

State of Connecticut
Regulation of
Department of Energy and Environmental Protection
Concerning
Water Diversion Exemptions

Section 1. Section 22a-377(b)-1 of the Regulations of Connecticut State Agencies is amended as follows:

Sec. 22a-377(b)-1. Exemptions from the Connecticut water diversion policy act

(a) In addition to those diversions exempted in section 22a-377 of the Connecticut General Statutes, and subject to the conditions set out in [subsection] subsections (b) and (c) of this section, the following diversions are exempt from the provisions of sections 22a-365 to 22a-378, inclusive, of the Connecticut General Statutes:

(1) Diversion of surface waters caused by activities which are incidental to construction, including, but not limited to dredging or filling for site development, stream bank stabilization, erosion and sedimentation control, construction or use of coffer dams, and dewatering of below grade structures, provided:

(A) there is no permanent change in the location of the natural bed of any perennial brook, stream or river;

(B) no perennial brook, stream or river is channelized;

(C) the diversion structure allows the continuous passage of existing watercourses; and

(D) any permit or approval required by sections 22a-32, 22a-39, 22a-42a or 22a-361 of the Connecticut General Statutes is obtained.

(2) Diversion of water incidental to testing the production capability of a well or the quality of water withdrawn therefrom, provided the diversion continues no longer than is necessary for testing the production capability of the well or the quality of water withdrawn therefrom.

(3) Withdrawal of groundwater from a well which is constructed in the vicinity of a failed well to replace the failed well, provided:

(A) the failed well was registered or permitted pursuant to sections 22a-365 to 22a-378, inclusive, of the Connecticut General Statutes;

(B) the failed well is permanently plugged and abandoned; and

(C) the replacement well is located no further than 250 feet from the failed well.

(4) Diversion of water incidental to the inspection, maintenance, or repair of existing diversion structures and related facilities, provided:

(A) the diversion continues no longer than is necessary to carry out inspection, maintenance, or repair work;

(B) such existing diversion structures and related facilities were registered or permitted pursuant to sections 22a-365 to 22a-378, inclusive, of the Connecticut General Statutes; and

(C) the surface elevation of any pond, lake, or reservoir, whether natural or artificial, is not drawn down except as may be authorized by subdivision [16] (15) of this subsection.

(5) Diversion of water, or increase in the capacity to divert water, incidental to providing water treatment, extending distribution mains, or maintaining or expanding service within a service area, provided the quantity of water withdrawn from any source does not exceed the quantity authorized

pursuant to any applicable permit issued or registration [issued or] filed under section 22a-368 of the Connecticut General Statutes.

(6) Transfer of up to 50,000 gallons of water in any twenty-four hour period from one distribution system or service area to another distribution system or service area, or installation of capacity to transfer such water, provided the quantity of water withdrawn from any source does not exceed the quantity authorized pursuant to any applicable permit issued or registration [issued or] filed under section 22a-368 of the Connecticut General Statutes.

[(7)] [As used in subdivisions (5) and (6) of this subsection, “service area” means a service area identified in any applicable permit or registration issued or filed under section 22a-368 of the General Statutes or an exclusive service area established under section 25-33g of the General Statutes.]

[(8)](7) Diversion of tidal water incidental to navigation improvements, dredging, or the construction of jetties, groins, piers, or similar structures, provided that the permit or approval required for such activity by sections 22a-32 or 22a-361 of the Connecticut General Statutes is obtained.

[(9)](8) Diversion of water resulting from separation of combined storm water and sanitary sewer systems approved by the Commissioner pursuant to chapter 446k of the Connecticut General Statutes, except when such diversion results in an interbasin transfer of surface water run-off from an area of 100 or more acres.

[(10)](9) Diversion of water incidental to the placement of an obstruction or encroachment within stream channel encroachment lines established pursuant to sections 22a-342 to 22a-348, inclusive, of the Connecticut General Statutes, provided:

- (A) the permit required by section 22a-342 of the Connecticut General Statutes is obtained;
- (B) the obstruction or encroachment allows the continuous passage of the watercourse for which such stream encroachment lines were established;
- (C) no watercourse is dammed, diked, or channelized as a result of such diversion; and
- (D) if such obstruction or encroachment is on or in a tributary to the watercourse for which such stream channel encroachment lines have been established, the total drainage area of the tributary does not exceed five square miles.

[(11)](10) Diversion of water authorized by the Commissioner pursuant to section 316 of the Federal Clean Water Act, 33 U.S.C. sections 1251 *et seq.*

[(12)](11) Diversion of water in a manner and degree which is specified by order of the Commissioner for the abatement of pollution pursuant to sections 22a-133e, 22a-424, 22a-428, 22a-430, 22a-431, 22a-432, 22a-449, or 22a-451 of the Connecticut General Statutes, or as specified in approved plans submitted pursuant to such an order.

[(13)](12) Alteration of watercourses and collection or impoundment of water runoff in an area which has a tributary watershed of less than 100 acres, provided that any permit or approval required by sections 22a-32, 22a-39, 22a-42a, 22a-342, 22a-401 or 22a-403 of the Connecticut General Statutes is obtained.

[(14)](13) Diversion of water authorized under a permit issued by the Commissioner pursuant to section 22a-403 of the Connecticut General Statutes for removal of a dam, dike, or similar structure or for the lowering of the spillway elevation of a dam, dike, or similar structure, provided that the exemption set forth in this paragraph shall not apply when the diversion involves a dam owned or operated by a water company as defined by section 25-32a of the Connecticut General Statutes.

[(15)](14) Diversion of water incidental to the hydraulic dredging of sediments from lakes, ponds or impoundments, and diversion of water incidental to dredging of lakes, ponds or impoundments approved by the Commissioner pursuant to sections 22a-339a through 22a-339e, inclusive, of the Connecticut General Statutes, provided:

- (A) any permit or approval required by section 22a-430 of the Connecticut General Statutes is

obtained; and

(B) no less than seven days before such diversion commences, written notice thereof is given to any water company, as defined by section 25-32a of the Connecticut General Statutes, which may be affected thereby.

[(16)](15) Diversion of water caused by drawing down the surface elevation of an impoundment and subsequent refilling for the purpose of aquatic weed control, water quality control, or inspection or maintenance of a dam, gate house, discharge structure, reservoir, shoreline or dock, provided:

(A) the surface elevation of the impoundment is lowered only to the elevation and for the amount of time necessary for aquatic weed control, water quality control, or inspection or maintenance of a dam, gate house, discharge structure, reservoir, shoreline or dock;

(B) such impoundment was registered or permitted pursuant to sections 22a-365 to 22a-378, inclusive, of the Connecticut General Statutes; and

(C) no less than seven days before such diversion commences, written notice thereof is given to the Commissioner and to any water company, as defined by section 25-32a of the Connecticut General Statutes, which may be affected thereby.

[(17)](16) Diversion of water in connection with State or Federal flood control projects which are designed and constructed under the supervision of the Department of Energy and Environmental Protection or, in the case of a Federal project, sponsored or initiated by the Department of Energy and Environmental Protection in accordance with section 25-68c (2) of the Connecticut General Statutes, provided:

(A) any permit required by sections 22a-39, 22a-342, or 22a-403 of the Connecticut General Statutes is obtained or, in the case of a Federal project, certification pursuant to Section 401 of the Federal Clean Water Act is obtained; and

(B) this exemption shall not apply in any case of a multipurpose flood management facility where the secondary use is hydropower, public water supply, a storage reservoir, or any other consumptive use of water which is not otherwise exempted by section 22a-377 of the Connecticut General Statutes or this section.

[(18)](17) Collection and drainage of storm water from pavement, building roofs and other impervious areas, provided:

(A) such activity is authorized by the Commissioner pursuant to section 22a-430 of the Connecticut General Statutes; and

(B) no watercourse is dammed, diked, or channelized as a result of such diversion.

[(19)](18) Diversion of surface waters and storm drainage by the Connecticut Department of Transportation incidental to highway construction authorized by the Commissioner pursuant to sections 22a-32, 22a-39, 22a-342, 22a-361, 22a-403 or 25-68b to 25-68h, inclusive, of the Connecticut General Statutes.

(b) As used in subsections (a)(5) and (a)(6) of this section, “service area” includes:

(1) a service area identified in any applicable permit issued or registration filed under section 22a-368 of the Connecticut General Statutes;

(2) an existing or five-year planning period service area identified in a water supply plan submitted on or before October 1, 2016 in accordance with section 25-32d of the Connecticut General Statutes;

(3) an exclusive service area identified on the maps, which the Department of Energy and Environmental Protection shall make available on its Internet web site and at the Department of Energy and Environmental Protection, Division of Water Planning and Management, 79 Elm Street, 2nd floor, Hartford, Connecticut during regular business hours, and which are labeled:

(A) Title: Western PWSMA Overview; Subtitle: Western Connecticut Water Supply Assessment; Sheet: Appended Figure 2; Date: October 31, 2016;

(B) Title: Central PWSMA Overview; Subtitle: Central Connecticut Water Supply Assessment; Sheet: Appended Figure 2; Date: October 28, 2016; or

(C) Title: Eastern PWSMA Overview; Subtitle: Eastern Water Supply Assessment; Sheet: Appended Figure 2; Date: November 4, 2016; or

(4) a water supply company's service area that may be expanded as a result of the acquisition or takeover of another water supply company, provided the source of water used to serve customers within each service area continues to be the source belonging to the water supply company originally serving each service area.

"Service area" does not include that portion of an exclusive service area expanded after October 1, 2016 pursuant to section 25-33g of the Connecticut General Statutes, except for service areas that may be expanded as described in subdivision (4) of this subsection.

[(b)](c) No activity, including construction of structures and facilities, shall be exempted under subsection (a) of this section:

(1) unless best management practices are employed to minimize erosion and sedimentation, to provide for necessary downstream flow in surface waters affected by the diversion, and to avoid adverse impacts to adjacent wells and to fish and wildlife, including to their spawning and nesting seasons; or

(2) if such activity, structure, or facility may alter the habitat of any rare, endangered or threatened species listed or identified by any federal or state governmental agency.

Statement of Purpose

The Commissioner of the Department of Energy and Environmental Protection intends to amend section 22a-377(b)-1 of the Regulations of Connecticut State Agencies.

Statement of Purpose: The purpose of the amendment to the exemptions from the Connecticut Water Diversion Policy Act is to ensure that expanded use of registered diversions into new Exclusive Service Areas will not significantly impact other water users nor the environment by requiring a diversion permit for such expansion.

A. The problems, issues or circumstances that the regulation proposes to address.

The intent of the Water Diversion Policy Act (Sections 22a-365 to 22a-378 of the Connecticut General Statutes) was to allow water diversions in use when the Act was passed to continue the existing use without being subject to the permitting process and attendant impact evaluation (a grandfathering process for existing users). An exemption for use of registered water within an Exclusive Service Area was included in the regulations adopted under the Act in 1991 to allow for infilling of public water service. However, the extensive consolidation of water companies and the potential expansion of Exclusive Service Areas through the Water Utility Coordinating Committee process (under C.G.S. 25-33g) may allow significant expansion of the use of registered diversions and export of water out of basin without consideration of the impacts; due to the current exemption from the permit process. The permit process includes consideration of the effect of the expanded use of the authorized diversion on related needs for public water supply and on other water resource needs, in addition to providing a process for public involvement. Narrowing the existing exemption in the regulations will rectify this situation without affecting continued use of the registered diversions within the existing service areas, consistent with the original intent of the diversion registration provisions.

B. Summary of the main provision of the proposed amendment.

The proposed amendment to the regulations redefines “service area” as the area served by the water system as identified in an applicable diversion permit or registration document, on existing maps of ESAs as established during past WUCC proceedings, or in a Water Supply Plan submitted on or before October 1, 2016, in accordance with Section 25-32d of the Connecticut General Statutes as being served now or potentially in the future up to the five-year planning period. In addition, the proposed amendment clarifies that in areas taken over or otherwise acquired by a water company, the water company may continue to serve both areas with the existing sources registered or permitted to serve those areas.

C. The legal effects of the proposed amendment on existing regulations or other laws.

There is no impact on existing regulations or other laws.