

Statute and Regulation Relating to Need for Water Balance Analyses

ANNOTATED CODE - STATE OF MARYLAND ENVIRONMENT ARTICLE

SUBTITLE 5. APPROPRIATION OR USE OF WATERS, RESERVOIRS, AND DAMS

§ 5-501. Policy of State; subtitle supplemental to existing laws.

(a) *Policy of State.* - In order to conserve, protect, and use water resources of the State in accordance with the best interests of the people of Maryland, it is the policy of the State to control, so far as feasible, appropriation or use of surface waters and ground waters of the State.

§ 5-502. Permit to appropriate or use State waters.

(a) *Required.* - Every person is required to obtain a permit from the Department to appropriate or use or begin to construct any plant, building, or structure which may appropriate or use any waters of the State, whether surface water or groundwater. The permit is obtained upon written application to the Department. The applicant shall provide the Department with satisfactory proof that the proposed withdrawal of water will not jeopardize the State's natural resources.

§ 5-507. Grant or denial of permits; conditions of permits.

(a) *Department procedure.* - Before acting on any permit application, the Department shall weigh all respective public advantages and disadvantages and make all appropriate investigations. If the Department believes from the evidence before the Department and based upon State water resources policy declared in this subtitle that the applicant's plans provide greatest feasible utilization of the waters of the State, adequately preserve public safety, and promote the general public welfare, the Department shall grant the permit to appropriate or use the waters, construct, reconstruct, or repair the proposed reservoir, dam, or waterway obstruction, or accomplish any combination of these objectives. If the Department believes from the evidence before the Department that the proposed appropriation or use of State waters or proposed construction is inadequate, wasteful, dangerous, impracticable or detrimental to the best public interest, the Department may reject the application or suggest modifications to the proposed plans to protect the public welfare and safety.

(b) *Conditions of grant; measure and report of water use.* -

- (1) In granting any permit to appropriate or use water or construct any reservoir, dam or waterway obstruction, the Department may include any condition, term, or reservation concerning the character, amount, means, and manner of the appropriation or use or method of construction necessary to preserve proper control in the State and insure the safety and welfare of the people of the State.

From the Code of Maryland Regulations (COMAR)

26.17.06 Water Appropriation or Use

.01 Definitions.

A. In this chapter the following terms have the meanings indicated.

B. Terms Defined.

(4) "Aquifer" means a water-bearing geologic formation which is capable of causing water to flow into a well.

(12) "Ground water" means water that naturally lies, percolates, or flows through aquifers under the surface of the earth.

(20) "Sustained yield" means the availability of water from an aquifer managed so that total withdrawals do not exceed natural recharge, thus enabling the aquifer to function as an aquifer in perpetuity.

(25) "Water table" means the water-saturated zone which is:

- (a) First encountered when drilling into the earth's surface; and
- (b) Not a confined aquifer.

.02 Statement of Policy.

A. The General Assembly recognizes that the availability of adequate water supplies is essential to health, safety, and economic welfare. To conserve and protect water resources of the State in the best interest of the people, the Department is authorized to control appropriation or use of surface and ground waters. This control provides for the greatest possible use of waters of the State, while protecting the State's valuable water supply resources from mismanagement, abuse, or overuse. The State's water supply resources include watercourses, lakes, aquifers, tidal areas, and other bodies of water in the State. Private property owners have the right to make reasonable use of the waters of the State which cross or are adjacent to their land. For the benefit of the public, the Department acts as the State's trustee of its water resources.

B. Maryland follows the reasonable use doctrine to determine a person's right to appropriate or use surface or ground water. A ground water appropriation or use permit or a surface water appropriation or use permit issued by the Department authorizes the permittee to make reasonable use of the waters of the State without unreasonable interference with other persons also attempting to make reasonable use of water. The permittee may not unreasonably harm the water resources of the State.

.05 Criteria for Approval of Water Appropriation or Use Permits.

A. General.

The Department shall issue a permit only for a beneficial appropriation or use under the following criteria:

- (2) The requested appropriation or use does not have an unreasonable impact on:
 - (a) The waters of the State; and
 - (b) Other users of the waters of the State.

B. Criteria for Determining Reasonableness.

(1) Except for applications proposing to appropriate or use water for agricultural purposes, the Department, in determining the reasonableness of a proposed appropriation or use, may consider, when appropriate, the following factors:

- (a) The protection of existing water uses, land values, investments, and enterprises; and
- (b) The financial hardship of requiring a new user to bear the loss of potential harm as provided in D(1) of this regulation.

(2) In determining the reasonableness of any proposed appropriation or use, the Department shall consider, when appropriate, the following factors:

- (a) The purpose of the use;
- (b) The suitability of the use to the watercourse, lake, or aquifer;
- (c) The extent and the amount of the harm it may cause;
- (d) The practicality of avoiding the harm by adjusting the proposed use or method of use of the applicant or another permittee;
- (e) The practicality of adjusting the quantity of water used by each permittee;
- (f) Aggregate changes and cumulative impact that this and future appropriations in an area may have on the waters of the State;
- (g) The contribution that the proposed appropriation may make to future degradation of the waters of the State; and
- (h) Whether the proposed appropriation or use is located within a water management strategy area.

D. Special Criteria for Issuance of Ground Water Appropriation or Use Permit.

(1) Except for applicants proposing to appropriate or use water for agricultural purposes, if an applicant intends to appropriate ground water in unprecedented quantities for purposes not common to a locality, and the appropriation would cause harm to other users by lowering the water table or potentiometric surface below a level which would render the users' wells unusable, the Department may condition the issuance of the ground water appropriation or use permit on payment by the permittee of the cost of improving neighboring facilities or on mitigation of the impact on nearby users.

(3) The Department may not issue a ground water appropriation or use permit for an appropriation from a confined aquifer if the appropriation, either by itself or in combination with existing appropriations, will exceed the sustained yield of the aquifer.