

TABLE OF CONTENTS

Water Diversion

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

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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 General Statutes, and subject to the conditions set out in subsection (b) of this section, the following diversions are exempt from the provisions of sections 22a-365 to 22a-378, inclusive, of the 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 water-courses; and

(D) any permit or approval required by sections 22a-32, 22a-39, 22a-42a or 22a-361 of the 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(2) Diversion of water incidental to testing the production capability of a well or the quality of water withdrawn therefrom, provided the diversion continues no longer than is necessary for testing the production capability of the well or the quality of water withdrawn therefrom.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 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 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 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 or registration issued or filed under section 22a-368 of the 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 or registration issued or filed under section 22a-368 of the 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) 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 General Statutes is obtained.

(9) Diversion of water resulting from separation of combined storm water and sanitary sewer systems approved by the Commissioner pursuant to chapter 446k of the 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) 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 General Statutes, provided:

(A) the permit required by section 22a-342 of the 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) 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) 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 General Statutes, or as specified in approved plans submitted pursuant to such an order.

(13) 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 General Statutes is obtained.

(14) Diversion of water authorized under a permit issued by the Commissioner pursuant to section 22a-403 of the 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 General Statutes.

(15) 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 General Statutes, provided:

(A) any permit or approval required by section 22a-430 of the 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 General Statutes, which may be affected thereby.

(16) 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 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 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 General Statutes, which may be affected thereby.

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

(A) any permit required by sections 22a-39, 22a-342, or 22a-403 of the 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 General Statutes or this section.

(18) Collection and drainage or 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 General Statutes; and

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

(19) 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 General Statutes.

(b) 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.

(Effective March 21, 1990)