

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY) (MARCH 9, 2020)
COVID-19 STATE OF EMERGENCY

Temporary Rule Modification adopted by Catherine R. McCabe, Commissioner, Department of Environmental Protection

Date: May 6, 2020

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., 58:11-64 et seq., and 58:12A-1 et seq., N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy)(EO 103)

Effective Date: May 6, 2020

Expiration Date: Concurrent with expiration of EO 103

This is an emergency adoption of a temporary rule modification to allow for waiver of certain provisions of the Department of Environmental Protection's (Department) Licensed Operator rules, N.J.A.C. 7:10A, subject to the criteria set forth herein.

By way of Executive Order No. 103, dated March 9, 2020 (EO 103), Governor Phil Murphy declared that a Public Health Emergency and State of Emergency exists in the State of New Jersey as a result of Coronavirus disease 2019 (COVID-19) pandemic. Section 6 of EO 103, authorizes agency heads to waive, suspend or modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the COVID-19 emergency, notwithstanding the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Department of Environmental Protection is authorizing necessary suspension of its rules as follows:

N.J.A.C. 7:10A establishes the rules governing the eligibility, examination, and licensing of persons as operators of Industrial Wastewater systems, Public Wastewater Collection Systems, Public Wastewater Treatment Systems, Public Water Treatment Systems, Public Water Distribution Systems and Public Non-Community Surface Water Treatment Systems (Licensed Operators). Licensed Operators are individuals approved by the Department who are routinely onsite at a water system and are actively involved in and have responsibility for their operation, maintenance, and effectiveness. Due to the required social distancing practices described in Executive Order 107, and in anticipation of worker shortage issues as a result of the COVID-19 pandemic, there may be a shortage of Licensed Operators throughout the State. In light of these unprecedented circumstances and recognizing that the continued, uninterrupted management of drinking water and wastewater is essential to the protection and preservation of public health and the environment, it may become necessary for the Department to take emergency action during the duration of EO 103 to ensure that properly-qualified Licensed Operators remain available.

Such actions may include allowing Licensed Operators whose licenses have recently lapsed to be reinstated, allowing Licensed Operators certified in other states to become temporarily certified in New Jersey, and waiver of certain examination, continuing education and work hour requirements for the duration of the State of Emergency.

Accordingly, I find that strict adherence to the licensure requirements referenced above may, in certain circumstances, be detrimental to the public welfare during this emergency. Therefore, by operation of this adoption, N.J.A.C. 7:10A is temporarily modified as follows:

Full text of the adopted modifications follows (additions indicated in bold **thus**; deletions indicated in brackets [(thus)]):

N.J.A.C. 7:10A-1.16

(a) Notwithstanding the provisions of N.J.A.C. 7:10A-1.6, -1.7, -1.8, -1.9, -1.10, -1.11, -1.15 or any other rule to the contrary, during the effective period of Executive Order No. 103 (2020), the Department may, on a case-by-case basis, temporarily waive eligibility requirements, application requirements, fees or continuing education obligations, modify work hour requirements, or reinstate a lapsed or expired license provided:

- 1. The Department determines such action is necessary to ensure the uninterrupted and proper management of drinking water and wastewater systems;**
- 2. any such action is narrowly tailored to address circumstances created by or directly related to the COVID-19 pandemic;**
- 3. any such action is limited to, at most, the duration of Executive Order 103;**
- 4. any individual authorized to act as a Licensed Operator possesses sufficient qualifications to manage drinking water and wastewater systems in accordance with the Act and N.J.A.C. 7:10A; and**
- 5. in the case of a reinstatement of a lapsed or expired license, the licensee was in good standing at the time it lapsed or expired.**

(b) Any waiver, modification or reinstatement under (a) above shall be upon such terms and conditions as the Department deems appropriate.

(c) Any waiver, modification or reinstatement under (a) above shall be temporary and automatically expire upon the expiration or revocation of EO 103.

I find that modification of the rule above is necessary because enforcement of the existing rules may be detrimental to the public welfare during this emergency.

This emergency adoption shall remain in effect until the expiration or revocation of Executive Order No. 103 (Murphy).

Date: _____

5/6/20



Catherine R. McCabe, Commissioner
Department of Environmental Protection