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ENVIRONMENTAL PROTECTION

ENVIRONMENTAL REGULATION

DIVISION OF WATER QUALITY

Licensing of Water Supply and Wastewater Treatment Operators

Readoption with Amendments: N.J.A.C. 7:10A

Adopted Amendment: N.J.A.C. 7:14A-6.12

Proposed: July 7, 2008 at 40 N.J.R. 3785(a)

Adopted: November 14, 2008 by Lisa P. Jackson, Commissioner, Department of Environmental
Protection

Filed: November 20, 2008 as R.2008 d.381 **with substantive and technical changes** not
requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 58:11-64 et seq., 58:12A-1 et seq., 58:10A-1 et seq., and 13:1D-1 et seq.

DEP Docket Number: 06-08-05/621

Effective Date: November 20, 2008, Readoption

December 15, 2008, Amendments

Expiration Date: November 20, 2013, N.J.A.C. 7:10A

December 2, 2013, N.J.A.C. 7:14A

The New Jersey Department of Environmental Protection (Department) is readopting its rules at N.J.A.C. 7:10A, governing the examination and licensing of operators of public water supply distribution and treatment systems and wastewater collection and treatment systems.

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N.J.A.C. 7:10A establishes standards and procedures for the licensing of operators of industrial wastewater treatment systems, public wastewater collection systems, public wastewater treatment systems, public water distribution systems, and public water treatment systems to ensure that only educated, trained and responsible individuals operate and maintain these systems in an effective and lawful manner. All systems as defined by the rules must, as part of meeting minimum license requirements, obtain the services of qualified licensed individuals, either part or full-time, to operate and maintain these systems.

The Department is adopting amendments to provide an automatic extension of the renewal date for licensees on active duty in the military, and to allow an extension to licensees who have a medical condition or other hardship an extension of time to renew his or her licenses. The amendments also limit the number of times an applicant may take a licensing exam before the applicant must retake the training course.

The Department is adopting amendments to the duties and responsibilities of licensed operators, including minimum requirements for operation and maintenance procedures; and a new requirement for licensed operators who wish to operate more than 10 very small water systems (VSWS) systems to request approval from the Department.

Lastly, as adopted the rules include increases in the application fees, initial license fees, annual license fees and late renewal fees to recover the cost of implementing the program.

Summary of Hearing Officer Recommendation and Agency Response:

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A Public Hearing was held on August 5, 2008 at the New Jersey Department of Environmental Protection, 1st floor Hearing Room, 401 East State Street, Trenton, New Jersey, 08625. Two people provided oral comments. Alan S. Dillon, Section Chief of the Department's Bureau of Safe Drinking Water Technical Assistance in the Division of Water Supply, served as the Hearing Officer. After reviewing the comments received during the public comment period, the Hearing Officer has recommended that the proposal be adopted with the changes described below in the Summary of Public Comments and Agency Responses. The Department accepts the Hearing Officer's recommendation.

A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection

Office of Legal Affairs

ATTN: Docket No. 06-08-05/621

PO Box 402

Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The following people submitted written comments and/or gave oral testimony on the proposal:

1. Carol Broccoli, New Jersey Agricultural Experiment Station, Rutgers, the State University of
New Jersey

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2. Michael Furrey, Agra Environmental and Laboratory Services
3. Suzana Loncar, Corporate Counsel, New Jersey American Water
4. John McGowan
5. Dennis Palmer, P.E., P.P., Legislative Chairman for the Association of Environmental Authorities and the New Jersey Water Environment Association
6. Carol Storms, Manager of Water Quality and Wastewater, Aqua New Jersey

A summary of the timely submitted comments and the Department's responses follow. The number(s) in parentheses after each comment corresponds to the commenter(s) listed above.

General Comments

1. COMMENT: At least 60 percent of the non-transient, non-community systems and the small community systems use the services of compliance management companies. These companies not only supply some licensed operators, but support them with services such as expediting water testing, evaluating State reporting forms, managing follow-up if there is a water quality violation, and preparing public notices. The companies provide technical support to licensed operators who are less familiar with the Very Small Water System (VSWS) because the operator has been trained in a larger system, as well as to systems that have had their operator go through the VSWS training, but feel that the operator needs some support to maintain compliance. The time that is spent on site by licensed operators is really augmented to a great degree by the work that is done by these companies. (4)

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RESPONSE: The Department interprets this comment as suggesting that a licensed operator that is affiliated with, or retains the services of a compliance management company would be able to spend less time on each VSWS for which he or she is responsible, thereby being able to service numerous VSWS. (See N.J.A.C. 7:10A-1.10(h).) The companies, however helpful, do not take the place of licensed operators, nor do they relieve the licensed operators of their responsibilities under the rules. Owners of water and/or wastewater systems are required to place the direct supervision of their systems under the responsible charge of an appropriately licensed operator. Such a licensed certified operator must have 1) a minimum education of a high school diploma; 2) passed an exam that demonstrates that the operator has the necessary skills, knowledge, ability and judgment as appropriate to his or her certification; and 3) the defined minimum amount of on-the-job experience for each appropriate level of certification. These requirements ensure that the licensed operator is aware of the public health objectives of our program and that the system will be operated in a manner that protects both public health and the environment.

The licensed operator, by definition at N.J.A.C. 7:10A-1.2, is responsible for the on-site operation, maintenance and effectiveness of a system. To meet these licensed operator responsibilities, a certain minimum amount of time and effort is required at each system. The use of a third party service, including a compliance management” service, does not change the responsibilities of the licensed operator.

Subchapter 1

Water Supply and Wastewater Treatment System Operators

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N.J.A.C. 7:10A-1.5 Advisory committee on training

2. COMMENT: N.J.A.C. 7:10A-1.5(b)9 should reflect the change in title from “Director of the Office of Continuing Professional Education at Cook College, the State University of New Jersey” to “Director of the Office of Continuing Education at the New Jersey Agricultural Experiment Station, Rutgers, the State University of New Jersey,” which is a result of a recent reorganization at Rutgers University. (1)

RESPONSE: The Department is modifying N.J.A.C. 7:10A-1.5(b)9 on adoption to correct the title.

N.J.A.C. 7:10A-1.8 Fees

3. COMMENT: The increase in the fees seems exorbitant and will generate significant amounts of revenue beyond what is necessary to run this portion of the Department. In addition, there is concern that any excess receipt of funds could be diverted away from the Water and Wastewater Licensing Operator Program. (5)

RESPONSE: Fees for the Water and Wastewater Operators Licensing Program have not been increased since July 2, 1984. (See 16 N.J.R. 1740(a).) In FY2007, the Department received \$198,905 from licensing fees. This was \$94,895 less than the program costs.

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An increase in the application and licensing fees is necessary to meet the expected program costs for Fiscal Year 2009 (FY2009). As explained in the proposal summary (40 N.J.R. at 3786), the FY2009 budget for administering the water and wastewater licensed operators program is \$406,800, which includes the cost of the existing program and the one additional staff person dedicated to information technology related to the program. The anticipated revenue of \$60,160 in excess of the FY2009 budget that the Department anticipates collecting from licensing fees is to be used to address technical enhancements and equipment maintenance for the computer systems related to operator licensing and testing.

The Department notes that the 2009 Budget, specifically Resolution No. 17 Table No. ENV40#43D, states, "Receipts in excess of the amount anticipated from fees from the Water and Wastewater Operators Licensing Program are appropriated subject to the approval of the Director of the Division of Budget and Accounting." (See P.L. 08, ch. 35.) This language in the Budget gives the Department access to funds in excess of FY2007 receipts for the purposes noted above. Without the specific language, the excess revenue would be deposited in the normal course into the State's General Fund.

N.J.A.C. 7:10A-1.9 License renewal requirements

4. COMMENT: The commenter supports the license extension language found in N.J.A.C 7:10A-1.9(g) for licensees in military service who are deployed or ordered into active service, and in N.J.A.C 7:10A-1.9(h) for those who are suffering a medical condition or hardship. However, the rules should allow a licensee to apply for retired operator status. Such a status

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would allow the operator to continue his or her license in effect (but not active) without the need for training contact hours (TCHs). To reactivate the license, the operator would complete TCHs.

(5)

RESPONSE: The Department acknowledges the commenter's support for the license extension provisions for licensees in military service who are deployed or ordered into active service, and for those who are suffering a medical condition or hardship.

The Department is considering whether to allow a retired or inactive status for licensees. However, allowing such a status is too substantial a change to make on adoption. If the Department does determine that retired or inactive status is appropriate, it will propose the amendments in a separate rulemaking.

N.J.A.C. 7:10A-1.10 Licensed operator required; exemptions

5. COMMENT: N.J.A.C. 7:10A-1.10(h) should be amended to require not only Very Small Water System (VSWS) licensed operators, but any licensed operator wishing to operate more than 10 VSWS systems to submit a written request to the Department for approval. (6)

RESPONSE: As discussed in the proposal summary (40 N.J.R. at 3787), it is the Department's intent to require any licensee who wishes to serve as the licensed operator for more than 10 VSWS to demonstrate to the Department that he or she is able to comply with these rules.

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Holders of VSWS licenses, as well as holders of other types of operator licenses, can serve as the licensed operator for a VSWS. The demands of operating more than 10 VSWS are the same, no matter the type of operator license that a person holds. The Department is modifying N.J.A.C. 7:10A-1.10(h) on adoption to require any licensed operator who wishes to operate more than 10 VSWS to obtain Department approval.

N.J.A.C. 7:10A-1.12 Duties, records and reports

6. COMMENT: The additional language in N.J.A.C.7:10A-1.12, which in part outlines the duties and responsibilities of licensed operators, stipulates that the licensed operator shall update operation and maintenance (O&M) procedures within 30 days after a substantive change to the system. The licensed operator should be allowed six months to complete the update after changes to system operation and/or maintenance procedures. If six months is unacceptable, then 120 days should be considered.(1)

RESPONSE: The Department does not believe that more than 30 days is appropriate or necessary for updating the operation and maintenance procedures. As discussed in the Economic Impact (40 N.J.R. at 3788), if new equipment is installed as part of the change, in most instances the manufacturer of the equipment will supply O&M guidelines for the new equipment. Accordingly, initial operation and maintenance procedures for new equipment should be readily available within 30 days of implementing such changes. For other changes, too, the facility should be able to consider necessary revisions to the O&M manual while it is preparing for the

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changes, in order that the manual is updated in a timely fashion. The operation and maintenance procedure document is not a static document, but one that should be revised on a continuing basis to reflect changes in system operation and maintenance.

N.J.A.C. 7:10A-1.15 Criteria needed to take the examination for each license

7. COMMENT: N.J.A.C. 7:10A-1.15(a)4 stipulates that any person who fails a particular exam three times shall not be permitted to take that examination a fourth time without submitting proof of satisfactory completion of a course pertaining to the license being sought. The Department should identify the course that one must take prior being able to retest. (1, 3)

RESPONSE: In N.J.A.C. 7:10A-1.15(a)1 and 2, and (c)1, an applicant for a license must complete the course or courses approved by the Department. As set forth in the proposal summary, 40 N.J.R. at 3787, the Department will require “the applicant to retake the appropriate training course in the subject matter pertaining to the license.” The Department is modifying the rule on adoption to require a licensee who has failed a particular exam three times to retake the Department-approved training course in the subject matter pertaining to the license sought. The Department makes a list of approved courses available on its website, www.nj.gov/dep/watersupply.

Federal Standards Statement

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Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq., require administrative agencies that adopt, readopt or amend any rule to which that order and law apply, to provide a comparison with Federal law and to provide further discussion and analyses (including a cost benefit analysis) if the standards or requirements imposed by the agency exceed standards or requirements imposed by Federal law.

The 1996 Federal Safe Drinking Water Act amendments required the USEPA to publish guidelines specifying minimum standards for certification (and recertification) of the operators of community and nontransient noncommunity public water systems. On February 5, 1999, USEPA published in the Federal Register, "Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems." (See 64 Fed.R. 5915.) The guidelines provided states with the minimum standards for the development implementation and enforcement of operator certification programs for community and nontransient noncommunity public water systems. The USEPA withholds 20 percent of a state's Drinking Water State Revolving fund capitalization grant funds if the state has not adopted or implemented an operator certification program that meets the requirements of the published guidelines. The readopted rules with amendments are in accordance with the USEPA guidelines, as published, and they contain no requirement or standard that exceeds any Federal regulatory standard. Accordingly, no further analysis is required.

N.J.A.C. 7:14A-6 specifies the general conditions applicable to all NJPDES permits. N.J.A.C. 7:14A-6.12 incorporates and provides more detail on the proper operations and maintenance provisions found in the Federal regulations at 40 CFR 122.41(e) and 144.51(e). The proposed amendments to N.J.A.C. 7:14A-6.12, which provide for a specific time frame to

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update the O&M manual and additional requirements for the O&M manual are consistent with EPA Guidance Document number EPA816-F-06-037, entitled “Water System Operator Roles and Responsibilities: A Best Practice Guide,” dated September 2006. Accordingly, no further analysis is required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 7:10A.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

**CHAPTER 10A LICENSING OF WATER SUPPLY AND WASTEWATER
TREATMENT SYSTEM OPERATORS**

**SUBCHAPTER 1. WATER SUPPLY AND WASTEWATER COLLECTION AND
TREATMENT SYSTEMS: EXAMINING AND LICENSING OF OPERATORS**

7:10A-1.5 Advisory committee on training

(a) (No change)

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(b) The Committee members shall be appointed and may be reappointed by the Commissioner for terms of three years and shall include, as a minimum:

1. - 8. (No change)

9. The Director of the Office of Continuing Professional Education at *[Cook College]* **the New Jersey Agricultural Experiment Station, Rutgers***, the State University of New Jersey.

(c) - (e) (No change.)

7:10A 1.10 Licensed operator required; exemptions

(a)-(g) (No change from proposal.)

(h) The Department reserves the right to limit the number of systems a licensed operator may operate and to specify the number of hours the licensed operator is required to be in attendance at each system.

1. Any *[VSWS]* licensee who desires to serve as the licensed operator for more than 10 VSWSs shall demonstrate to the Department that he or she is able to comply with this chapter for each VSWS. The written demonstration shall include:

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i. - vi. (No change from proposal.)

2. - 3. (No change from proposal.)

(i)-(k) (No change.)