

Regulatory Analysis Form

<h3 style="margin: 0;">Regulatory Analysis Form</h3>		This space for use by IRRC IRRC Number: <u>2154</u>
(1) Agency Pennsylvania Emergency Management Agency		
(2) I.D. Number (Governor's Office Use) #30-55 #30-56 #30-57 #30-58		
(3) Short Title <ul style="list-style-type: none"> • Reductions of Major Water Use in the Delaware River Basin Drought Emergency Area • Prohibition of Nonessential Water Uses in a Commonwealth Drought Emergency Area • Philadelphia Drought Water Emergency Plan • Local Water Rationing Plan 		
(4) PA Code Cite 4 Pa. Code Chapter 118 4 Pa. Code Chapter 119 4 Pa. Code Chapter 119a 4 Pa. Code Chapter 120	(5) Agency Contacts & Telephone Numbers Primary Contact: Mark Goodwin 717-651-2010 Secondary Contact: Stuart Gansell 717-783-7420	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and non-technical language. <p>The revised regulations will be effective at all times, rather than only during declared drought emergencies. They will also be effective statewide, rather than only in the declared emergency area. This will enable the designation of a <u>permanent</u> Commonwealth Drought Coordinator (CDC) within the Department of Environmental Protection. It will authorize the CDC to receive and approve drought management plans on an ongoing basis from water users across the Commonwealth. While the regulations will remain in effect at all times, implementation of actual emergency provisions of the regulations, including the nonessential water use bans, would only be effective during a declared emergency and within the declared emergency area, as before.</p> <p><i>Chapter 118</i></p> <p>Chapter 118 requires the submittal of drought contingency plans by public water suppliers and major industrial/commercial water users. References limiting the effective area of the regulations to the</p>		

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Delaware River Basin are being removed from the regulations in order to make them applicable statewide.
(8) Continued...

To the extent practicable, references to the Pennsylvania Emergency Management Agency (PEMA) with regard to submittal and review of drought contingency plans are being removed from the regulations, and authority and responsibility for those activities are being delegated to the CDC, as agent for PEMA. In a similar manner, the current authorities and responsibilities of the Emergency Management Council in the appeal process are being assigned to PEMA and further delegated to the extent practicable to the Public Utility Commission's administrative law judges or others.

Chapter 119

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

The effective emergency area is being expanded to include the complete service area of any public water supply agency whose source of water is located in the declared emergency area. The revisions provide that a public water supply agency whose sources are not in jeopardy, although located within a declared emergency area, may request a variance from the nonessential use bans, if the agency is following a drought contingency plan that was approved by the CDC within the previous three years.

Definitions have been added to clarify the meanings of athletic field, newly seeded and sodded grass, effective conservation, professional landscaper and irrigation contractor.

A new section is added to specifically address athletic fields, which were previously considered part of the "lawn" section. Separate regulations are provided for normal athletic fields and sand-based fields. Irrigation of sand-based fields will require metering and reporting and must be done according to a plan approved by the CDC. Normal athletic fields will be limited to watering one time per week; while sand-based fields will be limited to one and a half inches of water per week.

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

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

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

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Revisions in the mobile equipment and paved surface sections recognize the need to wash
(8) Continued...

equipment or areas related to food vending and hauling. The use of a hand-held hose with automatic shutoff nozzle will be allowed, up to two minutes, for washing personal cars, recognizing that this will generally require less water than the "bucket" method allowed in the current regulations.

The fire hydrant regulations previously contained in Chapter 119a are being incorporated into Chapter 119; while Chapter 119a, which dealt specifically with Philadelphia, is being eliminated.

Chapter 119a

This chapter, which applies specifically to Philadelphia, is being eliminated and the section on fire hydrants is being incorporated into Chapter 119, as indicated above.

Chapter 120

This chapter applies solely to public and municipal water supply systems, and allows either the municipality or the water supply agency to institute water rationing if the bans on nonessential water uses effected through Chapter 119 are insufficient to protect local water supplies. The suggested revisions to this chapter are primarily procedural in nature, some of them reflecting the proposed assignments and delegations of authority from the Council and/or PEMA to PEMA and/or the CDC. Again, the appeal processes reflect the intended use of Public Utility Commission administrative law judges as hearing officers. In addition, procedures for amendment or repeal of an implemented rationing plan are being simplified.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Emergency Management Services Code (35 Pa. C.S. §§ 7101-7707).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Emergency Management Services Code

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(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Introduction

The drought experience of 1998-99 offered insight into many ways in which the drought emergency regulations found at Chapters 118, 119 and 120 have become outdated with the passage of nearly 20 years since they were initially written and nearly 10 years since they were last revised. Technology and social trends have advanced in ways that earlier drafters of the regulations could not have envisioned. As an example, irrigation practices have advanced with new technologies, and it may now be more efficient to irrigate with automated irrigation systems than to water with a hand-held hose in many cases.

Overall, our experience has also shown us the potential for more efficient ways to manage water use during drought emergencies. For example, a permanent Commonwealth Drought Coordinator, with authority to approve drought plans prior to a drought, rather than during an emergency, would enable the Emergency Management Council to focus more clearly on drought emergency operations and at the same time provide for more meaningful reductions in and more efficient use of available water resources.

The proposed revision will move the Commonwealth toward full-time drought preparedness and management. It will authorize the CDC to receive and approve drought management plans on an ongoing basis from water users across the Commonwealth, thus allowing more opportunity to provide education and technical assistance to water users to guide them in the development of their individual drought plans. It will also allow more time for the CDC and related staff to adequately review plans and to approve them prior to an actual emergency.

Chapter 118

The Chapter 118 regulations were originally written to apply only to the Delaware River Basin portion of the Commonwealth. Many of the activities involved in submittal and review of drought contingency plans, as required by the regulations, included duplications of effort by both PEMA and the CDC.

Chapter 119

Problems were experienced previously when public water supply service areas extended beyond an emergency county into a non-emergency county, with the result that only a part of the service area was subject to emergency restrictions. Public water supply systems located within a declared emergency area may have adequate sources or reserves of water and are thus unnecessarily impacted by bans on nonessential water use.

Golf courses have been impacted to the extent of significant grass loss because of insufficient irrigation allowances, while others have been able to circumvent the nonessential water use restrictions because of inadequate enforcement ability in the current regulations.

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(11) Continued...

Citizens were forced to request variances under the current regulations in order to protect fish and aquatic life in fish ponds and water gardens.

Similarly, variances were required in order to wash equipment or areas related to food vending and hauling.

Chapter 120

Procedural changes are required in order to reflect the proposed assignments and delegations of authority from the Council and/or PEMA to PEMA and/or the CDC. Procedures for amendment or repeal of an implemented rationing plan are complicated and confusing in the current regulations.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Under the current regulations, many citizens are inconvenienced by the need to prepare and submit requests for variances from the nonessential water use regulations for certain forms of water use that are generally approved by the Commonwealth Drought Coordinator anyway, such as for operation of essential aeration equipment in fish ponds, or washing paved surfaces or mobile equipment associated with food vending or hauling. This poses unnecessary stress and/or loss of income or property to those individuals while awaiting approval of their requests. Many provisions of the current regulations no longer serve to manage water use in the most effective manner, as a result of changing technologies during the past 20 years, such as use of modern automatically-controlled irrigation equipment, thus posing unwarranted risk to both the environment and to health, safety and welfare.

While the Commonwealth has yet to experience a drought severe enough to warrant general cutbacks in industrial/commercial water uses, the revisions will clarify and effectuate statewide the requirements for such users to plan for cutbacks in order to protect life and health-sustaining water uses should such conditions occur.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The revisions will help protect the livelihoods of thousands of individuals involved in the landscaping business across the Commonwealth, while at the same time managing water use for irrigation of gardens and shrubs far more effectively than do the current regulations. Thousands of organizations and schools owning athletic fields will be better able to protect their fields as well as the safety of their players as a result of the sweeping revisions to the athletic field regulations. Similarly, over 700 golf courses across the Commonwealth will be able to protect this multi-million dollar industry by being able to more effectively use the water allotted to them under the completely-revised golf course regulations. Hundreds of individuals involved in mobile power washing businesses will be able to sustain their livelihoods while more effectively restricting water use for washing allowed surfaces and mobile equipment. Thousands of citizens will benefit from the provisions for maintaining fish ponds and water gardens. Millions of citizens will benefit from the revised car-washing provisions.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

We do not anticipate adverse effects resulting from the revisions. The revisions have all been developed to positively address adverse effects that resulted from the current regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

- **Chapter 118 - Approximately 2000 public water supply systems and perhaps as many as 2500 large industrial/commercial users, statewide, would be affected, but these numbers would be restricted to the specific emergency area declared in any particular drought.**
- **Chapter 119 - The entire citizenry of the Commonwealth, but again restricted to the specific emergency area declared.**
- **Chapter 120 - Approximately 2000 public water supply systems, statewide, but this number would be limited generally to only a very few systems who may need to implement rationing in an emergency area.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

During preparation of the proposed revisions to the regulations, meetings were held with representatives of the golf course industry, athletic field owners (both public and private), the landscape and nursery industry, the public water supply industry (both public and private investor-owned), and the food processing industry. Additionally, three public information meetings were held in Pittsburgh, Harrisburg and Bethlehem, at which the revisions were described to the public in attendance. Comments were accepted from the public, as well as from the specific interest groups mentioned above, and all comments were considered and incorporated to the extent practicable in the final recommended revisions. Revisions relating to the interest group representatives were provided to them, and generally, their concurrence was secured.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

In general, the revisions will not result in additional costs to the regulated community. Exceptions may include the golf course and sand-based athletic field owners. In both of these cases, the revisions will require metering of irrigation water used during drought emergencies, and in the case of golf courses, metering of five prior years' irrigation water use will also be required. Meter installation costs for athletic fields should be less than \$250. For golf courses, meter installation should be in the \$700-1500 range, depending upon the size and type of meters required. Meter reading costs for athletic fields should be minimal. For golf courses, meter reading on a daily basis by grounds keepers should not impose any significant additional costs. Automatic recorders may be installed, if desired, to avoid the need for manual daily reading.

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(17) Continued...

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

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Because the revisions are designed to make the regulations clearer, and many of the compliance problems experienced with the current regulations are being addressed in the revisions, costs to local enforcement agencies should be reduced, or at least should not increase.

Local governments may experience additional costs associated with municipally-owned athletic fields or golf courses, as described in Question 17, above.

Savings, as described in Question 17, may likewise accrue to local governments or school districts, to the extent that they own or maintain athletic fields, golf courses and landscape/nursery materials. Health, safety and employment will be better protected for them also, as described in Question 17.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

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

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

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Local Government	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
State Government	\$3000	\$3000	\$3000	\$3000	\$3000	\$3000
Total Savings	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
COSTS:						
Regulated Community	\$812,500	Unknown	Unknown	Unknown	Unknown	Unknown
Local Government	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
State Government	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Total Costs	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
REVENUE LOSSES:						
Regulated Community	\$812,500	Unknown	Unknown	Unknown	Unknown	Unknown
Local Government	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
State Government	Unknown	(\$3000)	(\$3000)	(\$3000)	(\$3000)	(\$3000)
Total Revenue Losses	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown

(20a) Explain how the cost estimates listed above were derived.

(a) State government savings are based on 500 variances processed during droughts in the 1990s, or an average of 50 per year, at an assumed savings of one man-hour or \$60.00 apiece, resulting in \$3000 per year savings. Additional costs, primarily in staff time related to processing athletic field and golf course drought operations plans, are unknown.

(b) Regulated community costs are based upon an average meter installation cost of \$1000 for 800 golf courses and \$250 for 50 athletic fields.

Most costs, if any, and savings are listed as unknown due to the uncertainty of drought occurrence and the actual value of property or income savings that may result from the revisions.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

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Program	FY - 3	FY - 2	FY - 1	Current FY
Unknown	Unknown	Unknown	Unknown	Unknown

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Overall, this is not possible to answer because of the large number of unknowns. Just based upon the actual estimated costs presented, and assuming that each golf course could reasonably save in excess of \$1000 in costs for replacing fairway grass, there would be an overall net savings to golf courses resulting from the proposed revisions. Many immeasurable savings will accrue throughout the regulated community. Overall, those additional savings are anticipated to far outweigh the remaining costs to state government.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not Applicable

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Non-metered alternatives were discussed with the golf course and athletic field interests. Their preference was to use the metered approach.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Not Applicable

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(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Our nonessential water use restrictions are generally compatible with surrounding states, as witnessed during the 1999 drought that affected all neighboring states except Ohio and West Virginia. No competitive disadvantage is foreseen. Maryland, Delaware, New Jersey and New York are all currently revising their drought management regulations as well, and all four states are considering Pennsylvania's approach as a guide for fashioning their new regulations.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

DEP regulations will not be affected by the revisions.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

As indicated in Question 16, public meetings were held in Harrisburg, on April 5, 2000; in Bethlehem on April 6, 2000; and in Pittsburgh on April 18, 2000. Additionally, several meetings were held in Harrisburg, during December 1999 and January 2000, with representatives of the golf course, landscape/nursery, athletic field and public water supply interests.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

During declared drought emergencies only, owners of golf courses and sand-based athletic fields will be required to report irrigation usage to the CDC, on a monthly basis. Owners of golf courses should record usage for a five-year period prior to a drought emergency; this information will be included in their application for approval of a drought operations plan.

No reporting forms have been developed at this time.

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(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

While not affecting farmers directly, the mobile equipment washing restrictions are being revised to allow washing of feed trucks, to help prevent spread of animal diseases between farms. The regulations are being revised specifically to address problems previously encountered by owners and operators of public water supply systems, golf courses, athletic fields, landscape/nursery businesses, mobile power-wash businesses, food processing and vending businesses, fish ponds, water gardens, and automated landscape irrigation systems.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Although no specific date is specified, approval of the proposed regulation revisions is anticipated to occur prior to December 31, 2000. Compliance with the regulations is only required during a declared drought emergency. Provisions of the regulations that apply absent a declared drought emergency are optional and are to the advantage of the segments of the regulated community to which they may apply, such as golf courses, athletic fields and public water supply agencies. Drought operation plans must be approved prior to actual irrigation of golf courses or sand-based athletic fields during a declared drought emergency; therefore approval prior to a drought is to the advantage of owners of such facilities.

(31) Provide the schedule for continual review of the regulation.

The regulations, as in the past, will be reviewed during each declared drought emergency, in order to determine from actual experience any reasonable or necessary modifications.

CDL-1

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REVIEW COMMISSION

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#2156

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BY: _____
(DEPUTY ATTORNEY GENERAL)

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☐ Check if applicable
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Copy below is hereby certified to be a true and correct
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**PENNSYLVANIA EMERGENCY
MANAGEMENT AGENCY**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 30-55

DATE OF ADOPTION: 5/9/01

BY: _____

TITLE: **DIRECTOR**
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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Agencies

BY: _____

5/30/01
DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)

☐ check if applicable. No Attorney General
approval or objection within 30 days after
submission.

Notice of

Final Rulemaking

Pennsylvania Emergency Management Agency

4 Pa. Code Chapter 118

Reduction of Major Water Use in a Commonwealth Drought Emergency Area

Annex A

TITLE 4. ADMINISTRATION

PART V. EMERGENCY MANAGEMENT AGENCY

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

Sec.

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§ 118.1. Definitions.

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

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

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

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

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

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

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

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

***Department*--The Department of Environmental [Resources] Protection of the Commonwealth.**

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

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

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

***Public water supply agency*--A [person, partnership, association, corporation, municipality or municipal authority, district or other entity supplying or authorized to supply water to the public] "community water system" as that term is defined in section 3 of the Pennsylvania Safe Drinking Water Act (ACT 43 OF 1984, 35 P. S. § 721.3).**

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

***Secretary*--The Secretary of the Department.**

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

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

***Water user*--**

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

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

§ 118.2. Purpose.

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

§ 118.3. Scope.

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

§ 118.4. Contingency plans--public water supply agencies.

(a) *Preparation and submission.*

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

(2) Each public water supply agency shall submit three copies of the drought contingency plan to the Commonwealth Drought Coordinator, for distribution to PEMA,

the Department and other interested Commonwealth agencies, **including the Pennsylvania Public Utility Commission if applicable.** Each public water supply agency shall submit a copy of the drought contingency plan to the counties in which the public water supply agency serves water.

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

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

* * * * *

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

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

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

(A) **Public health and safety, including pharmaceutical PROCESSES.**

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

(C) ~~Provision of essential public utility services, and the maintenance of employment.~~
DELIVERY OF ELECTRIC GENERATION SERVICES.

(D) ~~the~~ **THE maintenance of employment.**

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

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

§ 118.5. Contingency plans--self supplied commercial and industrial users.

(a) *Preparation and submission.*

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

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

(3) [The] During the effective period of the Governor's proclamation of drought emergency, the Commonwealth Drought Coordinator, [Council or PEMA,] may direct ORDER the owner or operator of [another] any commercial or industrial facility [subject to this section] not included in paragraph (2) whose source of water is located within the designated drought emergency area, to [file] develop, adopt and submit a drought contingency plan [within a reasonable time with] to the Commonwealth Drought Coordinator ~~within a reasonable time~~ THE TIME FRAME SPECIFIED IN THE ORDER.

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

* * * * *

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

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

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

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

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

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

(i) **Public health and safety, including pharmaceutical PROCESSES.**

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

(iii) **~~[provision] Provision of essential public utility services[, and the maintenance]~~ DELIVERY OF ELECTRIC GENERATION SERVICES.**

(iv) **Maintenance of employment.**

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

(b) Each **[public water supply agency and the] owner or operator of each self-supplied commercial or industrial facility shall implement, under the contingency plans required under § [§ 118.4 and] 118.5 (relating to contingency plans--[public water supply agencies and contingency plans] self supplied commercial and industrial users) measures that are necessary to achieve the withdrawal and use reductions ordered by the [Council] Commonwealth Drought Coordinator.**

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

[§ 118.7. Penalties and enforcement.

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

§ 118.7 118.8. Procedure for exemptions or variance from water use reductions by self-supplied industrial or commercial water users.

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

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

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

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

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

* * * * *

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

(4) The Commonwealth Drought Coordinator or a designee **[as agent for PEMA and Council]** is authorized to render a decision regarding applications received for exemption or variance. The Commonwealth Drought Coordinator or a designee will provide the applicant **[and other interested parties]** notice in writing of the decision and the reasons for the decision. **[Where]** When possible, the Commonwealth Drought Coordinator or a designee will provide a written decision within 7 working days, or if perishable products are involved, within 1 working day of submission of an application or **[of]** will request additional information as necessary to review the

application. When appropriate, the Commonwealth Drought Coordinator may issue a Statewide exemption or variance to similarly situated water users. A notice of the decision will be published in the *Pennsylvania Bulletin*. Unless appealed under this section, the decision of the Commonwealth Drought Coordinator or a designee, shall be considered a final action on the application.

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

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

(7) When an initial decision is appealed, [the Commonwealth Drought Coordinator] PEMA will provide the applicant with an opportunity for a hearing NOT LATER THAN 7 BUSINESS DAYS AFTER PEMA HAS RECEIVED THE APPEAL REQUEST. [The Commonwealth Drought Coordinator may act as the hearing examiner, or] PEMA may appoint a hearing examiner who may be an administrative law judge of the Pennsylvania Public Utility Commission. Hearings may be held telephonically. [A hearing will be conducted under 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).]

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

(9) [The Council] PEMA will notify the applicant in writing of its final decision and the reasons for the decision regarding the appeal WITHIN 2 BUSINESS DAYS AFTER PEMA HAS RECEIVED A WRITTEN RECOMMENDATION FROM THE HEARING EXAMINER.

* * * * *

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

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

§ 118.8. [118.9. Implementation period] County drought management task force.

[This chapter shall be implemented upon declaration by the Governor of a drought or water shortage emergency, and shall remain in effect during the period of the emergency until terminated by action of the Governor, or by order of PEMA. Notice of the termination of the drought emergency and the reversion of this

chapter to a standby status shall be submitted to the Legislative Reference Bureau for suggested publication in the *Pennsylvania Bulletin*.]

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

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

(2) The county task forces shall be comprised of county emergency management officials, public water supply agency representatives, elected officials, health officials, fire officials, law enforcement officials, affected business and industry representatives, and others, ~~as the county may determine~~ INTERESTED PARTIES. EACH COUNTY MAY DETERMINE THE NUMBER AND COMPOSITION OF REPRESENTATIVES FROM EACH GROUP THAT WILL SIT ON THE TASK FORCE.

(3) The county commissioners will coordinate, and report to the Commonwealth Drought Coordinator on county task force activities to include, BUT NOT LIMITED TO, public information, planning, water system vulnerabilities, enforcement coordination, fire protection and other areas of public concern. THE REPORT SHALL BE SUBMITTED EITHER MONTHLY OR WITHIN A SHORTER TIME FRAME AS DETERMINED BY THE COMMONWEALTH DROUGHT COORDINATOR.

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

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

§118.9. ~~§118.10.—Effective date (Reserved)~~ PENALTIES AND ENFORCEMENT. A PERSON WHO VIOLATES THIS CHAPTER, FAILS TO CARRY OUT DUTIES AND RESPONSIBILITIES IMPOSED BY THIS CHAPTER, OR IMPEDES OR INTERFERES WITH ACTIONS UNDERTAKEN OR ORDERED UNDER THIS CHAPTER SHALL BE SUBJECT TO THE PENALTIES UNDER 35 PA.C.S. § 7707. VIOLATION OF ANY PROVISION OF THIS CHAPTER IS A SUMMARY OFFENSE ENFORCEABLE BY PROPER LAW ENFORCEMENT AUTHORITIES OR PRIVATE CITIZENS IN ACCORDANCE WITH 234 PA. CODE CHAPTERS 50 AND 6000 (RELATING TO SUMMARY CASES; AND RULES OF CRIMINAL PROCEDURE FOR THE MUNICIPAL COURT OF PHILADELPHIA).

Notice of Final Rulemaking
Emergency Management Agency
(4 Pa. Code Chapters 118, 119, 119a and 120)
(Reductions of Major Water Use, Nonessential Water Uses, Water Emergency Plan
and Local Water Rationing Plans)

A. Statutory Authority

The Pennsylvania Emergency Management Agency (PEMA) under the authority contained in 35 Pa. C.S. § 7313 (relating to power to adopt regulations) amends 4 Pa. Code Chapters 118, 119, 119a and 120 (relating to Reductions of Major Water Use in the Delaware River Basin Drought Emergency Area, Prohibition of Nonessential Water Uses in a Commonwealth Drought Emergency Area, Philadelphia Drought Water Emergency Plan and Local Water Rationing Plans). The amendments to Chapter 118 will make them applicable statewide, rather than just in the Delaware River Basin. The amendments to Chapter 119 include changes to the definition section and to the list of exceptions to the nonessential water use bans. The provisions of Chapter 119a are eliminated and incorporated into Chapter 119. The amendments to Chapter 120 are primarily procedural. Overall, the amendments will move the Commonwealth toward full-time drought preparedness and management. Implementation of actual emergency provisions of the regulations, including the nonessential water use bans, will only be effective during a declared drought emergency and within the declared emergency area. PEMA adopts these regulations to read as set forth in Annex A. These final-form regulations were previously published as proposed rulemaking at 30 Pa. B. 5735 (November 4, 2000).

B. Effective Date

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

C. Background and Purpose

The drought experience of 1998-99 offered insight into many ways in which the drought emergency regulations found at Chapters 118, 119, 119a and 120 have become outdated with the passage of nearly 20 years since they were initially written and nearly 10 years since they were last revised. Technology and social trends have advanced in ways that earlier drafters of the regulations could not have envisioned. As an example, irrigation practices have advanced with new technologies, and it may now be more efficient to irrigate in many cases with automated irrigation systems than to water with a hand-held hose.

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

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

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

D. Comments

Written comments, suggestions and changes were solicited within a 30-day period after the proposed regulations were published in the Pennsylvania Bulletin. Comments were received from Representative Russell H. Fairchild, the Philadelphia Suburban Water Company, Reliant Energy Company, the Pennsylvania Landscape and Nursery Association, Carpenter Specialty Alloys, Penreco, and the Pennsylvania State University.

Following the close of the public comment period, PEMA received comments from the Independent Regulatory Review Commission (IRRC). The regulations contained in Annex A are responsive to the comments and suggestions received from the commenters and IRRC. For ease of reference, PEMA will address the comments in the order in which the regulatory sections appear in the three different regulatory chapters.

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

Section 118.1. Definitions

Comment: The definition of *Commonwealth Drought Coordinator* should be consistent with the definition of the same term in Sections 119.1 and 120.1. of the regulations.

Response: The definition of “Commonwealth Drought Coordinator” has been revised to be consistent in all three sections of the regulations.

Comment: The definition of *consumptive water use* appears to contain a typographical error by including the word “or” in the definition.

Response: The word “or” following the word “used” has been deleted.

Comment: The definition of *Designated drought emergency area* should be applied to specific water supplies impacted by a drought and not generically applied to a general region, such as a county. Some water suppliers are impacted significantly by a drought while others are not.

Response: The Governor has historically declared drought emergencies on a county-wide basis. This declaration process has worked very well over the past 20 years for the management of drought emergencies in Pennsylvania. As a result, neither PEMA nor DEP believe there is a need to change this drought declaration process.

Comment: The definition of *public water supply agency* references a statutory standard of “...15 service connections...” but Sections 118.2 and 118.4(a)(1) relax the standard to “50 or more connections.” What is the basis for the relaxation? Second, the “50 or more customer connections” standard should be included in the definition of a public water supply agency.

Response: The definitions in Chapters 118, 119 and 120 are consistent. Because the definition needs to be consistent in all three chapters, it is essential that the Chapter 118 definition not be changed to achieve a mere internal consistency within that one Chapter. Furthermore, this definition was included in the regulations at the request of the public water supply industry. The “50 or more customer connections” standard has been used by the Department of Environmental Protection for the past 20 years because systems with fewer than 50 customer connections generally have operations that are not conducive to the type of drought contingency planning required by these regulations. For these reasons, no changes have been made to this definition.

Section 118.2 Purpose

Comment: In the last sentence of this section, the phrase “directs by directing” appears to be incorrect.

Response: The words “by directing” have been deleted.

Section 118.4. Contingency Plans

Comment: Subsection (b)(6) requires a plan of action, including “public notice”. Examples of public notice should be included in the regulation.

Response: The subsection has been revised to read “public notice such as newspaper, radio or television notice.”

Comment: Subsection (b)(7) references 4 Pa. Code 120.9(d). Should it reference 120.9(e)?

Response: The subsection is revised to read “4 Pa. Code 120.9(e).”

Comment: A commenter disagreed with PEMA’s plan to carve out generic special water rationing exemptions for the food and pharmaceutical industries.

Response: The commenter has misconstrued the intent of Subsection 118.4(b). No exemptions are carved out in this section for the food and pharmaceutical industries. Instead, the regulations stipulate that these industries must be considered by public water supply agencies when they prepare their drought contingency plans. Therefore, no revision is needed for this subsection.

Comment: Subsection (b)(7)(i), as well as Subsection 118.6(a)(1) refer to the “relative impact of water use reductions.” How is this going to be measured?

Response: The word “relative” has been deleted from this subsection because no measurement of the impact of water use reductions will be required.

Comment: Subsection (b)(7)(i)(C), as well as Section 118.6(a)(2)(iii) use the phrase “essential public utility services”, which should be defined.

Response: The phrase “essential public utility services” has been replaced with “delivery of electric generation services.”

Section 118.5 Contingency Plans – self supplied commercial and industrial users

Comment: Subsection (a)(1) indicates that a facility shall “develop and adopt” a drought contingency plan. It may be interpreted that “adopt” means to implement. The words “and adopt” should be stricken.

Response: The commenter has misinterpreted the meaning of “adopt.” This subsection only requires that the plan be adopted by some official corporate action before it is submitted to the Commonwealth Drought Coordinator for review. A plan that has been prepared by staff but not formally adopted by a corporation’s managers is not an officially approved and recognized planning document of the corporation.

Comment: In Subsection (a)(3), the phrase “a reasonable time” is used. The regulation should specify a time frame or detail the criteria upon which a “reasonable time” will be determined.

Response: The language has been changed to “within the timeframe specified in the request.”

Comment: Add a paragraph to Section 118.5 that allows the Commonwealth Drought Coordinator to allow continued water withdrawal by those water users that directly impact public health.

Response: Section 118.5 merely requires self-supplied commercial and industrial water users to submit a drought contingency plan to the Commonwealth Drought Coordinator when its water use exceeds 500,000 gallons per day. Because every drought contingency plan must identify actions that a facility can take to achieve a phased reduction of its normal water withdrawal ranging from 5% to 50%, the Commonwealth Drought Coordinator can certainly consider such factors as the facility’s operational impact (e.g. electric generation) upon the public’s health and welfare in determining the actual percentage of water use reduction that the facility would have to implement during a drought emergency. Therefore, because the plans provide the Commonwealth Drought Coordinator with a great deal of flexibility in determining the degree of water use reductions, there is no need to identify or establish special exceptions for any particular type of facility in the regulations.

Comment: Section 118.5 should not require contingency plans if a facility can demonstrate that it returns all or a vast majority of the water it withdraws to the water body from which it was withdrawn.

Response: The purpose of the drought contingency plans is to enable industrial and commercial operations to anticipate measures they could take if they were required to implement water use reductions. Those reductions could be forced upon a facility by its particular water resource conditions, absent any action taken by the Commonwealth Drought Coordinator. For this reason, all self-supplied commercial and industrial water users need to develop a drought contingency plan that can be implemented in response to a wide range of drought conditions or factors. A facility cannot be automatically exempted from the requirements of this subsection simply because it does not consume all of the water that it takes from the environment. Instead, such a facility can petition for either a partial or total exemption from this requirement under the provisions of section 118.8.

Comment: Water use reduction plans that are developed by businesses should include the ability to use site-specific hydrogeological data to determine if rationing is necessary.

Response: The regulations clearly permit an industrial water user or business to use its unique hydrogeological conditions at the site of the facility in developing and implementing its drought contingency plan.

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

Comment: This section contains the only provision to consider public health and safety and essential public utility services. It may be more efficient to consider those factors when crafting the drought contingency plans, not when implementing them. Even thinking about a 50% reduction in withdrawals by electric generating facilities is impractical and should not be an issue before the Commonwealth Drought Coordinator during an emergency.

Response: The purpose of the plans is to enable industrial and commercial operations to anticipate measures they could take if they were required to implement reductions. Those reductions could be forced upon them by water resource conditions, absent any action by the Commonwealth Drought Coordinator. The Commonwealth Drought Coordinator will only be making decisions about industrial or commercial reductions after drought conditions have become so extreme as to warrant mandatory water use reductions. Only at the time of the actual drought emergency will the Commonwealth Drought Coordinator be able to consider such factors as the public health and safety in determining the various levels of reductions and the types of industry and commerce to be impacted by his decision. For this reason, electric generating facilities need to develop drought contingency plans in the same manner as other facilities.

Comment: The Commonwealth Drought Coordinator should consider a company's water recycling efforts when making a water rationing decision concerning that company.

Response: Paragraph (a)(2) does this.

Section 118.7 Penalties and enforcement

Comment: IRRC recommended that this section be moved to the end of the Chapter.

Response: This section has been moved to the end of the Chapter.

Section 118.8 Procedure for exemptions or variances from water use reductions by self-supplied industrial or commercial water users

Comment: Subsection (c)(3) uses the phrase “a reasonable time”, which should be specified or the phrase should be deleted.

Response: The phrase has been deleted.

Comment: Subsection (c)(3) refers to “other appropriate Commonwealth agencies”. Those agencies should be specified in the regulations.

Response: We disagree. The appropriate Commonwealth agency or agencies to be consulted will depend upon the circumstances or nature of the water use reductions. It is not appropriate to predetermine which Commonwealth agencies may need to be consulted in the decision-making process. Those decisions must be made at the time of the actual drought emergency.

Comment: Subsection (c)(4) uses the phrase “when possible.” What circumstances would prevent the Commonwealth Drought Coordinator from meeting the seven- or one-day time frames specified?

Response: It is not possible to anticipate all such circumstances. However, circumstances beyond the control of the Commonwealth Drought Coordinator such as illness or hospitalization, unavailability of staff support, telecommunications failures, or other types of administrative problems could impact upon the seven or one day time frames.

Comment: Subsection (c)(7) states that PEMA will provide the applicant with an opportunity for a hearing and may appoint an administrative law judge of the Public Utility Commission as hearing examiner. Within what time frame will the hearing be provided, and under what circumstances will PEMA appoint a PUC administrative law judge?

Response: An appeal hearing will be held not later than seven business days after PEMA has received the appeal request from the water user. It is anticipated that PUC administrative law judges will be used for all of the appeal hearings.

Comment: Subsection (c)(9) should specify the timeframe within which PEMA will issue a final decision on the appeal.

Response: PEMA will notify the applicant of its final decision within two business days after it has received a written recommendation from the hearing examiner (PUC administrative law judge).

Section 118.9 County drought management task force

Comment: The right bracket is missing at the end of the deleted text in this section.

Response: The right bracket has been inserted as originally intended.

Comment: Subsection (a)(2) could be interpreted to require all officials in each county to serve on their county task forces. This should be clarified.

Response: A new sentence has been added to the subsection which states that each county may determine the number and composition of representatives from the various identified groups that will sit on the county task force.

Comment: Subsection (a)(3) should specify the required time frames for submission of the county task force reports to the Commonwealth Drought Coordinator.

Response: A new sentence has been added to the subsection which states that the county commissioners shall submit a report either monthly or within a shorter time frame as determined by the Commonwealth Drought Coordinator.

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

Section 119.1 Definitions

Comment: The definition of *Commonwealth Drought Coordinator* should be consistent with the definition of the same term in Sections 118.1 and 120.1.

Response: The definition of Commonwealth Drought Coordinator has been revised to be consistent in all three sections.

Comment: Under the definition of “athletic field”, what does the term “racing” refer to?

Response: Any type of racing such as automobile or horse racing.

Comment: A definition of *professional landscaper* should be added to this section.

Response: We do not believe that these regulations provide the proper authority for PEMA to establish a professional status for landscapers. As a result, PEMA will not attempt to regulate which persons or businesses may engage in landscaping activities in Pennsylvania.

Section 119.4 Prohibition of nonessential water uses.

Comment: The last sentence of the opening paragraph neither narrows the nonessential water use restrictions, nor clarifies the exceptions. Therefore, the sentence should be deleted.

Response: We disagree. The sentence clarifies the fact that using water under one of the exceptions does not allow the same water to be used for consequential uses. For example, watering shrubs does not allow overspray or runoff to water any surrounding grass. Therefore, a method of watering shrubs must be used that does not result in the watering of grass as a consequence.

Comment: Paragraph (2)(iv)(F) is not related to plan approvals and should be included as a separate Paragraph (2)(v), and subsequent paragraphs should be renumbered.

Response: We agree. The paragraphs have been revised as suggested.

Comment: Paragraph (3)(ii) allows the watering of landscaped areas, trees and shrubs between 5 p.m. and 9 a.m. Water bags, used to water trees, are installed and left in place for several days and would therefore not meet the time-of-day restriction. Has PEMA considered exempting the use of water bags from the time-of-day restriction?

Response: No exemption is required because water bags are an irrigation method that conforms with this paragraph. It is our understanding that water bags empty within 1 to 2 hours after being filled, so they should be filled between 5 p.m. and approximately 7 a.m. to ensure that they are applying water only during the times prescribed in the regulations.

Comment: In Paragraph (4), the regulation establishes a time frame for plan approval of “no earlier than 3 years prior to the month of use during an emergency.” How was the three-year time frame determined?

Response: The Department of Environmental Protection’s water use managers considered the typical timeframe for changing irrigation practices at golf courses and the effort required to update and obtain the Commonwealth Drought Coordinator’s approval of a water use plan. Based upon these factors, the water use managers determined that three years was a reasonable time to insure an up-to-date plan without unduly burdening the golf course industry.

Comment: Paragraphs (2)(iv)(D) and (4)(iv) require meter records to be available to representatives of the local law enforcement authority or the Commonwealth Drought Coordinator. It is not clear who is to make the records available.

Response: These regulatory sections have been revised to state that the golf course operator must make the records available.

Comment: Paragraph (4)(vi) allows the watering of heat-sensitive grasses with a hand-held hose with an automatic-shutoff nozzle. Has PEMA considered allowing automated systems if they are timed and supervised?

Response: A primary purpose of the golf course revisions was to eliminate the use of automated systems for daytime syringing of heat-sensitive grasses. The golf course industry advised us that by allowing them to use a specified water allotment during the prescribed hours, such a practice would virtually eliminate the need for further syringing of heat-sensitive grasses.

Comment: Paragraphs (5) (i) – (iv) list exceptions to prohibitions on washing paved surfaces. The regulations should clearly state whether paved surfaces can be washed to meet a permit or other regulatory requirement.

Response: A new subsection has been added to this paragraph which states that water may be used at a minimum rate necessary to comply with a permit or other regulatory requirement.

Comment: Paragraph (7)(i) establishes the same day for citizens with an even or no street address to wash cars. Why have the even and no street addresses been combined?

Response: Because about half of the “no street addresses” would be “even addresses” if they had an address. This means that only the other half of the “no street addresses” will be true additions on the Wednesday car wash day. Since most of these addresses are rural addresses and are less likely to be customers of public water supply systems, there should not be any undue burden to the water supply systems resulting from this combination of even or no street addresses.

Comment: Paragraph (7)(ii) allows commercial car washes to operate. This should be limited to those car washes that recycle water.

Response: Information obtained in prior droughts revealed that most commercial car washes do recycle water. These operations involve people’s livelihoods and one of the primary purposes of these regulations is to protect the welfare and livelihoods of Pennsylvania’s citizens during a drought emergency. Eliminating the exception for those car washes that do not recycle water would simply set the stage for those business owners to request water use variances because of extraordinary hardship to their livelihood. For this reason, the exception will not be limited to only those car washes that recycle water.

Comment: Paragraph (7)(vi) allows professional mobile wash businesses to wash commercial, government or other vehicles as part of normal business practices. Why should government be treated any better than the average citizen?

Response: Government vehicles require periodic washing the same as commercial and other vehicles. For this reason, the phrase “commercial, government or other” has been deleted from the paragraph.

Comment: Paragraph (7)(v)(B) revises the day that car dealers without a street address may wash cars so that they will be allowed to wash on the same day as dealers with an even street address. Why have they been combined?

Response: In order to provide equal treatment for all commercial car dealers located in the same area.

Section 119.6 Procedure for exemptions or variances from the prohibition of nonessential uses of water.

Comment: The regulation should clearly state that an exemption applies only until the expiration of the drought emergency and does not apply to future drought emergencies.

Response: We agree. The regulation has been revised to state that the water use variance or exemption will expire with the termination of the drought emergency proclamation, unless otherwise specified in the variance or exemption.

Comment: Subsection (b) does not appear to recognize large water supply systems or those with many different sources. Under this subsection, what criteria will be used to determine “the ability of law enforcement agencies locally or throughout the drought emergency area to enforce these or other emergency regulations”?

Response: This subsection was added to the regulations with large water systems in mind because the large systems generally have adequate water sources. However, those large systems also may have service areas so expansive and disjointed that enforcement of the non-essential water use regulations may or may not apply on opposite sides of streets or from one housing development to the next. These situations make enforcement activities difficult for local law enforcement agencies. As a result, law enforcement agencies will be advised to consider the totality and continuity of the public water supply agency’s service areas within municipalities or the county. PEMA, DEP, and the county emergency management agencies will coordinate law enforcement activities through the operation of the county drought task forces.

Comment: Under Subsection (c), what factors will PEMA consider in order to determine “other personal or economic loss which is substantially more severe than the sacrifices borne by other water users”?

Response: This is the existing language in the regulation and does not represent a change. During past droughts, the Commonwealth Drought Coordinator has considered all of the personal, business or other factors presented by the party seeking the variance or exemption. This process has worked well and neither PEMA nor DEP wants to establish any further criteria in this subsection that might hinder or adversely impact the ability of the Commonwealth Drought Coordinator to deal with the volume of variance or exemption requests received during a drought emergency.

Comment: Subsection (d)(5) states, “When possible...” the drought coordinator will provide a decision within certain time frames. What circumstances would prevent the Commonwealth Drought Coordinator from rendering a decision within these time frames?

Response: Circumstances beyond the control of the Commonwealth Drought Coordinator such as illness or hospitalization, unavailability of staff support, telecommunications failures, or other types of administrative problems could impact upon the seven or one day time frames.

CHAPTER 120. LOCAL WATER RATIONING PLANS

Section 120.1 Definitions

Comment: The definition of *Commonwealth Drought Coordinator* should be consistent with the definition of the same term in Sections 118.1 and 119.1. (1)

Response: The definition of *Commonwealth Drought Coordinator* has been changed to be consistent in all three Sections.

Section 120.2 Purpose

Comment: Chapter 120 applies primarily to water supply agencies and to governing bodies of local governments. This leaves open the possibility that water suppliers and local governments may independently develop and try to implement inconsistent Local Water Rationing Plans. No local plan should be developed or implemented that is inconsistent with an approved plan developed by a water supplier.

Response: No local water rationing plan can be approved or implemented without the approval of the Commonwealth Drought Coordinator. It is the Commonwealth Drought Coordinator's responsibility to ensure that all local water rationing plans meet the same planning standards and requirements. Furthermore, a local government would only seek approval for a water rationing plan for an area that is directly served by the municipality. This review process will ensure that all local government water rationing plans are consistent with each other.

Section 120.5 Implementation of plans

Comment: Subsection (a)(2) references two guidance documents relating to water rationing and states that public water supply agencies "are encouraged to" contact the Department of Environmental Protection for assistance in developing a plan. Regulations establish binding norms of general applicability and future effect. The provisions in this paragraph are not mandates. Therefore, Paragraph (2) should be deleted.

Response: We disagree. Regulations may reference guidance documents that are helpful to the regulated community. For this reason, the subsection has been revised to read, "may contact the Department..." We believe it is important to provide this source of guidance to the water users. However, we do not want to mandate that they contact the Department if they are capable of developing their plans without further guidance..

Comment: Subsection (d)(1) requires notice in “at least one newspaper serving the area covered by the plan.” To insure adequate coverage, the regulation should require the notice to be published in a newspaper of general circulation for the area covered by the plan. Additionally, should the notice also include where the public can review a copy of the plan or how the public can obtain a copy as required by Paragraphs (3) and (4)?

Response: We agree with this comment and have revised the subsection accordingly.

Section 120.8 Service Interruptions

Comment: It may not be practical for a water supplier to operate curb stops or install flow restrictors on single user services. Are the provisions of this section intended to apply to individual service connections or to larger portions of a water system?

Response: It is generally intended to apply to “all or part of” the water supply service area, as stated in Subsection (b)(1), although the public water supplier is authorized to implement service interruptions as it “deems appropriate”.

Section 120.11 Enforcement by political subdivision ordinance

Comment: Subsection (a)(1), as published in the *Pennsylvania Bulletin*, repeats the phrase “plan has been.” This typographical error should be corrected.

Response: The correction has been made.

Section 120.14 Repeal of a plan

Comment: The title of this section references a “repeal.” However, the text of this section references both repeal and amendment. The title should be revised accordingly.

Response: The title to this section has been changed to read “Repeal or amendment of a plan.”

Section 120.15 Notification of termination

Comment: This section should require notices to be published in a newspaper “of general circulation” for the area covered by the plan.

Response: The suggested revision has been made.

E. Benefits, Costs and Compliance

Benefits

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

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

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

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

Savings may likewise accrue to local governments or school districts, to the extent that they own or maintain athletic fields, golf courses and landscape/nursery materials. Health, safety and employment will be better protected for them also.

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

Compliance Costs

In general, the revisions will not result in additional costs to the regulated community. Exceptions may include golf course and sand-based athletic field owners. In both of these cases, the revisions will require metering of irrigation water used during drought emergencies, and in the case of golf courses, metering of five prior years'

irrigation water use will also be required. Meter installation costs for athletic fields should be less than \$250. For golf courses, meter installation should be in the \$700-1500 range, depending upon the size and type of meters required. Meter reading costs for athletic fields should be minimal. For golf courses, meter reading on a daily basis by grounds keepers should not impose any significant additional costs. Automatic recorders may be installed, if desired, to avoid the need for manual daily reading.

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

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

Compliance Assistance Plan

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

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

F. Paperwork Requirements

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

During declared drought emergencies only, owners of golf courses and sand-based athletic fields within the declared emergency area will be required to report irrigation usage to the Commonwealth Drought Coordinator, on a monthly basis. Owners of golf courses should also record usage for a five-year period prior to a drought emergency; this

information will be included in their application for approval of a drought operations plan.

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

G. Sunset Review

PEMA will review these regulations on an annual basis to determine whether the regulations effectively fulfill the goals for which they were intended.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. 745.5(a)), on October 24, 2000, a copy of the proposed rulemaking, published at 30 Pa.B.5735 was submitted to IRRC and the Chairpersons of the Senate State Government Committee and the House Veterans Affairs and Emergency Preparedness Committee for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the agency also provided IRRC and the Committees with copies of all comments received from the public. In preparing these final-form regulations, PEMA has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on _____. IRRC met on _____ and approved the amendments in accordance with Section 5.1(e) of the Regulatory Review Act.

I. Contact Person

Questions regarding these final-form regulations may be directed to Mark Goodwin, Chief Counsel, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110-9364.

J. Findings

PEMA finds that:

(a) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(b) A public comment period was provided as required by law and all comments were considered.

(c) These regulations are necessary and appropriate for the administration of the Emergency Management Services Code.

K. Order

PEMA, acting under the authority of the Emergency Management Services Code, orders that:

(a) The regulations of PEMA, 4 Pa. Code Chapters 118, 119, 119a and 120 are amended to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) PEMA shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form as required by law.

(c) PEMA shall certify this order and Annex A and shall deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the Pennsylvania Bulletin.

David L. Smith
Director

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 30-55
SUBJECT: Reduction of Major Water Use in a Commonwealth Drought Emergency Area
AGENCY: PA Emergency Management Agency

TYPE OF REGULATION

Proposed Regulation
X Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

RECEIVED
MAY 31 PM 1:32
REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5-31-01	<u>Richard G. O'Brien</u>	HOUSE COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS
5-31-01	<u>Denise Wilkins</u>	
5/31/01	<u>Valerie Koller</u>	SENATE COMMITTEE ON STATE GOVERNMENT
5/31/01	<u>Dan Byrd</u>	
5/31/01	<u>Chana Ragan</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

May 31, 2001