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Water Company Land Permits

Sec. 25-37d-1. Application for a permit

(a) No water company shall sell, lease, assign or otherwise dispose of or change the use of any watershed lands, and any off-watershed Class II lands, except as provided in sections 25-37c-1 and 2, and 25-37d-1 through 10, inclusive, of the Regulations of Connecticut State Agencies without a written permit from the Commissioner of Public Health.

(b) An application for a permit shall be made by the water company on forms furnished by the Commissioner. These forms shall be sufficiently complete and shall contain such information as the Commissioner deems necessary for a fair determination of the Commissioner's statutory responsibilities. Such application form shall include but not be limited to: a description of the property, with such site plan and maps as are appropriate; a description of the proposed use of the property upon transfer or change in use; data on the chemical, physical and biological characteristics, where appropriate, of the reservoir, watershed and impact of the proposed use; and documentation of the proposed restrictions to be applicable to property covered by the application.

(c) Upon submission of an application, the Commissioner shall review it to determine whether there is sufficient information therein to determine whether the proposed action will or will not have a significant adverse impact upon the present and future purity and adequacy of the public drinking water supply. In connection therewith, the Commissioner may require that the applicant provide such additional information as the Commissioner deems necessary on any proposed use restriction, to aid in determining the enforceability thereof against subsequent owners, lessees and assignees.

(d) An application will not be deemed to be complete by the Commissioner until all information, papers and documents required as part of and in support of the application have been submitted in proper form, and the Commissioner may require that the application be supplied in sufficient copies. For the purpose of statutory limitations, the Commissioner shall acknowledge receipt of the completed application. The Commissioner shall notify the applicant and shall notify the chief executive officer of the town or municipality in which the proposed action is to take place of the pendency of the application thereof and may notify such other towns, municipalities, state agencies or persons as deemed appropriate.

(Effective February 6, 1980; amended September 6, 2006)

Sec. 25-37d-2. Standards of review of application

(a) Once a complete application has been received, the Commissioner shall review the proposed action in accordance with the performance criteria set forth herein in order to determine whether the proposed action may have a significant adverse impact upon the present and future purity and adequacy of the public drinking supply.

(b) The Commissioner shall not grant a permit for the sale, lease or assignment of Class I land.

(c) The Commissioner shall not grant a permit for a change in use of Class I land unless the applicant demonstrates that such change will not have a significant adverse impact upon the present and future purity and adequacy of the public drinking water supply.

(1) The performance criteria which shall be applied in determining whether the proposed change in use of Class I land may have a significant adverse impact upon the present and future purity and adequacy of the public drinking water supply are

as follows. The Commissioner shall give due consideration to whether or not the proposed change in use will:

(A) Create an intentional or unintentional point or non-point source of contamination;

(B) disturb ground vegetation on surface public drinking supply watersheds except as required for water supply maintenance and improvement;

(C) create subsurface sewage disposal systems;

(D) create wheeled, tracked or hooped transport of any kind on surface public drinking supply watersheds except as required to manage the watershed or that which is under water utility control, and except as specifically allowed under section 25-43c (a) of the Connecticut General Statutes.

(d) The Commissioner shall not grant a permit for the sale, lease, assignment or change in use of any land in Class II unless the applicant demonstrates that the proposed sale, lease, assignment or change in use will not have a significant adverse impact upon the purity and adequacy of the public drinking supply, and that any use restrictions which the Commissioner requires as a condition of granting a permit can be enforced against subsequent owners, lessees and assignees.

(1) The performance criteria which shall be applied in determining whether the proposed action within the various categories of Class II lands may have a significant adverse impact upon the present and future purity and adequacy of the public drinking water supply are as follows. The Commissioner shall give due consideration to whether or not the proposed change in use will:

(A) Category 1.

(i) Create an intentional or unintentional point or non-point source of contamination. Adequate man-made interception and control safeguards as approved by the Department of Public Health may be considered;

(ii) prevent maintenance of ground vegetation for more than one growing season on surface public drinking water supply watersheds except as required for water supply maintenance and improvement or as associated with access to or underlying a habitable structure whose use meets the requirements of (i) above;

(iii) significantly decrease the adequacy of water supply through: loss of aquifer recharge area for infiltration due to impervious land cover; reduction of hydraulic connection between stream and aquifer due to siltation; decrease in stream flow available for induction due to increased surface water run-off rates;

(iv) allow subsurface sewage disposal systems in areas with shallow to bedrock soils, twenty (20) inches or less, poorly drained, and very poorly drained soils. Where subsurface sewage disposal systems are proposed, the design and installation of such systems will be in accord with Department of Public Health regulations and shall use seepage rates that do not exceed that of the existing soils on the site. Seepage rates in fill sections will not be used in the system design.

(B) Category 2.

(i) Create an intentional or unintentional point or non-point source of contamination. Adequate man-made interception and control safeguards approved by the Department of Public Health may be considered;

(ii) permanently disturb ground vegetation in areas with present slopes greater than five percent (5%) except that required for water supply maintenance and improvement, or that associated with access to or underlying a habitable structure whose use meets the requirements of (i) above.

(C) Category 3.

(i) Create an intentional or unintentional point or non-point source of contamination. Adequate man-made interception and control safeguards approved by the Department of Public Health may be considered.

(D) Category 4.

(i) Create interstate, state, or town roadways or mainline railroads except to provide access for allowable uses;

(ii) encourage uncontrolled access by the general public.

(e) In determining the conditions and restrictions in use necessary to maintain the adequacy and purity of the public drinking water supply due consideration must be given to:

(1) the creation of point or non-point sources of contamination;

(2) the disturbance of ground vegetation;

(3) the creation of subsurface sewage disposal systems;

(4) the degree of water treatment provided;

(5) any other significant potential source of contamination of the public drinking water supply;

(6) the decrease in both surface and groundwater supplies resulting from or caused by the increased run-off due to proposed changes in land use;

(7) the legal adequacy of the deed control mechanisms enforceable against subsequent owners, lessees and assignees, together with any other land use control mechanisms available and suitable for such purposes;

(8) the available dilution and the natural purification process of the receiving stream and the residence time and natural purification processes in the receiving reservoir; and

(9) the distance between the proposed change and the beneficial effect of all intervening wetlands.

(Effective February 6, 1980; amended September 6, 2006)

Sec. 25-37d-3. Summary ruling on proposed actions without significant adverse impact

(a) If the Commissioner upon review of the completed application finds that the applicant has demonstrated that the proposed action will not have a significant adverse impact upon the present and future purity and adequacy of the public drinking water supply, and if the applicant has further demonstrated that the conditions or restrictions in use required by the Commissioner as necessary to maintain the purity and adequacy of the public drinking water supply are fully enforceable against subsequent owners, lessees, and assignees, then the Commissioner may grant a permit at this stage without a public hearing. Nothing herein however shall prevent the Commissioner from scheduling a public hearing on said application in accordance with the procedures set forth in section 25-37d-4 of the Regulations of Connecticut State Agencies.

(b) If the Commissioner makes the findings described in the above subsection and determines not to hold a public hearing on said application, then within sixty (60) days after receipt of the completed application, the Commissioner shall issue a written decision setting forth the reasons for granting the permit with or without conditions.

(c) Within the prescribed time limit of section 25-37d-4 of the Regulations of Connecticut State Agencies the Commissioner shall notify the applicant and all parties to the proceeding and the chief executive officer of the town or municipality in which the proposed action is to take place of the pendency of the application and may notify such other town, municipalities, state agencies or persons as the

Commissioner determines appropriate by forwarding them a copy of the written decision by certified mail. The Commissioner may also cause notice of the order issuing a permit to be published in a daily newspaper having a general circulation in the community where the proposed action is to take place.

(Effective February 6, 1980; amended September 6, 2006)

Sec. 25-37d-4. Plenary rulings—public hearing

(a) If, upon receipt of a complete permit application, the Commissioner finds that the proposed action does or may have a significant adverse impact upon the present and future purity and adequacy of the public drinking water supply, and if the Commissioner finds that any proposed conditions or restrictions in use are not or may not be sufficient to maintain the purity and adequacy of the public drinking water supply or be sufficiently enforceable against subsequent owners, lessees and assignees, then the Commissioner shall appoint a professional review team as provided by section 25-37d of the Connecticut General Statutes, and docket the application for a public hearing.

(b) The location of the public hearing shall be at the discretion of the Commissioner.

(c) Notice of the hearing shall be published at least once not more than forty-five (45) days and not fewer than fifteen (15) days before the date set for the hearing in a newspaper having a general circulation in the community where the proposed action is to take place. In addition to notification of the general public through newspaper publication, the Commissioner shall give notice to the applicants, all parties and intervenors, and may notify the chief executive officer of the town or municipality in which the proposed action is to take place of the pendency of the application and such other town, municipalities, state agencies or persons as the Commissioner deems appropriate.

(d) The notice of the public hearing shall include:

- (1) a statement of the time, place and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and regulations involved;
- (4) a short and plain statement of the matters asserted. If the Commissioner or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a general statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be made available at the Commissioner's office.

(e) The Commissioner may authorize a hearing officer to conduct an inquiry and to preside at the public hearing. The Commissioner may by order of the hearing officer require any party or other participant that proposes to offer substantive, technical or expert testimony to prefile such testimony in written form on such date before or during the hearing as the presiding officer shall direct. Such prefiled written testimony shall be received in evidence with the same force and effect as though it were stated orally by the witnesses who have given the evidence, provided that each witness shall be present at the hearing at which the prefiled testimony is offered, shall adopt the written testimony under oath, and shall be made available for cross examination as directed by the hearing officer. Prior to its admission such written testimony shall be subject to objections by parties. The hearing officer may subpoena witnesses and require the production of records, papers and documents to the record of the public hearing.

(f) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(g) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(h) The record of the public hearing shall include:

- (1) all pleadings, motions and intermediate rulings;
- (2) evidence received or considered;
- (3) questions and offers of proof, objections and rulings thereon;
- (4) any decision, opinion, or report by the officer presiding at the hearing.

(i) Oral proceedings or any part thereof shall be transcribed on request of any party or intervenor. The requesting party or intervenor shall pay accordingly the cost of such transcript or part thereof.

(j) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(Effective February 6, 1980; amended September 6, 2006)

Sec. 25-37d-5. Designation of a party or intervenor

(a) **Filing of petition.** Any person other than the applicant who seeks to be admitted as a party or an intervenor to any application proceeding shall file a written petition to be so designated not later than fifteen (15) days before the date of the hearing on the application.

(b) **Contents of petition.** The petitioner shall state:

- (1) the name and address of the petitioner;
- (2) and describe the manner in which the petitioner claims to be substantially and specifically affected by the proceeding;
- (3) the contention of the petitioner concerning the application;
- (4) whether the petitioner seeks admission as a party or intervenor;
- (5) in what way and to what extent the petitioner proposes to participate in the hearing;
- (6) the nature of the evidence, if any, that the petitioner intends to present in the event that the petition is granted.

(c) The Commissioner or designated hearing officer may grant, deny, or grant with such conditions as the Commissioner or hearing officer deems appropriate the petition, taking into account whether or not the participation of the petitioner will furnish assistance to the Commissioner in resolving the disposition of the application for the permit or the participation of such person is necessary to the proper disposition of the application.

(d) No grant of leave to participate as a party or intervenor shall be deemed to be an expression by the Commissioner that the person permitted to participate may be aggrieved if the permit is granted or denied.

(e) The Commissioner or designated hearing officer may, during the hearing on the application, designate additional parties or intervenors upon motion and a showing of good cause for failing to submit a timely petition in accordance with this section when it is determined the participation of such person is necessary to the proper disposition of the application or the person will furnish substantial assistance in resolving the disposition of the application.

(Effective February 6, 1980; amended September 6, 2006)

Sec. 25-37d-6. Evidence at the public hearing

(a) Any oral or documentary evidence may be received, but the Commissioner shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial, or

unduly repetitious evidence. The Commissioner or hearing officer shall give effect to the rules of privilege recognized by law. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(c) A party or intervenor may conduct cross examinations required for a full and true disclosure of the facts.

(d) **Facts noticed, commission records.** The Commissioner may take notice of judicially cognizable facts, including prior decisions and orders of the Commissioner. Any exhibit admitted as evidence by the Commissioner in a prior hearing may be offered as evidence in a subsequent hearing and admitted as an exhibit therein; but the Commissioner shall not deem such exhibit to be judicially cognizable in whole or in part and shall not consider any facts set forth therein unless such exhibit is duly admitted as evidence in the proceeding then being heard.

(e) **Facts noticed, procedure.** The Commissioner may take notice of generally recognized technical or scientific facts within the Commissioner's specialized knowledge. Parties shall be afforded an opportunity to contest the material so noticed by being notified before or during the hearing, or by an appropriate reference in preliminary reports or otherwise of the material noticed. The Commissioner shall nevertheless also employ the Commissioner's experience, technical competence, and specialized knowledge in evaluating the evidence presented at the hearing for the purpose of making the findings of the facts and arriving at a decision.

(f) The evaluation of the professional review team made in accordance with the requirements of Section 25-37d of the Connecticut General Statutes shall become part of the hearing record after its adoption under oath, and the authors thereof shall be subject to cross-examination on its contents.

(Effective February 6, 1980; amended September 6, 2006)

Sec. 25-37d-7. Decision

(a) The hearing officer shall submit to the Commissioner and to the applicant and the chief executive officer of the town or municipality in which the proposed action is to take place no later than thirty (30) days following the completion of the hearing, written findings and recommendations on whether to grant or deny the application, and setting forth the hearing officer's reasons therefore.

(b) In making a final decision on the application, the Commissioner shall consider the record and evidence submitted in the proceedings in accordance with the standards of review set forth in Section 25-37d-2 of the Regulations of Connecticut State Agencies.

(c) The Commissioner's decision shall be in writing and shall set forth the reasons for the conclusions.

(d) The Commissioner shall issue a decision within one hundred and twenty (120) days of receipt of the completed application, and shall forward a copy of the decision to the applicant, and all other parties to the proceeding and may notify the chief executive officer of the town or municipality in which the proposed action is to take place of the pendency of the application and such other towns, municipalities, state agencies or persons as the Commissioner deems appropriate. Notice of the Commissioner's decision may be published in a newspaper having a general circulation in the community where the proposed action is to occur.

(Effective February 6, 1980; amended September 6, 2006)

Sec. 25-37d-8. Signature of applicant

No permit issued under these regulations shall be effective until the applicant or his duly authorized representative shall have signed the permit, which signature shall constitute an agreement to abide by any terms and conditions therein.

(Effective February 6, 1980)

Sec. 25-37d-9. Severance

The invalidity of any word, clause, sentence, section, part or provision of these regulations shall not affect the validity of any other part.

(Effective February 6, 1980; amended September 6, 2006)