

**58:11-59 Failure to comply by small water, sewer companies.**

1. a. Whenever a small water company or a small sewer company, or both, are found to have failed to comply with any unstayed order of the Department of Environmental Protection concerning the availability of water, the potability of water, or the provision of water at adequate volume and pressure, or any unstayed order finding a small water company or a small sewer company or both a significant noncomplier or requiring the abatement of a serious violation, as those terms are defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3), which the department is authorized to enforce pursuant to Title 58 of the Revised Statutes, the department and the Board of Public Utilities may, after 30 days' notice to capable proximate public or private water or sewer companies, municipal utilities authorities established pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.), municipalities or any other suitable public or private entities wherein the small water company, small sewer company, or both, provide service, conduct a joint public hearing to announce: the actions that may be taken and the expenditures that may be required, including acquisition costs, to make all improvements necessary to assure the availability of water, the potability of water and the provision thereof at adequate volume and pressure, and the compliance with all applicable federal and State water pollution control requirements for a small sewer company, including, but not necessarily limited to, the acquisition of the small water company or small sewer company, or both, by the most suitable public or private entity.

At the hearing the department and the board shall state the costs that are expected to be borne by the current users of the small water company, small sewer company, or both. The department shall propose an administrative consent order setting forth an agreed upon time schedule by which the acquiring entity would be required to make improvements required to resolve existing violations of federal and State safe drinking water and water pollution control statutes and regulations. The administrative consent order shall stipulate that the acquiring entity shall not be liable for any fines or penalties for continuing violations arising from the deficiencies, obsolescence or disrepair of the facilities at the time of the acquisition, provided that:

(1) the stipulation shall be conditioned upon compliance by the acquiring entity with the timeframes established for improving the facilities and eliminating the existing violations; and

(2) the stipulation shall not include any violation to the extent caused by operational error, lack of preventive maintenance or careless or improper operation by the acquiring entity.

Under no circumstances shall the acquiring entity be liable for violations occurring prior to the acquisition.

At the conclusion of a hearing conducted pursuant to this section the record of the hearing shall be kept open for 30 days to allow for the submission of additional comments.

b. As used in sections 1 through 4 of P.L.1981, c.347 (C.58:11-59 through 58:11-62):

"Small water company" means any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections ; and

"Small sewer company" means any company, business, or entity, other than a governmental agency, which is a public utility as defined pursuant to R.S.48:2-13, that collects, stores, conveys, or treats primarily domestic wastewater, and that regularly serves less than 1,000 customer connections.

L.1981,c.347,s.1; amended 1994, c.58, s.57; 1999, c.296, s.2.

**58:11-60 Compensation for acquisition of small water, sewer company.**

2. a. Compensation for the acquisition of a small water company, small sewer company, or both, shall be determined:

(1) By agreement between the parties, subject to the approval of the Board of Public Utilities, in consultation with the Department of Environmental Protection, and after the holding of a joint public hearing by the board and the department; or

(2) Through use of the power of eminent domain by the appropriate agencies or, the provisions of section 34 of P.L.1957, c.183 (C.40:14B-34) to the contrary notwithstanding, the designated acquiring public or private entity.

b. Compensation shall be the commercially reasonable value as determined by agreement between the small water company, small sewer company, or both, and the designated acquiring public or private entity, as approved by the board and the department, or the appraised value as established through eminent domain proceedings. Upon remittance of the compensation as set forth herein, the designated acquiring public or private entity shall obtain title to the assets of the small water company, small sewer company, or both, free and clear of all liens, claims and encumbrances, judgments, security interests, fines, penalties, and outstanding taxes incurred by the small water company, small sewer company, or both. The acquiring public or private entity shall place in escrow or deposit in court so much of the compensation amount as necessary to satisfy any liens, claims and encumbrances, judgments, security interests, fines, penalties, and outstanding taxes which are of record or of which the designated acquiring public or private entity has actual knowledge.

Nothing contained herein shall waive, or impair the right of any creditor, including a secured creditor, to obtain payment directly from the owner or operator of the small water company or small sewer company from the proceeds of any acquisition concluded pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.).

No fines or penalties incurred by the owner or operator of a small water company or small sewer company shall be a liability of the owner or operator of the designated acquiring public or private entity, of the service users of the acquired small water company or small sewer company or any service user of the water supply or sewer system of the designated acquiring public or private entity. Any such incurred penalties shall remain the sole liability of the owner or operator who incurred the penalties.

c. If a small water company and a small sewer company serve a common residential development, were established by the developer to service that development, and are under common control and ownership, and if the small water company or the small sewer company, or both, have failed to comply with an order of the Department of Environmental Protection and are subject to the provisions of section 1 of P.L.1981, c.347 (C.58:11-59), they may be treated as one company for the purposes of sections 1 through 4 of P.L.1981, c.347 (C.58:11-59 through 58:11-62), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.), provided that the proceeds of the acquisition shall be segregated and distributed based on the commercially reasonable or appraised value of each company.

L.1981,c.347,s.2; amended 1999, c.296, s.3.

### **58:11-61 Order for acquisition of small water, sewer company.**

3. a. The Department of Environmental Protection and the Board of Public Utilities, upon a determination that the costs of improvements to and the acquisition of the small water company, small sewer company, or both, are necessary and reasonable, may order the acquisition of the small water company, small sewer company, or both, by the most suitable public or private entity pursuant to this section. This order shall provide for the immediate inclusion in the rates of the designated acquiring public or private entity the anticipated costs of necessary improvements, or, if the determination of acquisition costs has been deferred, as soon as possible thereafter as may be practicable and feasible. No order may be issued pursuant to this section until at least 30 days following the date of the hearing conducted pursuant to section 1 of P.L.1981, c.347 (C.58:11-59).

b. The Board of Public Utilities shall extend the franchise area of the designated acquiring public or private entity to the extent necessary to cover the service area of the small water company, small sewer

company, or both, taken over pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.). The governing body of the municipality in which the small water company, small sewer company, or both, are located shall provide the board with the municipal consent that allows the designated acquiring public or private entity to operate within the franchise area. The board shall approve any municipal consent granted pursuant to this subsection necessary to cover the service area of the small water company, small sewer company, or both, acquired pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.).

c. An order issued pursuant to this section designating a public or private entity to acquire a small water company, small sewer company, or both, shall authorize the public or private entity to commence eminent domain proceedings in accordance with P.L.1971, c.361 (C.20:3-1 et seq.), without further petition to, or further order by, the board. Prior to commencing eminent domain proceedings, an appropriate officer of the designated acquiring public or private entity shall transmit notice to the board, the department, and all parties affected by the order issued pursuant to this section, including, without limitation, any person or entity having a recorded interest in the land or property which may be subject to eminent domain proceedings pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.). Notice provided to such parties pursuant to this section shall satisfy the notice requirements set forth in R.S.48:3-17.

d. An order issued pursuant to this section shall constitute revocation by the board of the franchise of the small water company, small sewer company, or both, to be acquired and shall render the owner or operator of the acquired small water company, small sewer company, or both, unfit to hold any other water or sewer franchise or municipal consent to provide water or sewer service.

L.1981,c.347,s.3; amended 1999, c.296, s.4.

#### **58:11-62 Acquisition, improvements to assure compliance.**

4. Any water company, sewer company, municipal utilities authority or other suitable public or private entity which receives an order pursuant to section 3 of P.L.1981, c.347 (C.58:11-61) shall acquire the small water company, small sewer company, or both, and shall make the necessary improvements to assure the availability of water, the potability of the water and the provision of water at adequate volume and pressure and the compliance with all applicable federal and State water pollution control requirements in the case of a small sewer company. The small water company, small sewer company, or both, as the case may be, shall immediately comply with the order and shall facilitate its sale to the water company, sewer company, municipal utilities authority, or other suitable public or private entity ordered to acquire the small water company, the small sewer company, or both, as the case may be.

L.1981,c.347,s.4; amended 1999, c.296, s.5.

#### **58:11-63 Collection of differential rate from customers of acquired company.**

1. Whenever the Department of Environmental Protection and the Board of Public Utilities order the acquisition of a small water company, small sewer company, or both, by the most suitable public or private entity pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.) and P.L.1999, c.296 (C.58:11-63.1 et al.), the board may, in its discretion, allow the designated acquiring public or private entity to charge and collect a differential rate from the customers of the small water company, small sewer company, or both, for the use or service of the acquiring public or private entity's water supply system or facilities, sewage system or facilities, or both.

As used in this section "small water company" and "small sewer company" shall have the same meaning as in section 1 of P.L.1981, c.347 (C.58:11-59).

L.1989,c.389,s.1; 1999, c.296, s.6.

### **58:11-63.1 Costs of acquisition, improvements eligible for financing.**

7. a. Whenever a public or private entity receives an order pursuant to section 3 of P.L.1981, c.347 (C.58:11-61) to acquire a small sewer company, the cost to the designated acquiring public or private entity of the improvements to the acquired small sewer company necessary to assure the compliance with all applicable federal and State water pollution control requirements for a small sewer company shall be eligible for financing pursuant to the "New Jersey Environmental Infrastructure Trust Act," P.L.1985, c.334 (C.58:11B-1 et seq.), as amended by P.L.1997, c.224. Any loan application made by an acquiring public entity pursuant to this subsection shall be expedited by the New Jersey Environmental Infrastructure Trust and the Department of Environmental Protection, to the maximum extent feasible while still maintaining compliance with all applicable laws, rules and regulations.

b. Whenever a public or private entity receives an order pursuant to section 3 of P.L.1981, c.347 (C.58:11-61) to acquire a small water company, the cost to the designated acquiring public or private entity of the improvements to the acquired small water company necessary to assure the availability of water, the potability of water, and the provision thereof at adequate volume and pressure and compliance with all applicable federal and State safe drinking water requirements for a small water company, shall be eligible for financing pursuant to the "New Jersey Environmental Infrastructure Trust Act," P.L.1985, c.334 (C.58:11B-1 et seq.), as amended by P.L.1997, c.224. Any loan application made by an acquiring public entity pursuant to this subsection shall be expedited by the New Jersey Environmental Infrastructure Trust and the Department of Environmental Protection, to the maximum extent feasible while still maintaining compliance with all applicable laws, rules and regulations.

c. The provisions of any other law or rule or regulation adopted pursuant thereto to the contrary notwithstanding, improvements to an acquired small water company pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.) shall constitute a water supply project for the purposes of P.L.1981, c.261, as amended by P.L.1983, c.355 and P.L.1997, c.223.

d. As used in this section "small water company" and "small sewer company" shall have the same meaning as in section 1 of P.L.1981, c.347 (C.58:11-59).

L.1999,c.296,s.7.

### **58:11-63.2 Acquiring entity not responsible for prior discharge of hazardous substance; immunity from liability; exceptions.**

8. The provisions of any law, or rule or regulation adopted pursuant thereto to the contrary notwithstanding, whenever a public or private entity receives an order pursuant to section 3 of P.L.1981, c.347 (C.58:11-61) to acquire a small water company, small sewer company, or both, the designated acquiring public or private entity shall not be deemed the discharger or responsible party for a discharge of a hazardous substance that occurred prior to the acquisition and is attributed to the facilities being acquired, and shall not be liable for any required cleanup and removal costs or damages resulting from any such discharge of a hazardous substance. As a condition of, and at the time of the acquisition, the designated acquiring public or private entity shall conduct a preliminary assessment and a site investigation of the facilities to be acquired to ascertain the presence and the levels of any hazardous substance. Neither the designated acquiring public or private entity, the service users of the small water company or small sewer company being acquired, or the users of the designated acquiring public or private entity's services shall have any liability for cleanup and removal costs relating to any hazardous discharge identified by the site investigation conducted pursuant to this section as being a pre-acquisition hazardous discharge, provided that the designated acquiring public or private entity shall exercise reasonable care in addressing any environmental contamination at the facilities upon acquisition.

The exemption from liability granted to an acquiring public or private entity pursuant to this section shall not apply to the designated acquiring public or private entity's liability, pursuant to any law or rule or regulation, for arranging for the off-site disposal or treatment of a hazardous substance or for transporting

and disposing of a hazardous substance at an off-site facility selected by the designated acquiring public or private entity.

Nothing in this section shall prohibit or limit the right of the Department of Environmental Protection to undertake a cleanup of the property or to obtain a lien on the property for the cost of a cleanup pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f). Any recovery of cleanup and removal costs from an acquiring public or private entity pursuant to a lien obtained by the Department of Environmental Protection shall be limited to the actual financial benefit realized by the designated acquiring public or private entity solely due to a cleanup or removal action. Recovery by the Department of Environmental Protection shall be conditioned upon the department providing a detailed financial analysis to the designated acquiring public or private entity demonstrating that the actual financial gain realized by the designated acquiring public or private entity is due solely to the cleanup or removal action. The acquiring entity shall have 30 days to notify the department, in writing, of any dispute relating to the financial analysis or the department's determination of actual financial gain. The Department of Environmental Protection shall negotiate, for a period not to exceed 30 days, with the designated acquiring public or private entity to resolve any dispute relating to the financial analysis or the department's determination of actual financial gain identified by the designated acquiring public or private entity prior to imposition of a lien. The department may waive any lien or recovery if warranted by the circumstances.

As used in this section "small water company" and "small sewer company" shall have the same meaning as in section 1 of P.L.1981, c.347 (C.58:11-59).

L.1999,c.296,s.8.

#### **58:11-63.3 Violations, penalties.**

9. Any owner or operator of a small water company, small sewer company, or both, who violates the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63), and P.L.1999, c.296 (C.58:11-63.1 et al.), or fails to comply with any order issued pursuant to section 3 of P.L.1981, c.347 (C.58:11-61), shall be subject upon order of a court to a civil penalty not to exceed \$50,000 per day of such violation, and each day's continuance of the violation shall constitute a separate violation. Any penalty incurred pursuant to this section may be recovered with costs, and, if applicable, interest charges, in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Board of Public Utilities or the Department of Environmental Protection may also commence a civil action in the Superior Court for any other appropriate relief, including without limitation, a temporary or permanent injunction, and the reasonable costs of preparing and litigating the case. Use of any of the remedies in this section shall not preclude the use of any other remedy available to the Board of Public Utilities or the Department of Environmental Protection under this section or under any other applicable law. As used in this section "small water company" and "small sewer company" shall have the same meaning as in section 1 of P.L.1981, c.347 (C.58:11-59).

L.1999,c.296,s.9.

#### **58:11-63.4 Construction of act as to BPU enforcement.**

10. Nothing in the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63), or P.L.1999, c.296 (C.58:11-63.1 et al.) shall be construed to prohibit the Board of Public Utilities from determining, after notice and hearing, that a franchise or other authority to operate should be revoked for good cause or that penalties as may otherwise be authorized, should be imposed.

L.1999,c.296,s.10.