

MARYLAND REGISTER

## Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	08/04/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 9/5/2014**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

26 17 06 01,.04-.09

**3. Name of Promulgating Authority**

Department of the Environment

**4. Name of Regulations Coordinator**

Renee D Matthews

**Telephone Number**

410-537-3567

**Mailing Address**

1800 Washington Blvd

**City State Zip Code**  
Baltimore MD 21230

**Email**

rmatthews@mde.state.md.us

**5. Name of Person to Call About this Document**

John Grace

**Telephone No.**

410-537-3714

**Email Address**

john.grace@maryland.gov

**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 07/07/14.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

40: 22 Md. R 1887-1890 11/01/2013  
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: 13-339-P.

**7. Is there emergency text which is identical to this proposal:**

Yes  No

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Nancy Young, Assistant Attorney General, (telephone #410-537-3042) on 7/23/14. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Robert M. Summers, Ph.D.

**Title**

Secretary

**Telephone No.**

410-537-3084

**Date**

7/24/14

**Title 26**  
**DEPARTMENT OF THE ENVIRONMENT**

**Subtitle 17 WATER MANAGEMENT**

**26.17.06 .01,.04-.09**

Authority: Environment Article, §§5-101, 5-204, and 5-501—5-516, Annotated Code of Maryland

**Notice of Proposed Action**

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The Secretary of the Environment proposes to to amend Regulation .01, adopt new Regulation .04, amend and recodify existing Regulations .04 and .05 to be Regulations .05 and .06, recodify existing Regulations .06—.08 to be Regulations .07—.09 under COMAR 26.17.06 Water Appropriation or Use. Because substantive changes have been made to both the regulation and the guidance document incorporated by reference in the original proposal as published in the 40:22 Md.R. 1887-1890 (November 1, 2013), this action is being re-proposed at this time.

**Statement of Purpose**

The purpose of this action is to to adopt procedures pursuant to the change in Maryland laws adopted in April of 2008 (Senate Bill 674 — commonly known as the “Brinkley Bill”), codified as Environment Article §5-501(b). This law grants priority for groundwater use to water systems serving Priority Funding Areas established prior to January 1, 2000, or those parts of municipal corporations established prior to January 1, 2000, within Carroll, Frederick, or Washington Counties. Previous Department policies limited the amount of groundwater that could be allocated to a water system to the amount of water that is recharged on lands owned or controlled by the water supplier. These regulatory changes will establish procedures that allow water suppliers to have higher allocations than would be given under previous policies. The regulations incorporate by reference a Guidance Document that outlines the procedures by which the water supplier can take advantage of this priority allocation. The procedures are designed to ensure that the granting of water beyond that which is recharged on lands owned or controlled by the water supplier does not jeopardize the natural resources of the State or prevent other landowners within the same watershed from making a reasonable use of water in accordance with their needs.

The proposed regulations and Guidance Document lay out an approach to ensure that adequate information is collected and analyzed when deciding on such requests. It provides a uniform approach that is predictable for the water suppliers, and ensures that a watershed will not be over allocated, that the need is reasonable, and that there are not unreasonable impacts to other users.

This proposal also codifies certain statewide policies that relate directly to implementation of SB674, including policies for allocating water from unconfined

aquifers and policies related to the consideration of well yield when issuing permits. The proposal also specifically authorizes MDE to request certain documentation as needed for evaluating withdrawal requests. These policies have been routinely applied to withdrawal requests throughout Maryland for more than ten years.

### **Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

### **Estimate of Economic Impact**

#### **I. Summary of Economic Impact.**

When obtaining a water appropriation and use permit, an applicant is required to demonstrate that the use is non-damaging to the State's natural resources, that the requested need is reasonable and non-wasteful, and that the use is feasible and will not unreasonably impact other users. Policies currently in effect use a "water balance" approach, allowing permittees to utilize only water that is recharged on lands the permittee owns or controls. This policy ensures that the use is sustainable and that each property owner will be able to exercise his right to make a reasonable use of groundwater. Current smart growth standards require development in Priority Funding Areas to develop at a density of 3.5 units per acre. Typical drought year groundwater recharge rates for aquifers in Frederick, Carroll and Washington counties are sufficient to support the water demand of between one to two units per acre. Thus water suppliers relying on groundwater in these counties may find that they must rely on recharge on lands developed at a lower density and/or municipal parklands, or they need to acquire additional land and/or water recharge easements in order to meet the water balance requirements.

These regulations will allow certain public water systems dependent on groundwater to develop and utilize sources of groundwater to a greater extent than would have been otherwise authorized by previous Department policies. This benefit will enhance the ability of such water systems to maximize current well capacities, and may reduce future expenses for water systems, in that they would not be required to acquire additional land or purchase water recharge easements from other property owners to meet water balance requirements. This proposed action will provide more opportunities for these water systems to develop water supplies in locations where they are most likely to find high-producing wells, even if the water system does not own or control significant land areas in a watershed. These regulations will enhance the potential for development within designated growth areas at densities consistent with State policies and may result in less sprawl development using individual wells and septic systems. The proposed regulation incorporates the "Application for Water Allocation: Guidance Document for Public Water Systems Providing Groundwater to Municipal Corporations or Priority Funding Areas in Carroll, Frederick and Washington Counties, June 2014", which offers a detailed, step-by-step approach to evaluating available water resources with respect to a water system's need. This evaluation is likely to add several thousands of dollars to the cost of completing an application for a water appropriation and use permit. Over time, any costs associated with undertaking the analysis will be more than

offset by the long term benefits of using existing groundwater sources instead of having to develop new supply wells and associated infrastructure, or purchase additional land or easements to acquire sufficient groundwater recharge. Water systems will voluntarily choose to conduct the analysis, and should garner benefits that greatly exceed the costs of the evaluation. It is uncertain how many water systems will seek to take advantage of the opportunity offered by these regulations or how many additional gallons of water might be allocated under these policies when compared to current policies.

The additional time that reviewing the detailed accounting and analysis submitted by an applicant by the Department is not significant and will not require additional staffing.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	(E-)	No mandatory expenditures
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	N/A
E. On other industries or trade groups:		
(1) Hydrogeologist	(+)	Minimal
(2) Developers	NONE	Unquantifiable
F. Direct and indirect effects on public:		
(1) Indirect cost to the public	NONE	
(2) Indirect benefits to the public	(+)	Unquantifiable

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

A. This regulation will impact a limited number of permits. Should water suppliers apply for priority allocations under these regulations, the permit evaluation process will be somewhat more complex than typical permits; however, no additional personnel will be needed to implement these regulations.

C. These regulations are voluntary and water systems will have the opportunity to weigh the costs of submitting the application against the potential benefits of receiving additional allocations. Water systems are likely to reap overall benefits if they choose to apply for additional allocations.

D. No impacts

E(1). Hydrogeologic consultants may benefit from additional contractual work associated with conducting the evaluations. The benefits are likely to be minimal.

E(2). Developers will benefit from the reduced costs associated with obtaining adequate water supplies for new development.

F(1). The public will benefit from more efficient use of the State's water resources.

F(2). Citizens who reside within the service areas of water systems that apply for additional allocation under these regulations will benefit from the cost savings that water systems are likely to experience as a result of this regulation

### **Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to John Grace, Chief , MDE-Water Management Administration,Source Protection and Appropriation Division, 1800 Washington Boulevard, or call 410-537-3714, or email to [john.grace@maryland.gov](mailto:john.grace@maryland.gov), or fax to 410-537-3157. Comments will be accepted through October 20, 2014. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 0

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

Attached Document:

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## **Title 26 DEPARTMENT OF THE ENVIRONMENT**

### **Subtitle 17 Water Management**

#### **Chapter 06 Water Appropriation or Use**

Authority: Environment Article §§5-101, 5-204, and 5-501-5-516, Annotated Code of Maryland

##### **.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) — (17) (text unchanged)

(18) *Public Water System.*

(a) *“Public water system” means a system that provides to the public water for human consumption through pipes or other constructed conveyances and:*

(i) *Has at least 15 service connections; or*

(ii) *Regularly serves at least 25 individuals daily at least 60 days out of the year.*

(b) *“Public water system” includes:*

(i) *Any collection, treatment, storage, or distribution facility that is under the control of the operator of the system and is used primarily in connection with the system; and*

(ii) *Any collection or pretreatment storage facility that is not under the control of the operator of the system and is used primarily in connection with the system.*

[(18)] (19) (text unchanged)

(20) *“7Q10” means the lowest 7-day average flow that occurs, on average, once every 10 years.*

[(19)] (21) — [(22)] (24) (text unchanged)

(25) *“Water audit” means an examination of water use that traces the flow of water from the site of water withdrawal through the distribution system and final use of the water, and details the variety of consumption and losses that exist from withdrawal through final use.*

(26) *“Water conservation” means the use of practices, techniques, and technologies that:*

(a) *Reduce the consumption, loss, or waste of water;*

(b) *Improve efficiency in the use of water; or*

(c) *Make more efficient use of water treatment infrastructure.*

(27) *“Water supply capacity management plan” means a plan that analyzes available water supply capacity and establishes a system to track water allocation commitments.*

[(23)] (28) — (25) (30) (text unchanged)

##### **.04 Incorporation by Reference.**

*Application for Water Allocation: Guidance Document for Public Water Systems Providing Groundwater to Municipal Corporations or Priority Funding Areas in Carroll, Frederick, and Washington Counties (June 2014) is incorporated by reference.*

##### **[.04] .05 Water Appropriation or Use Permit Application Procedures.**

A. Application Procedures for Applicant.

(1) — (8) (text unchanged)

(9) The Department may require the applicant to conduct special evaluations, including:

(a) Water quality analyses, well-pumping tests, or geophysical well logging for proposed ground water appropriations; [or]

(b) Water quality analyses, watercourse flow measurements, or aquatic habitat evaluations for proposed surface water withdrawals[.];

(c) *Water audits, water supply capacity management plans, water conservation plans, or estimates of distribution system leakage; and*

(d) *For public water systems requesting special consideration under Environment Article, §5-501(b), Annotated Code of Maryland, evaluations as described in Applications for Water Allocation: Guidance Document for Public Water Systems Providing Water to Municipal Corporations or Priority Funding Areas in Carroll, Frederick, and Washington Counties (June 2014).*

B. (text unchanged)

**[.05].06 Criteria for Approval of Water Appropriation or Use Permits.**

A. (text unchanged)

B. Criteria for Determining Reasonableness.

(1) (text unchanged)

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

(a) — (f) (text unchanged)

(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[.];

(i) *The ability of a well or spring to sustainably yield the requested amount of the appropriation; and*

(j) *Whether the proposed appropriation in Carroll, Frederick, or Washington County will provide groundwater:*

(i) *To a municipal corporation, not including those areas annexed after January 1, 2000; or*

(ii) *To a priority funding area established on or before January 1, 2000, under State Finance and*

*Procurement Article, §5-7b-02(7), Annotated Code of Maryland.*

C. (text unchanged)

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

(1) — (5) (text unchanged)

(6) *Appropriation from an Unconfined Aquifer.*

(a) *The Department may not issue a water appropriation or use permit in excess of 5,000 gallons per day as an average annual use from an unconfined aquifer, unless the Department finds that the appropriation is sustainable by recharge to the aquifer.*

(b) *Priority may be given to public water systems requesting special consideration under Environment Article, §5-501(b), Annotated Code of Maryland, as outlined in Application for Water Allocation: Guidance Document for Public Water Systems Providing Water to Municipal Corporations or Priority Funding Areas in Carroll, Frederick, and Washington Counties (June 2014).*

[(6)] (7) — [(10)] (11) (text unchanged)

**[.06].07 – [.08].09 (text unchanged)**

ROBERT M. SUMMERS, Ph.D.  
Secretary of the Environment