) The Department may specify additional or alternative requirements to address impacts of withdrawals in groundwater-driven water sources (the southern portion of South Coastal, Cape Cod, Islands, and portions of Buzzards Bay).

(6) New permit applications shall also include identification of alternatives, if any, to the proposed withdrawal including a study of cost, feasibility and environmental effects of such alternatives.

(7) Permit renewal applications shall also include:

(a) any proposed changes to the expiring permit's provisions or conditions, with the reason for such proposed changes; and

(b) a demonstration that permit conditions have been met.

(8) Applicants may include, or the Department may require, the following additional

information:

(a) any water resource protection measures affecting the withdrawal that have been implemented or that are planned by the applicant or by any other person;

(b) any agreements with an owner of property conveying an easement by deed which restricts the right of the owner of the property to make a withdrawal from the same water source from which the applicant proposes to withdraw;

(c) the impact of the withdrawal on economic development and the creation of jobs in the Commonwealth;

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(d) the impact of the proposed withdrawal on other water uses, land values, investments and enterprises that are dependent on previously allowable withdrawals in the water source;
(e) identification of the area of contribution for any groundwater withdrawal point;
(f) any other information requested by the Department related to the withdrawal, its use, source protection, minimization and mitigation of the effects of the withdrawal, discharge, impacts, or information related to the factors the Department must consider in reviewing applications, as listed in 310 CMR 36.26.

36.22: Coldwater Fish Resource, Minimization, and Mitigation Planning Requirements

(1) The plans described at 310 CMR 36.22(4) through (7), including a timetable for implementation, shall be submitted for review and written approval by the Department as part of an application for a new or renewed permit as required by 310 CMR 36.21. 310 CMR 36.22(4) through (7) specify the minimum requirements for each component.

(2) The Department may, in consultation with the EOEEA agencies, specify additional or alternative requirements to address cumulative impacts of tier 2 and tier 3 withdrawals in a water source.

(3) All required planning components may be combined in a single written plan.

(4) Coldwater Fish Resource Optimization Review: An applicant with a withdrawal point(s) impacting a coldwater fish resource(s) shall, after consultation with the Department and EOEEA agencies, submit an evaluation of options for shifting withdrawals to the applicant's other withdrawal points, if any, to minimize impacts at the coldwater fish resource.

(5) Minimization Plan: A groundwater applicant with a withdrawal point(s) in a subbasin(s) having August net groundwater depletion of 25% or greater shall submit a plan to minimize the impacts of the withdrawals to the greatest extent feasible, including but not limited to:
(a) minimizing depletion of groundwater during the late summer bioperiod (July-September) by optimizing use of the applicant's withdrawal points located in subbasins that are less groundwater depleted, if any, or by use of any feasible alternative source(s) or interconnection(s);
(b) releasing water from surface water supply impoundments and other measures that return water to the subbasin or water source to improve streamflow taking into consideration the ability of the applicant to meet demand;
(c) adopting restrictions on nonessential outdoor water use more stringent than those required by the permit conditions described at 310 CMR 36.28(4)(c)4.;
(d) adopting water conservation measures, consistent with health and safety, more stringent than those required by the permit conditions described at 310 CMR 36.28(4)(c)1., 2., and 3;
(e) adopting agricultural, horticultural or industry-specific best management practices as applicable.

(6) Mitigation Plan for Tier 2: A tier 2 applicant shall submit a plan to mitigate the withdrawal above baseline that must be offset, as determined at 310 CMR 36.21(3)(b) or (4)(b), to the greatest extent feasible, as follows:
(a) First, the applicant shall evaluate direct mitigation activities that can be volumetrically quantified and compared to the applicant's mitigation volume including, but not limited to:
1. releases from any surface water impoundments that enhance downstream flows;

2. activities that return stormwater to groundwater, including but not limited to, physically disconnecting or removing impervious areas directly connected to surface water;

3. activities that physically return wastewater to groundwater;

4. improvements to wastewater conveyance systems that reduce infiltration and inflow; and

5. activities or releases that will offset impacts to coldwater fish resources as applicable.

(b) If the applicant cannot achieve all the mitigation required through direct mitigation, then the applicant must evaluate indirect mitigation activities that will improve fluvial habitat, but which cannot be volumetrically quantified including, but not limited to:

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1. culvert repair/replacement to meet stream crossing standards;
2. removal of a dam or flow barrier;
3. fish passage improvement;
4. streambank restoration;
5. stream channel restoration;
6. streamside buffer restoration;
7. habitat restoration;
8. development and implementation of stormwater bylaw with recharge requirements;
9. development and implementation of a stormwater utility;
10. implementation of MS4 requirements; and
11. development and implementation of low impact development bylaws.

(c) The proximity of the proposed mitigation to the withdrawal point(s) and the net groundwater depletion of the receiving subbasin(s) will be considered by the Department in determining the equivalence of mitigation measures to withdrawal impacts.

(d) Mitigation measures implemented since 2005 that the applicant demonstrates will mitigate the impact of the proposed withdrawal may be credited toward an applicant's mitigation obligation.

(7) Alternative Demonstration and Mitigation Plan for Tier 3.

(a) A tier 3 groundwater applicant shall demonstrate that there is no feasible alternative source that is less environmentally harmful than the withdrawal point(s) identified in the application. In order to make this demonstration, the applicant must show that:

1. all alternative groundwater sources are in subbasins in groundwater withdrawal category 4 or 5; or
2. taking additional withdrawals from an alternative groundwater source would result in an adverse change to that source's subbasin's biological category, groundwater withdrawal category or seasonal groundwater withdrawal category; and
3. taking additional withdrawals from an alternative surface water supply source would result in unacceptable streamflow impacts or affect the permittee's ability to meet demonstrated water needs. In determining whether an alternative surface water supply source is a feasible alternative, the Department may consider reservoir release plans, downstream flow impacts and other operational considerations on a case-by-case basis.

(b) If a tier 3 groundwater applicant demonstrates there is no feasible alternative source that is less environmentally harmful, then the applicant shall submit a plan for mitigation commensurate with the impact of their additional withdrawal as described in 310 CMR 36.22(6). The Department shall consider the adverse change in the subbasin's biological category, groundwater withdrawal category or seasonal groundwater withdrawal category in determining the scope of commensurate mitigation. If the applicant is unable to provide commensurate mitigation through direct mitigation and demand management, the Department shall require the applicant to provide a higher ratio of indirect mitigation when feasible.

(c) The proximity of the proposed mitigation to the withdrawal point(s) and the net groundwater depletion of the receiving subbasin(s) will be considered by the Department in determining the equivalence of mitigation measures to withdrawal impacts.

(d) Mitigation measures implemented since 2005 that the applicant demonstrates will mitigate the impact of the proposed withdrawal may be credited toward an applicant's mitigation obligation.

(8) Implementation Timetable: An implementation timetable shall be submitted as part of any

coldwater fish resource, minimization, and mitigation plan.

(a) An applicant may phase the implementation of the mitigation plan, provided that the measures associated with specific increases in withdrawals are implemented prior to those increases.

(b) If demonstrated water needs exceed the baseline prior to issuance of the permit, an applicant may request additional time during the first five years of a permit to implement the mitigation plans.

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(9) The fact than an activity fulfills one or more of the permittee's obligations under another regulatory program shall not preclude such activity from receiving mitigation credit in water management permitting, provided such activities meet the objectives of 310 CMR 36.22.

(10) The final plan(s) as approved by the Department will be included as a condition of any permit issued by the Department authorizing the requested withdrawal.

36.23: Public Notice Requirements

(1) All applicants for a new permit shall comply with the following public notice requirements:
(a) The applicant shall prepare a public notice of the proposed withdrawal, which includes:
1. the location of the water source from which the withdrawal is to be made;
2. the volume of water to be withdrawn;
3. the name and address of the water resources management official of each city or town in which the withdrawal is proposed, who will have a copy of the application available for inspection, and the times when it will be available;
4. a statement that written comments on the granting of a permit may be filed with the water resources management official(s) and the Department within 30 days of the notice's publication date; and
5. the name and address of the permit applicant.
(b) Within ten business days after an application is filed with the Department, the applicant shall publish the notice in a newspaper which carries legal notices, and which is of general circulation in the town or city where each proposed withdrawal is to be located, and in each town and city within the same water source as the proposed withdrawal.
(c) Within five business days after the above publication, the applicant shall send a copy of the public notice (return receipt requested), noting the date of publication from which the comment period began to run, to each abutter of the property(ies) where the proposed withdrawal point(s) is located and to each abutter of abutters of the property(ies).
(d) Within ten business days of completing the requirements in 310 CMR 36.23(1)(a) through (c), the applicant shall submit a copy of the published notice and an affidavit to the Department attesting to the fact that the requirements of 310 CMR 36.23(1)(a) through (c) were met.

(2) No earlier than 30 days after publication of the notice described in 310 CMR 36.23(1)(a), the applicant may submit to the Department a certificate from each water resources management official in each city or town in which the withdrawal point(s) is located, which states that:
(a) the proposed withdrawal is not inconsistent with the local water resources management plan; and
(b) no statement of opposition has been received by the water resources management official(s) during the 30 day comment period.

(3) Within five business days of the close of the public comment period the applicant shall submit to the Department any comments received by the applicant or by the water resources management official in each city or town in which the proposed withdrawal point(s) is located.

(4) Following the Department's receipt of the affidavit described in 310 CMR 36.23(1)(d), the Department will send a copy of the notice described in 310 CMR 36.23(1)(a) and may include a summary of the application to:
(a) all registrants, permittees and those who have approved nonconsumptive use statements

for water withdrawn from the same water source as the proposed withdrawal;

(b) the water resources management official(s) for the community(ies) in which the proposed withdrawal(s) is located, and other persons who have made a written request for notice of the permit.

Such notice will include a statement that the Department will receive comments for a period of time set by the Department, not less than 30 days and not to exceed 45 days.

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(5) For permit renewals, the Department will publish notice of all renewal applications received in a water source in the Environmental Monitor within 30 days after the renewal application deadline in the water source. The notice will state that written comments on the granting of a permit renewal(s) may be filed with the Department within 30 days of the notice's publication date.

(6) The applicant for a new or renewed permit shall provide a written response, if requested by the Department, to any comments submitted to the Department.

(7) The Department shall not deem an application complete until the applicant has responded to all written comments as requested by the Department following the comment period.

36.24: MEPA Requirements

(1) An applicant for a new permit is deemed to have completed MEPA requirements for purposes of M.G.L. c. 21G and 310 CMR 36.00 when the Department receives:

(a) a certificate issued by the Secretary stating that no Environmental Impact Report is required;

(b) a determination by the Secretary that the project does not meet MEPA review thresholds; or

(c) a certificate issued by the Secretary finding that any required Final Environmental Impact Report is adequate.

(2) The MEPA public notice required in 301 CMR 11.15: *Public Notice and the Environmental Monitor* may be combined with the public notice required in 310 CMR 36.23 if the filing deadlines under both 310 CMR 36.23(1) and 301 CMR 11.15(1): *Public Notice of Environmental Review* can be met.

36.25: Incomplete Applications

(1) An application for a permit shall not be deemed complete if the Department determines that the permit application:

(a) fails to provide all the information required by 310 CMR 36.21 and 36.22 by the date established by the Department for completion of the application, including any additional information requested by the Department in accordance with 310 CMR 36.21(7)(f);

(b) fails to demonstrate compliance with MEPA requirements as applicable;

(c) fails to demonstrate completion of applicable public notice requirements, as described in M.G.L. c. 21G and 310 CMR 36.23, or fails to respond to comments as requested by the Department in accordance with 310 CMR 36.23(6);

(d) fails to demonstrate compliance with a water resources management plan for any town or city in which the water is to be used; or

(e) fails to demonstrate compliance with M.G.L. c. 21, §§ 8B through 8D (the Interbasin Transfer Act) where applicable.

(2) An application for a new permit, or a permit renewal, amendment or transfer shall not be complete if the Department determines that the permit application:

(a) fails to provide all information required by 310 CMR 36.00 and all information requested by the Department;

(b) fails to include the applicable fee established in 310 CMR 4.00: *Timely Action Schedule*

and Fee Provisions;
(c) fails to provide evidence of compliance with any relevant permit conditions;
(d) is not completed by the applicable date; or
(e) otherwise fails to comply with M.G.L. c. 21G or 310 CMR 36.00.

(3) The date for completing an application shall be extended by the Department if it determines that, for reasons beyond the control of the applicant:
(a) any applicable MEPA requirement cannot be completed by the date;
(b) public comment periods set forth 310 CMR 36.23 extend beyond the date; or

36.25: continued

(c) any applicable M.G.L. c. 21, §§ 8B through 8D (Interbasin Transfer Act) requirement cannot be completed by the date.

(4) The date for completing an application may be extended by the Department if it determines that:

(a) the applicant demonstrates that, despite reasonable efforts, additional information requested by the Department after the application is filed cannot be provided within the time specified in the Department's request; or

(b) any other conditions exist, which were not caused by the applicant, and which in the interest of the purposes to be served by M.G.L. c. 21G, require additional time.

(5) The Department has no obligation to review an incomplete application.

(6) Without limitation, if the Department determines that an application is not complete and that the applicant has not made a good faith effort to complete the application in a timely manner by the applicable date, it may do one or any combination of the following:

(a) terminate any interim permit issued to the applicant pursuant to 310 CMR 36.27(2);

(b) require compliance with a plan ordered or approved by the Department;

(c) where an application is required by M.G.L. 21G or 310 CMR 36.00, or ordered by the Department, assess an administrative penalty, in accordance with M.G.L. c. 21G, and M.G.L. c. 21A, § 16; or

(d) deny the permit application pursuant to 310 CMR 36.30(1)(d).

36.26: Application Review

(1) In reviewing an application, the Department shall consider at least the following:

(a) the water available within the safe yield as determined by the Department in accordance with 310 CMR 36.13 and 36.27(4);

(b) the impact of the proposed withdrawal on other withdrawal points and on other water sources that are hydrologically interconnected with the water source from which the withdrawal is to be made;

(c) the impact of the withdrawal on the biological category, groundwater withdrawal category or seasonal groundwater withdrawal category of the subbasin(s) from which it will be made, in accordance with 310 CMR 36.19;

(d) the extent to which the applicant meets the applicable permit tier requirements in 310 CMR 36.21(3) and (4) and the coldwater fish resources, minimization, and mitigation planning requirements in 310 CMR 36.22;

(e) the anticipated times of year when the withdrawal is or will be made, and any projected changes in the withdrawal during the permit term;

(f) reasonable protection of water uses, land values, investments and enterprises that are dependent on previously registered, permitted or otherwise authorized withdrawals;

(g) the use to be made of the water proposed to be withdrawn and other existing, presently permitted, or projected uses of the water source from which the withdrawal is to be made;

(h) where available, the approved water resources management plan for any city or town in which the withdrawal is located and where different, for any city or town in which the withdrawal is to be used;

(i) any state water resources management plan adopted by the Commission;

(j) reasonable conservation practices and measures, including any water conservation and water use efficiency standards adopted by the Commission, or where the Commission has

not established such standards, other industry-specific best management practices appropriate to the permitted water use;

(k) reasonable protection of public drinking water supplies, water quality, wastewater treatment capacity, groundwater recharge areas, navigation, hydropower resources, water-based recreation, wetland habitat, fish and wildlife, agriculture and floodplains;

(l) the impact of the proposed withdrawal on reasonable economic development and the creation of jobs in the Commonwealth;

(m) comments received during the public comment period; and

(n) other state and Federal statutes.

36.26: continued

(2) If the Department determines that an increase in withdrawals smaller than that requested by the applicant is appropriate to protect significant and valuable environmental resources or to protect the public health, safety or welfare, then the Department may impose limitations on the proposed withdrawal, including but not limited to denial or reduction of the requested volume, offsets, management plans and operational restrictions and other conditions it deems necessary to further the interests of M.G.L. c. 21G and 310 CMR 36.00.

36.27: Issuance of Permits

(1) The Department will issue a single permit for withdrawals from all withdrawal points in a water source by one person.

(2) For renewal applicants, the Department may, in its discretion, grant an interim permit that authorizes;

(a) a withdrawal of the previously permitted volume; or

(b) a withdrawal of a reduced volume if necessary to ensure that the safe yield of the water source is not exceeded.

(3) Interim permits issued under 310 CMR 36.27(2) shall remain fully effective and enforceable until the effective date of a permit renewal or until the renewal application is denied, but in no case shall an interim permit be valid for more than one year from the date of issuance. Interim permits may be renewed by the Department if a renewal application has not been approved or denied at the time of expiration of an initial interim permit.

(4) The Department may take restrictive agreements and orders into consideration when determining the volume of water available for allocation within the safe yield of a water source, including:

(a) any agreement between a permit applicant and an owner of property conveying an easement by deed which restricts the right of the owner of property to make a withdrawal from the same water source from which the applicant proposes to withdraw; and

(b) any agreement or order which sufficiently restricts or prohibits a registrant's right to withdraw from the water source pursuant to a registration statement so as to render all or a portion of the registered volume effectively unavailable for withdrawal by the registrant.

(5) The Department shall issue a draft permit within 30 days of the date on which the application is deemed complete.

(6) Following the Department's issuance of a draft permit, the Department will publish notice of the availability of the draft permit for review and comment in the Environmental Monitor.

(7) The Department will accept written comments on the draft permit for 30 days following publication of the notice of availability in the Environmental Monitor.

(8) Following the Department's issuance of a draft permit, the Department will send notice of the availability of the draft permit for review and comment to:

(a) all registrants, permitees and those who have approved nonconsumptive use statements for water withdrawn from the same subbasin and, as the Department deems appropriate, other persons making withdrawals in the same water source; and

(b) the water resources management official(s) for the community(ies) in which the

withdrawal point(s) is located, and other persons who have made a written request for notice of the availability of the draft permit.

Such notice will include a statement that the Department will receive comment for a period of time set by the Department to coincide with the 30 day comment period established by publication of notice in the Environmental Monitor.

(9) The Department shall rule on a permit application:

(a) within 90 days of the date on which the application is deemed complete; or

36.27: continued

(b) within one year of the date on which the application is deemed complete if the Department determines that additional time is necessary to give proper consideration to the application and sets a new deadline.

36.28: Permit Provisions and Conditions

(1) Each permit shall provide at least the following:
(a) the term of the permit;
(b) the maximum allowable withdrawal volume expressed in terms of average daily withdrawal per year or per a shorter period of time, as applicable;
(c) the maximum allowable withdrawal volume expressed in terms of maximum daily withdrawal from each withdrawal point;
(d) the identification and any limitation of the use of the water withdrawn; and
(e) the maximum allowable peak withdrawal.

(2) No permit shall authorize a withdrawal beyond the expiration date for a water source, and in no case shall a permit have a term greater than 20 years.

(3) All permits shall be conditioned on at least the following:
(a) installation of flow meter(s) unless the Department determines that this condition is not applicable;
(b) accurate monthly recording and reporting of all future withdrawals unless the Department determines in writing that more frequent monitoring is required;
(c) operation and maintenance requirements;
(d) permission to the Department to enter the permit holder's facility or property at reasonable times to inspect and monitor the withdrawal and to inspect and copy any relevant records;
(e) implementation of water conservation measures appropriate to the permitted water use;
(f) implementation of coldwater fish resource, minimization, and mitigation plans as applicable;
(g) implementation of conditions that minimize any negative impacts of the withdrawal on factors the Department must consider in reviewing applications, as listed in 310 CMR 36.26;
(h) submission of an annual statement of withdrawal in accordance with 310 CMR 36.31;
(i) any other conditions necessary to further the purposes of M.G.L. c. 21G or to assure compliance with 310 CMR 36.00;
(j) documentation of the need for any change in withdrawal volume, or documentation of achievement of specified milestones relating to future increased withdrawals over the life of the permit; and
(k) authorization for the Department to amend, suspend or terminate the permit as described in M.G.L. c. 21G and 310 CMR 36.29.

(4) All public water supply permits shall include at least the following conditions, as applicable:
(a) groundwater supply protection through delineation of the Zone II or Zone III as applicable, as defined in 310 CMR 22.21: *Groundwater Supply Protection*, for the public groundwater supply source(s) included in the permit within three years of the date of permit issuance, and the implementation, where appropriate, of land use control measures, consistent with those found in 310 CMR 22.21: *Groundwater Supply Protection*, intended to protect the quality and quantity of the water supply;
(b) surface water supply protection through a firm yield analysis for the public surface

supply source(s) included in the permit within three years of the date of permit issuance, and the implementation, where appropriate, of a surface water supply protection plan, consistent with that found in 310 CMR 22.20B: *Surface Water Supply Protection* and 310 CMR 22.20C: *Surface Water Supply Protection for New and Expanding Class A Surface Water Sources* as applicable, intended to protect the quality and quantity of the water supply;

(c) excepting permits for a redundant well(s), water conservation requirements based on water conservation standards established by the Commission, including but not limited to:

36.28: continued

1. water audits and leak detection, metering, pricing, residential and public sector conservation, industrial/commercial conservation, lawn/landscape conservation, and education/outreach;
2. performance standard for residential gallons per capita day water use as dictated by specific facts concerning population served;
3. performance standard for unaccounted for water; and
4. seasonal limits on nonessential outdoor water use from May 1st to September 30th.

(5) The Department may impose additional requirements to address the cumulative impacts of tier 2 and tier 3 withdrawals in a water source.

(6) The holder of a permit shall comply at all times with all conditions of the permit and with all applicable federal and state statutes and regulations.

(7) The burden shall be on each permit holder to demonstrate compliance with all the provisions and conditions of the permit at all times.

36.29: Permit Amendments, Suspensions and Terminations

(1) Without limitation, the Department may amend, suspend or terminate any permit, after notice and opportunity for hearing, if it determines that:

(a) the permit holder has violated any provisions of M.G.L. c. 21G, the permit, these or other applicable regulations, or a Department Order;

(b) such action is necessary for the promotion of the purposes of M.G.L. c. 21G;

(c) the safe yield of, or other indications of stress on, the water source requires such action for the protection of public health, safety and welfare; or

(d) The permit holder no longer owns or has access to the property on which the withdrawal point(s) listed in the permit is located.

(2) A permit holder, who seeks to amend a permit during the term of the permit to decrease permitted volume, change the location of a withdrawal point, add a withdrawal point, change the authorized withdrawal rate for an individual withdrawal point, change the location of a discharge point(s), or otherwise amend a permit shall submit an application to the Department on a form provided by the Department.

(a) For requests to add a withdrawal point or increase the authorized withdrawal rate from an individual withdrawal point, the applicant shall provide public notice as required in 310 CMR 36.23.

(b) For all other amendments, the Department shall publish notice of the amendment application in the *Environmental Monitor* within 30 days of receipt of the application and accept written comment on the amendment application for 30 days from publication in the *Environmental Monitor*.

(c) The applicant shall provide a written response, if requested by the Department, to any comments submitted to the Department.

(d) An amendment application is not complete until the applicant has responded to all written comments as requested by the Department following the comment period.

(3) A permittee that wants to request an increase in total permitted withdrawal volume shall submit a permit application as described in 310 CMR 36.18 through 36.24.

(4) Each request by a permittee for a permit amendment shall be accompanied by the applicable fee established by 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.

36.30: Permit Application Denials

(1) Without limitation, the Department may deny a permit application or impose additional conditions on a permit if it determines that:

(a) the withdrawal will not conform to the applicable standards for permitting established by 310 CMR 36.00;

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(b) the withdrawal will negatively impact any of the factors listed in M.G.L. c. 21G or in 310 CMR 36.26;
(c) the applicant has submitted information in the permit application which the applicant knew or reasonably should have known was false or misleading; or
(d) the application is not complete by the applicable date.

(2) The Department shall deny permit applications for withdrawals from a water source if it finds:
(a) that the combined volume of existing, permitted and proposed withdrawals exceeds the safe yield of the water source; or
(b) that the existing, permitted or proposed withdrawals are otherwise in conflict.

36.31: Reporting and Review Requirements for Permits

(1) Each permit holder shall file an annual statement of withdrawal that includes at least the following:
(a) average daily volume of water withdrawn over the past 12 months;
(b) conservation measures instituted in the past 12 months;
(c) metering records;
(d) system updates; and
(e) the applicable fee as established in 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.

(2) Each permit holder shall retain a copy of all withdrawal records for at least ten years.

(3) For each permit that has a term greater than five years, the Department may conduct a review of the permittee's compliance with the permit at the end of each five-year period during the term of the permit, as specified in the permit. The Department may request, and the permit holder shall submit, any information requested by the Department in order to conduct the review. The Department may review any additional information submitted by the applicant. The Department may amend the permit in accordance with 310 CMR 36.29, after notice and opportunity for hearing, as necessary to promote the purposes of M.G.L. c. 21G and 310 CMR 36.00.

36.33: Transfer of a Permit

(1) Any person who has a permit and is in compliance with M.G.L. c. 21G and 310 CMR 36.00 and all conditions of its permit may request a transfer of the permit, in whole or in part, to another person by submitting a request to the Department at least 30 days before the date of the transfer.

(2) The request shall include a copy of the written agreement between the permittee and the transferee that transfers responsibility for the permit, and a certification by the transferee that there will be no significant change in use, source, location of the withdrawal, or discharge of the permitted volumes. The transferee must agree to accept all the provisions and conditions of the permit and the agreement must state a specific date for transfer of responsibility between them.

(3) Any transfer of a permit that meets the requirements of 310 CMR 36.33 will be granted by the Department, unless the Department determines in writing that the transfer would be contrary

to the intent or purpose of M.G.L. c. 21G or 310 CMR 36.00. No permit shall be transferred until the Department has authorized the transfer in writing.

(4) A request for transfer of a permit that requires an amendment of the permit must be submitted as a request for a permit amendment in accordance with 310 CMR 36.29.

(5) Each application for transfer of a permit shall be accompanied by the applicable transfer fee as set forth in 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.

36.34: Fee Schedule

Permits issued pursuant to 310 CMR 36.00 are subject to the provisions of 310 CMR 4.00: *Timely Action Schedule and Fee Provisions* concerning fees and schedules for timely action, as set forth in 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.

36.35: Nonconsumptive Use Statements

(1) Any volume of water approved by the Department to be withdrawn for a nonconsumptive use shall not be counted in the volume of water withdrawn for purposes of calculating whether a withdrawal exceeds the threshold volume.

(2) Any person claiming a nonconsumptive use for all or part of a withdrawal over the threshold volume shall file a request for approval of the nonconsumptive use consistent with guidelines established by the Department.

(3) Any person asserting that the use of a volume of water is nonconsumptive must demonstrate to the satisfaction of the Department that the volume of water meets the definition of nonconsumptive use in 310 CMR 36.03, and that no other registered or permitted withdrawals are substantially affected.

(4) No volume of water withdrawn for nonconsumptive use shall require a permit unless the Department determines that such a permit is required to protect other registered or permitted withdrawals.

36.36: Recognition of Normal Variation for Existing Withdrawals

(1) At the time when initial permit applications were due to be filed for a water source, any person who had an accepted registration statement for an existing withdrawal was able to request that the registration statement be amended to include an amount of water which the Department determined to be within the normal variation of the average volume withdrawn between January 1, 1981 and December 31, 1985.

(2) For registrants with groundwater withdrawals, the Department did not recognize as an existing withdrawal any volume in excess of one standard deviation of the average existing withdrawal volume for which a registration statement was accepted by the Department.

(3) For registrants who withdraw surface water from more than one water source, the Department recognized as an existing withdrawal a volume not to exceed 2.5 times the standard deviation of the average existing withdrawal volume for each water source for which a registration statement was accepted by the Department, provided that no recognition of such normal variation authorized withdrawals in any year of a volume in excess of the sum of the existing withdrawal volumes from all of the registrant's water sources for which registration statements were accepted by the Department. For the purpose of 310 CMR 36.36, standard deviation of the average existing withdrawal volume is defined as the unbiased estimate derived from the sample of five annual volumes of the registered withdrawal.

36.37: Appeals

(1) Any person who is aggrieved by a decision of the Department with respect to any permit application, amendment, suspension or termination, or any registration statement, and any person

who has been allowed pursuant to 310 CMR 1.01(7): *Intervention and Participation* to intervene in an adjudicatory proceeding that resulted in such decision, may request an adjudicatory hearing before the Department, under the provisions of M.G.L. c. 30A. With regard to a decision of the Department amending a permit, only the amended provisions or conditions of the permit shall be subject to a request for an adjudicatory hearing. Each request for a hearing must be sent by certified mail or hand delivered, and received by the Department within 21 days of the date of receipt of the decision being appealed. At the same time that the appeal is sent or hand delivered to the Department, a copy of the appeal must be sent by certified mail or hand delivered to the water resources management official in the city or town where the withdrawal point is located.

36.37: continued

(2) Any person who appeals a decision of the Department, who is neither the applicant, the registrant, nor the permittee authorized to make or continue a withdrawal, is required to notify the applicant, registrant or permittee of the appeal by certified mail or by hand within five days of filing the appeal.

(3) Each request for a hearing under 310 CMR 36.37 shall state specifically, clearly and concisely the facts which are the grounds for the appeal, the relief sought, and any additional information required by 310 CMR 1.01(6)(b): *Form and Content* or other applicable law or regulation.

(4) In every proceeding the burden shall be on the applicant for, or the holder of, a permit or registration statement to demonstrate compliance with 310 CMR 36.00 including the provisions of 310 CMR 36.37.

(5) Any person aggrieved by a final decision of the Commissioner may seek judicial review of that decision in Superior Court, in accordance with M.G.L. c. 30A, § 14.

36.38: Signatures

(1) All statements, permit applications and requests filed under 310 CMR 36.00 shall be signed as follows:

(a) For a corporation, by a corporate officer duly designated as a corporate representative for such purpose, or the manager of a manufacturing, production, or operating facility, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by an executive officer or a ranking elected official duly authorized for such purpose.

(2) All reports required and other information requested by the Department shall be signed by a person described in 310 CMR 36.38(1), or by a duly designated representative of that person. A person is a duly designated representative only if:

(a) the authorization is made in writing by a person described in 310 CMR 36.38(1);

(b) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility; and

(c) the written authorization is submitted to the Department.

(3) Any person signing a document under 310 CMR 36.38(1) or (2) shall include the following certification:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."

36.39: Right of Entry

Agents and employees of the Department may make such inspections of property, facilities or operations owned or controlled by persons subject to M.G.L. 21G and 310 CMR 36.00 as the Department may determine are necessary to carry out its responsibilities under M.G.L. c. 21G. Any person subject to 310 CMR 36.00 shall allow such agent(s) or employee(s) free and unrestricted access at reasonable times to examine any property, facility, operation, equipment or activity involving the withdrawal of water. Such agent(s) or employee(s) may also inspect, conduct tests, and review books, papers and records pertinent to any matter determined by the Department to be relevant to the administration or enforcement of 310 CMR 36.00.

36.40: Declaration of Water Supply Emergency

(1) Any public water supplier may petition the Department for a declaration of a state of water supply emergency pursuant to M.G.L. c. 21G, §§ 15 through 17, and in accordance with 310 CMR 36.40 through 36.42.

(2) Upon receiving a petition for a declaration of a state of water supply emergency, the Department may declare an emergency if it finds that there exists or impends a water supply shortage of a dimension which endangers the public health, safety or welfare, due to circumstances including, but not limited to:

(a) demand for water exceeds the availability of water;

(b) mechanical failure or similar type of emergency, including inability to maintain storage tanks, loss of power, loss of pumping capacity, loss of storage capabilities, or major breaks or leaks;

(c) contamination of the public water supply, the distribution system or storage tanks and inability to meet demand with remaining public water supplies;

(d) inadequate source of water, inadequate distribution system capacity, inadequate storage capacity or drought including seasonal water shortages which repeatedly affect the same public water system; or

(e) necessary repair or maintenance of the public water system.

(3) Whenever the Department determines pursuant to a petition that the protection of the public health, safety or welfare requires an immediate declaration of a state of water supply emergency, it may make such declaration verbally. A verbal declaration shall expire by its terms or by operation of 310 CMR 36.00 ten business days from the date of the verbal declaration, whichever is earlier, unless the public water supplier submits a written petition to the Department within the ten business day period.

(4) The Department in its discretion may not declare a state of water supply emergency if it finds that the water supply shortage has been primarily caused by closure of a local withdrawal point on local authority without prior approval by the Department.

(5) In declaring a state of water supply emergency, the Department may require the public water supplier to submit a water supply emergency plan for review and approval. Such plan shall include provisions the Department deems appropriate and feasible to remedy the state of emergency, including, but not limited to:

(a) taking by eminent domain under M.G.L. c. 79 the right to use any land for the time necessary to use such water;

(b) purchasing water from another public water system;

(c) restricting the use of water on public or private premises by shutting off the water at the meter or at the curb cock or by other means;

(d) an approved water resources management plan;

(e) a leak detection program;

(f) a program for auditing water use;

(g) a program for overall system rehabilitation;

(h) conservation programs for public and private buildings;

(i) bans or restrictions on certain water uses;

(j) water banking;

(k) moratorium on the issuance of building permits;

(l) a plan for establishing priority for distribution of water among competing uses; and

(m) a drought management or contingency plan.

(6) In declaring a state of water supply emergency, the Department shall limit the applicability of the state of water supply emergency to the city or town submitting the petition or the geographical area served by the public water supplier submitting the petition.

36.41: Actions to Resolve a Water Supply Emergency

(1) During a declared state of water supply emergency, to the extent not in conflict with applicable federal laws or regulations but notwithstanding any general or special law, local law or contractual agreement to the contrary, the Department may issue orders applicable within or outside the area in which any water emergency exists to:

(a) establish priorities for the distribution of any water or quantity of water use;

(b) permit any public water supplier to reduce or increase the distribution of water by a specified amount, to cease the distribution of water, to distribute a specified amount of water to certain users, or to share water with other water supply systems;

(c) direct any person to reduce or cease, by a specified volume, the withdrawal or use of any water;

(d) require the implementation of specific water conservation measures;

(e) mandate the denial, for the duration of the state of water supply emergency, of all applications for withdrawal permits within the areas of the Commonwealth to which the state of water supply emergency applies; and

(f) authorize a taking of land or purchase or sale of water in accordance with an approved water supply emergency plan provided that no taking, purchase or sale shall be made unless:

1. in the case of cities, the city council has voted to authorize the taking, purchase or sale;

2. in the case of towns, and water supply, fire and water districts, the taking, purchase or sale has been authorized by a vote at a town meeting or a district meeting;

3. in the case of water companies, notice of such taking, purchase or sale, including a copy of plans and specifications, has been given to the city council or to the board of selectmen of the city of town in which the affected water source is located, by certified mail at least ten days prior thereto.

(2) No taking of land or purchase or sale of water shall be undertaken pursuant to an approved water supply emergency plan unless the Department has issued an order authorizing the taking, purchase or sale. The use of such land or purchase or sale of such water pursuant to the authority of M.G.L. c. 21G, §§ 15 through 17 and 310 CMR 36.40 through 36.42 shall not exceed the duration of the Department's declaration, but in no case shall it exceed six months cumulatively in any 12 month period.

(3) Temporary pipes and other works may be installed in order to convey water pursuant to a taking, purchase or sale authorized in accordance with 310 CMR 36.41(1)(f) provided that the installation or repair of such pipes or other works along any highway shall be accomplished with the least possible hindrance to public travel, and shall be subject to the direction and approval of the officers or departments in charge of the maintenance of said highway where applicable.

(4) During a declared state of water supply emergency, a public water supplier may be permitted to sell or otherwise distribute water to the public water supplier in the state of water supply emergency as provided in an approved water supply emergency plan and authorized by order of the Department. Withdrawals for any such sale or distribution of water may be made in addition to withdrawals authorized in any registration or permit held by the selling or distributing public water supplier.

36.42: Duration of a Water Supply Emergency

(1) Except as provided in 310 CMR 36.40(3), a declaration of a state of water supply emergency will remain in effect for six months following the date of issuance unless revoked by

the Department.

(2) No state of water supply emergency will remain in effect for more than six months in the aggregate in any 12-month period unless the Department determines that a longer state of emergency is required to protect the public health, safety or welfare in all or in part of the area served by the public water supplier.

(a) An extension may be granted on the Department's initiative or at the request of the public water supplier.

36.42: continued

(b) The public water supplier shall submit an update of any water supply emergency plan required by the Department prior to the extension of a water supply emergency.
(c) The Department shall consider efforts taken by the public water supplier to address the underlying causes of the water supply emergency in reviewing the need for an extension.

(3) The Department may amend or terminate a declaration upon a finding that the public health, safety or welfare is no longer endangered by a water supply shortage in part or all of the area to which the emergency had been made applicable.

36.43: Orders, Violations and Penalties

(1) The Department may issue orders or amend, suspend or terminate a permit as necessary to aid in the implementation and enforcement of M.G.L. c. 21G and 310 CMR 36.00. Such orders may include, but shall not be limited to, orders requiring persons to cease any activity which is in violation of M.G.L. c. 21G or 310 CMR 36.00 or to carry out activities necessary to bring such person into compliance. The Department may also require any person to submit such information as the Department may reasonably require to evaluate whether that person is subject to, or in violation of, M.G.L. c. 21G or 310 CMR 36.00.

(2) Violations. Without limitation, it shall be a violation of M.G.L. c. 21G and 310 CMR 36.00 to:
(a) fail to comply with any order of the Department;
(b) make a water withdrawal or engage in any activity that is contrary to the terms and conditions of M.G.L. c. 21G and 310 CMR 36.00, or of any permit, registration statement or order issued pursuant to M.G.L. c. 21G and 310 CMR 36.00;
(c) fail to submit a timely application for a permit or a permit renewal for an activity that requires a permit pursuant to 310 CMR 36.16;
(d) make any false, inaccurate, incomplete or misleading statement in any document submitted to the Department or required to be kept by M.G.L. c. 21G or 310 CMR 36.00;
(e) make any false, inaccurate, incomplete or misleading statement in any record, report, plan, file, log, register or other document which the person submits to the Department or is required to keep by the terms of a registration statement, permit or order issued pursuant to 310 CMR 36.00; or
(f) fail to provide any information requested by the Department pursuant to 310 CMR 36.00 or a permit, registration statement or order issued pursuant to 310 CMR 36.00.

(3) Penalties. Any person violating M.G.L. c. 21G or 310 CMR 36.00 shall be subject to the full range of legal actions authorized by M.G.L. c. 21A, § 16, c. 21G, 310 CMR 5.00: *Administrative Penalty*, and any other applicable law or regulation including, without limitation, criminal fines, imprisonment, and civil and administrative orders and penalties.

36.44: Severability

If any provision of 310 CMR 36.00 or its application is held invalid, such invalidity shall not affect other provisions or applications of 310 CMR 36.00 which can be given effect without the invalid provision or application, and the provisions of 310 CMR 36.00 are declared to be severable.

REGULATORY AUTHORITY

310 CMR 36.00: M.G.L. c. 21G.

NON-TEXT PAGE