CHAPTER 120. LOCAL WATER RATIONING PLANS

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Authority
The provisions of this Chapter 120 issued under the Emergency Management Services Code, 35 Pa.C.S. §§ 7101—7707; amended under the Emergency Management Services Code, 35 Pa.C.S. § 7313, unless otherwise noted.

Source
The provisions of this Chapter 120 adopted May 29, 1981, effective May 30, 1981, 11 Pa.B. 1894, unless otherwise noted.

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

Applicant—The governing body of a political subdivision or a public water supply agency which experiences a local water shortage in the service area covered by its plan.

Commonwealth Drought Coordinator—An officer of the Department appointed by the Secretary 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.

Department—The Department of Environmental Protection.

Designated drought emergency area—The area of this Commonwealth described in the Governor’s proclamation or executive order declaring a state of drought or water shortage emergency.

Emergency service area—The service area covered by a plan.

Nonresidential water customer—A water customer who is not a residential water customer. The term includes commercial, industrial, institutional and
public users, including educational facilities, hotels, motels and restaurants. The term does not include hospitals or health care facilities.


Person—

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

(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 or State government.

Plan—local water rationing plan—A drought response plan for the equitable allocation of limited water supplies, submitted by a public water supply agency or the governing body of a political subdivision and approved by the Commonwealth Drought Coordinator.

Political subdivision—A county, city, borough, incorporated town or township.

Public water supply agency—A ’community water system’ as that term is defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P.S. § 721.3).

Residential water customer—A water customer who receives water service for a single or multifamily dwelling unit. The term does not include educational institutions, hotels, motels or similar commercial establishments.

Service area—The geographical area serviced by a public water supply agency.

Service interruption—The temporary suspension of water supply or reduction of water pressure below that required for adequate supply to a water customer or to a water supply system or portion thereof.

Water allotment—The maximum quantity of water allowed for each water customer over an applicable period as established by a plan.

Water customer—A person who is connected to and receives water service from a public water supply agency. The term includes both residential and nonresidential water customers as defined in this section.

Water rationing provisions—Provisions of a plan which require specific reductions in the amount of water used by water consumers, either on the basis of a percentage reduction or gallonage allotment. The term does not include prohibitions or restrictions of nonessential uses.

Source

§ 120.2. Purpose.
This chapter establishes procedures for the Commonwealth Drought Coordinator to review and approve plans by public water supply agencies or political subdivisions in response to a state of drought or water shortage emergency that has been declared by the Governor within specified areas of this Commonwealth.

Source

§ 120.3. Objective of a plan.
The objective of a plan is to balance the daily demands placed upon a public water supply agency with the requirement to maintain a sufficient water supply to meet the long term needs that may be placed upon the public water supply agency during a period of water shortage or drought emergency. In particular, the water conservation measures of a plan are intended to:

1. Avoid the depletion of a water supply to ensure that adequate water supplies are available to protect the health and safety of all water customers.
2. Provide for the equitable distribution of water during the emergency.

Source

§ 120.4. Responsibility to monitor local water supply and implement water conservation measures.
(a) Each public water supply agency or governing body of each political subdivision which has a source of water or a service area within an area affected by drought conditions or a local water shortage shall monitor the level of its water supply and estimate the availability of future water supply sources, the rate of present and anticipated water usage and the effectiveness of water conservation measures being implemented by them.

(b) Each public water supply agency or governing body of each political subdivision which has a source of water or a service area within an area affected by drought conditions or a local water shortage shall take prompt action to implement water conservation measures. These measures may include:
1. Asking water customers to voluntarily conserve water.
2. Implementing the development or activation of alternate sources of supplies.
3. Implementing specific bans on nonessential uses of water.
Implementing a plan as provided in §§ 120.5 and 120.6 (relating to implementation of plans; and implementation of further water usage reductions).

Source


§ 120.5. Implementation of plans.

(a) Plan.

(1) Each public water supply agency or governing body of a political subdivision is authorized to develop a plan. A plan shall contain provisions to:

(i) Prohibit nonessential water use, if the restrictions do not conflict with Chapter 119 (relating to prohibition of nonessential water uses in a Commonwealth drought emergency area).

(ii) Establish equitable water rationing provisions for residential, nonresidential and other water users together with appropriate implementing procedures.

(iii) Provide for granting of variances or exemptions to the provisions of a plan to address extraordinary hardships which may exist as a result of a plan.

(2) “Guidelines for the Development of a Local Water Rationing Plan” and a “Model Local Water Rationing Plan” may be obtained from the Department.

Public water supply agencies may contact the Department’s Bureau of Watershed Management, Post Office Box 8555, Harrisburg, Pennsylvania 17105-8555, (717) 772-4048, for assistance in developing a system-specific plan.

(b) Review and approval by Commonwealth Drought Coordinator. The Commonwealth Drought Coordinator will review local water rationing plans submitted for review and approval in accordance with the following procedures:

(1) The public water supply agency or governing body of the affected political subdivision shall apply in writing to the Commonwealth Drought Coordinator for approval of its plan. The written request for approval shall include the following elements:

(i) A plan as approved by the public water supply agency or governing body of the affected political subdivision.

(ii) A statement describing the existence and severity of the water shortage.

(iii) An express request for approval of the plan by the Commonwealth Drought Coordinator.

(iv) The signature of an authorized representative of the public water supply agency or governing body of the affected political subdivision.
(2) If the plan includes a service area which is not included in a currently effective Governor’s proclamation, the following procedures will be followed:

(i) The Commonwealth Drought Coordinator will determine whether or not the request, together with other available information, establishes the existence of a water shortage emergency that will require the Governor to issue a proclamation declaring a state of local drought or water shortage emergency for the affected area, and will make a recommendation to PEMA.

(ii) If PEMA concurs in the existence of a local water shortage emergency, PEMA will submit to the Governor a proposed proclamation to declare a state of local drought or water shortage emergency for the affected area described in the proclamation.

(iii) After the Governor signs the proclamation, PEMA will notify the Commonwealth Drought Coordinator that the plan may be approved and put into effect.

(3) Any plan that covers emergency service areas already included in a currently effective Governor’s proclamation will go into effect upon its approval by the Commonwealth Drought Coordinator.

(c) Mandatory implementation of plans.

(1) After the Governor has issued a proclamation declaring a state of local drought or water shortage emergency for an area of this Commonwealth, the Commonwealth Drought Coordinator may direct a public water supply agency or governing body of a political subdivision that is located within or has a source of water within the designated drought emergency area to prepare and submit a plan to the Commonwealth Drought Coordinator for review and approval.

(2) The public water supply agency or governing body of a political subdivision shall submit its plan to the Commonwealth Drought Coordinator, in accordance with the procedures described in subsection (b), within 10 calendar days after receiving written notification from the Commonwealth Drought Coordinator that the adoption and implementation of a plan by that public water supply agency or political subdivision is necessary to deal with the circumstances of the drought or water shortage emergency.

(d) Approval of a plan. Upon approval by the Commonwealth Drought Coordinator of a plan submitted under subsection (b) or (c), the Commonwealth Drought Coordinator will:

(1) Require the applicant to issue a notice to at least one newspaper of general circulation in the area covered by the plan, which will advise residential and nonresidential water customers or other persons doing business in the emergency service area of the approval of the plan and its effective date and where the public can review or obtain a copy of the plan.

(2) Transmit to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin, a written notice which states the approval of the plan by the Commonwealth Drought Coordinator and its effective date.
(3) Require the applicant to post a copy of the plan in at least one public building; for example, a library, or a city, town or municipal building within the emergency service area for the review of the water customers affected by the implementation of the plan.

(4) Require the applicant to make copies of the plan available to the water customers affected by the implementation of the plan, upon request, either electronically or in hard copy.

(e) Constructive notice. The actions described in subsection (d) constitute constructive notice under 45 Pa.C.S. § 904 (relating to constructive notice) to all residential and nonresidential water customers or other persons doing business within the emergency service area for the purpose of enforcing the plan adopted and approved by the Commonwealth Drought Coordinator.

Source


Cross References

This section cited in 4 Pa. Code § 120.4 (relating to responsibility to monitor local water supply and implement water conservation measures); 4 Pa. Code § 120.6 (relating to implementation of further water usage reductions); and 4 Pa. Code § 120.11 (relating to enforcement by political subdivision ordinance).

§ 120.6. Implementation of further water usage reductions.

(a) If a public water supply agency or governing body of an affected political subdivision determines that it is necessary to further decrease the water usage of its residential, nonresidential or other water customers, it may request the Commonwealth Drought Coordinator to consider and approve revisions or amendments, or both, to its plan in accordance with the procedure in § 120.5(b) (relating to implementation of plans).

(b) The Commonwealth Drought Coordinator may approve the requested revisions or amendments, or both, to the plan.

(c) Constructive notice of approved revisions or amendments, or both, to a plan will be provided in accordance with the notification procedures described in § 120.5(d).

Source


Cross References

This section cited in 4 Pa. Code § 120.4 (relating to responsibility to monitor local water supply and implement water conservation measures).
§ 120.7. Enforcement of plans.

(a) The public water supply agency or governing body of a political subdivision shall have primary responsibility for monitoring the compliance of residential, nonresidential and other water customers with its plan.

(b) The public water supply agency or governing body of a political subdivision shall institute procedures to monitor closely water supplies and current water usage to determine if water reductions are being attained consistent with the water conservation figures established in its plan. A public water supply agency or governing body of a political subdivision shall regularly advise the water customers of the effects of the water rationing program.

(c) Each public water supply agency or governing body of a political subdivision is authorized to alter meter reading schedules to assure compliance with its plan.

(d) Proper law enforcement authorities and private citizens have additional enforcement responsibilities and rights as specified in § 120.12 (relating to penalties).

(e) A political subdivision may enforce its plan by adopting an ordinance in accordance with § 120.11(a) and (b) (relating to enforcement by political subdivision ordinance).

Source

§ 120.8. Service interruptions.

(a) A plan shall include provisions for the implementation of temporary service interruptions. This action would be necessary to achieve water use reductions to prevent a public water supply agency from depleting its water supply to the point that vital service demands, such as public health and safety, firefighting and health care facilities, cannot be met.

(b) The following governs the implementation of service interruptions:

(1) To effectuate compliance with a plan, the public water supply agency is authorized and required to plan and implement service interruptions to all or part of its water supply system, as the public water supply agency deems appropriate, when one or more of the following conditions are determined by the public water supply agency to exist as to its water supply system:

(i) The specified reduction in systemwide water usage has not been achieved.

(ii) The specified reduction in systemwide water usage has been achieved, but has failed to have a significant impact in extending limited water supplies.
(iii) Service interruption are necessary to further extend limited or dwindling water supplies.

(2) If the public water supply agency determines that service interruptions are necessary, the public water supply agency shall notify its water customers through the public media, such as newspapers, radio, telephone and television, serving the water customers in its service area at least 1 day prior to the service interruptions, that a planned service interruption is to be imposed. In addition, the public water supply agency shall notify the local coordinator of emergency management; PEMA; the Commonwealth Drought Coordinator; the regional office of the Department of Environmental Protection; and the Pennsylvania Public Utility Commission, Bureau of Fixed Utility Services, if the public water supply agency is subject to the jurisdiction of the Pennsylvania Public Utility Commission. The notice shall:

(i) State the days when the planned service interruptions will occur.

(ii) State the time when the planned service interruptions will commence and the time the interruptions will cease.

(iii) State whether the planned service interruptions are to be imposed on the entire system or a part thereof. If only part of the system will experience planned service interruptions, identify the geographical boundaries within which the planned service interruptions will occur.

(iv) Advise the customers within the area affected by planned service interruptions how to treat water received from the system for human consumption during the period of planned service interruptions and for additional time as necessary until full pressure is restored to the system.

(3) If the public water supply agency imposes planned service interruptions as authorized and required by a plan, it shall provide for the continued delivery of water to health care facilities within the service area affected by the interruptions, by means of adequate, alternative delivery measures that may be necessary.

(4) If the public water supply agency implements temporary service interruptions, it shall provide, by any means possible, for the continued delivery of the water, as may be necessary, for the proper operation of sewage collection, treatment and disposal systems and facilities.

Source

§ 120.9. Excess use charges.

(a) Excess use charges.

(1) Excess use charges are a positive means of securing compliance with a plan. If a public water supply agency elects to include excess use charges in a
plan, the maximum excess use charge authorized to be imposed is as follows:

- First 2,000 gallons or portion thereof 5 times the actual rate charged for water
- Each 1,000 gallons or portion thereof thereafter 10 times the actual rate charged for water

(2) Excess use charges may only be assessed against meter customers and shall be based upon actual meter readings.

(b) **Water allotments.** A residential or nonresidential water customer who exceeds the water allotments established by the plan shall be subject to an excess use charge. Public water supply agencies in the emergency service area are authorized to collect an excess-use charge based on the amount by which a water customer’s use exceeds the water allotment established in the plan. The charges will be specified in the plan.

(c) **Disposition of excess use charges.** Moneys collected by public water supply agencies through excess use charges may not be accounted for as income to the public water supply agency, but shall be placed in a reserve account. The disposition of funds placed in the reserve account shall be governed as follows:

- (1) Funds collected by a public utility or a municipal corporation rendering services beyond its corporate limits shall be used to offset drought-related costs as directed by orders and procedures adopted by the Pennsylvania Public Utility Commission.
- (2) Funds collected by any public water supply agency not covered in paragraph (1) shall be used to offset drought-related costs.

(d) **Additional penalties.** In addition to the excess use charge, noncompliance with the plan may result in the following:

- (1) For the first excess use, the public water supply agency will warn the water customer that its water use may be discontinued if the water customer continues its noncompliance practices.
- (2) For the second excess use, the public water supply agency may interrupt or shut off service to the water customer for a period not to exceed 48 hours per incident. As an alternative, the public water supply agency may install a flow restriction in the water customer’s service line for the duration of the water shortage emergency. The cost incurred by the public water supply agency to interrupt or shut off and reinstate service, or to install and remove a flow restriction, shall be assessed to the water customer by the public water supply agency.

(e) **Appeal of decision or action.** A water customer aggrieved by a decision or action taken by a public water supply agency under the authority of this section may proceed in accordance with the following:

- (1) Each public water supply agency shall adopt procedures which provide an opportunity for the water customer to rebut the finding of a violation or to present evidence of circumstances beyond the water customer’s control which
resulted in the violation. Each public water supply agency shall keep a record of the evidence presented by the water customer concerning the disputed violations and shall provide the water customer with a written notice of its final decision and action in the case.

(2) A water customer aggrieved by the final decision or action of a water supply agency may file an appeal with the Pennsylvania Public Utility Commission, if the water supply agency is regulated by the Public Utility Commission, and in all other instances with the Court of Common Pleas in the county where the water service is provided, in accordance with 2 Pa.C.S. §§ 551—555 and 751—754 (relating to the Local Agency Law).

Source

Cross References
This section cited in 4 Pa. Code § 118.4 (relating to contingency plans—public water supply agencies).

§ 120.10. [Reserved].

Source

§ 120.11. Enforcement by political subdivision ordinance.

(a) A political subdivision may adopt an ordinance to enforce the various provisions of a plan within the jurisdictional boundaries of the political subdivision, if the following actions precede the adoption of the ordinance:

(1) The plan has been submitted to the Commonwealth Drought Coordinator in accordance with § 120.5 (relating to implementation of plans).

(2) The Governor has issued a proclamation declaring a state of local drought and water shortage emergency for an area of the Commonwealth that includes the political subdivision.

(3) The Commonwealth Drought Coordinator has approved the plan and constructive notice of the plan as described in § 120.5(d) has been provided to residential and nonresidential water customers or other persons doing business within the emergency service area of the plan.

(b) After the actions in subsection (a) have occurred, a political subdivision may adopt and publish an ordinance in accordance with its applicable county, city, borough or township code. The purpose of the ordinance shall be to implement the plan within the jurisdictional boundaries of the political subdivision.
The ordinance may include, adopt, incorporate or otherwise enact one or more sections, provisions or portions of the approved plan.

(c) Any person who violates a local water rationing/conservation ordinance adopted by a political subdivision, in accordance with the procedures specified in subsections (a) and (b), shall be subject to the fines and penalties that apply to violations of that ordinance as prescribed in the county, city, borough or township code under which the ordinance was adopted.

Source

Cross References
This section cited in 4 Pa. Code § 120.7 (relating to enforcement of plans).

§ 120.12. Penalties.
A person who violates a provision of this chapter, who fails to carry out duties and responsibilities imposed by this chapter or who impedes or interferes with actions undertaken or ordered under this chapter is subject to the penalties provided under 35 Pa.C.S. § 7707 (relating to penalties). Violation of a provision of this chapter is a summary offense enforceable by law enforcement officers or private citizens in accordance with 234 Pa. Code Chapters 50 and 6000 (relating to procedure in summary cases; and rules of criminal procedure for the municipal court of Philadelphia).

Source

Cross References
This section cited in 4 Pa. Code § 120.7 (relating to enforcement of plans).

§ 120.13. Additional water conservation and protection policies.
Nothing in a plan or this chapter limits or affects the power or authority of a political subdivision to adopt or enforce ordinances, rules, restrictions and orders for water conservation and protection of essential supplies, provided that the ordinances, rules, restrictions and orders do not conflict this chapter and Chapters 118 and 119 (relating to reductions of major water use in a Commonwealth drought emergency area; and prohibition of nonessential water uses in a Commonwealth drought emergency area), and river basin commission orders or plans.

Source
§ 120.14. Repeal or amendment of a plan.

A plan may be amended or repealed only by action of the Commonwealth Drought Coordinator upon the written request of the public water supply agency or governing body of a political subdivision that developed and submitted the plan. A request for amendment or repeal of a plan shall document the conditions justifying the amendment or repeal, be signed by an authorized representative of the applicant and be submitted to the Commonwealth Drought Coordinator for approval.

Source


Cross References

This section cited in 4 Pa. Code § 120.15 (relating to notification of termination).

§ 120.15. Notification of termination.

Upon approval of the repeal of a plan in accordance with § 120.14 (relating to repeal or amendment of a plan), the Commonwealth Drought Coordinator will require the applicant to issue a notice to at least one newspaper of general circulation in the area covered by the plan, which will advise residential and nonresidential water customers or other persons doing business in the emergency service area of the repeal of the plan and its effective date. The Commonwealth Drought Coordinator will also transmit to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin, a written notice which states that the plan has been repealed by the Commonwealth Drought Coordinator and its effective date.

Source