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ENVIRONMENTAL PROTECTION

WATER RESOURCE MANAGEMENT

DIVISION OF WATER SUPPLY AND GEOSCIENCE

Private Well Testing Act Rules; Safe Drinking Water Act Rules; Regulations Governing the Certification of Laboratories and Environmental Measurements

Discretionary Changes to National Regulations; State-Specific Requirements for Total Coliform

Adopted Amendments: N.J.A.C. 7:9E-2.1; 7:10-1.3, 2.6, 5.1, 5.2, 5.4, 9.4, 10.5, 11.5, 11.10, and 12:30; and 7:18-4.6 and 5.6

Adopted New Rule: N.J.A.C. 7:10-5.8

Proposed: March 20, 2017, at 49 N.J.R. 504(a).

Adopted: October 10, 2017, by Bob Martin, Commissioner, Department of Environmental Protection.

Filed: October 11, 2017, as R.2017 d.197, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., 58:11-9.1 et seq., 58:11-23 et seq., 58:11-64 et seq., and 58:12A-1 et seq.

DEP Docket Number: 01-17-02.

Effective Date: November 6, 2017.

Expiration Date: January 23, 2022, N.J.A.C. 7:9E;
March 29, 2024, N.J.A.C. 7:10.

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This rule adoption may be viewed or downloaded from the Department's website at

<http://www.nj.gov/dep/rules/adoptions.html>.

The Department is adopting amendments to the Safe Drinking Water Act rules at N.J.A.C. 7:10, which incorporate by reference the Federal Revised Total Coliform Rule (RTCR), 40 CFR Part 141, Subpart Y, to establish New Jersey-specific requirements for implementation of that rule, including a microbiological monitoring schedule, start-up procedures for seasonal water systems, Level 1 and Level 2 assessments, parties approved to perform Level 2 assessments, and the extension of the 24-hour limit for the collection of repeat samples on a case-by-case basis. The Department is adopting updates to the program contact information at N.J.A.C. 7:10-2.6 and corresponding references to that information throughout the rules. The Department is also adopting amendments to the Regulations Governing the Certification of Laboratories and Environmental Measurements, N.J.A.C. 7:18, with respect to the requirements governing the notice certified laboratories must provide to the water system, local health authority, and the Department regarding *E. coli* water sample results and nitrate/nitrite water sample results. As explained below, for consistency with the adopted amendments to the Regulations Governing the Certification of Laboratories and Environmental Measures, the Department is making administrative changes to the Private Well Testing Act rules at N.J.A.C. 7:9E and the Safe Drinking Water Act rules at N.J.A.C. 7:10.

Summary of Hearing Officer's Recommendation and Agency's Response:

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The Department held a public hearing on the notice of proposal on Monday, April 10, 2017, at 1:00 P.M., in the Department's Public Hearing Room, 401 East State Street, Trenton, New Jersey. The Assistant Director for the Division of Water Supply and Geoscience, Diane Zalaskus, was the hearing officer. One person commented at the public hearing. After considering the testimony at the public hearing and the written comments received, the hearing officer recommended that the Department adopt the amendments. The Department accepts the 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: DEP Docket No. 01-17-02

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, NJ 08625-0402

Summary of Public Comments and Agency Responses:

The following persons timely submitted comments on the notice of proposal:

1. Ahn, Junggho, Electronic Review for the Environment, Inc.

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2. Anzolut, Charles, Agra Environmental & Laboratory Services, Inc.
3. Marling, Dawn, Somerset County Department of Health
4. Sickels, Fred

The comments received and the Department's responses are summarized below. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

General Comment

1. COMMENT: At what point was the Department granted primacy for the Federal Revised Total Coliform Rule (RTCR), 40 CFR Part 141, Subpart Y? (2)

RESPONSE: As explained in the notice of proposal Summary, pursuant to the New Jersey Safe Drinking Water Act, the Department has primary enforcement responsibility, or primacy, for the National Primary Drinking Water Regulations (National Regulations), promulgated by the U.S. Environmental Protection Agency (USEPA) under the Federal Safe Drinking Water Act. As noted in the Summary of the notice of proposal, in order to assume primary enforcement for the RTCR, the Department must address certain discretionary elements in the RTCR through adoption of State regulations. With the promulgation of these amendments, the Department will fulfill that requirement and anticipates it will achieve primacy for the RTCR.

Assessments and Corrective Action

2. COMMENT: Please clarify the role of the local administrative authority regarding the public water system's implementation of corrective action required as part of a Level 1 or Level 2 assessment. (3)

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RESPONSE: In accordance with the adopted amendments at N.J.A.C. 7:10-5.8(f), Level 1 and Level 2 assessment forms are submitted to the Department for review. The Department's role includes the review of any sanitary defects identified, any corrective actions completed, and a timetable for completing any remaining corrective actions. Once the Department approves a corrective action plan, the public water system is ultimately responsible for ensuring that the identified corrective actions are completed in accordance with the timetable and in accordance with any other regulatory requirements, such as those administered by the administrative authority pursuant to N.J.A.C. 7:10-12. For example, corrective action requiring construction or alteration of a public noncommunity water system, such as the installation of treatment or a new well, is subject to approval of the administrative authority, which is the CEHA-certified agency or local board of health that has jurisdiction over the water system pursuant to N.J.A.C. 7:10-1.3. If the public noncommunity water system is unable provide photographs or other supporting documentation to confirm that the identified corrective actions have been completed, the administrative authority may be asked by the Department to provide on-site verification of completion. Finally, if the public noncommunity water system fails to complete required corrective actions, then the administrative authority would be responsible for taking enforcement action as necessary in accordance with the Local Health Services Act at N.J.S.A. 26:3A2-25.

3. COMMENT: With respect to the notification provisions when Level 1 or Level 2 assessments are triggered, the notice of proposal does not include a requirement for public water systems to notify the public when samples are total coliform-positive or when the public water system is in violation of the *E. coli* maximum contaminant level (MCL). While the notice of proposal requires public water systems to report their corrective action to the Department, the systems

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should also be required to notify the public when samples are total coliform- or *E. coli*-positive due to the potential health issues. (1)

RESPONSE: The Department acknowledges the commenter's concern about notifying the public of the exceedance of the *E. coli* MCL. As explained in the notice of proposal Summary, this rulemaking is limited to the New Jersey-specific requirements of the RTCR for which the Department has discretion. Public notification requirements for *E. coli* MCL violations are specified in the National Regulations at 40 CFR 141.202, which are incorporated into the Department's rules by reference pursuant to N.J.A.C. 7:10-5.1. In accordance with the National Regulations, a public water system must notify the public as soon as practical, but no later than 24 hours after the system learns of a violation with significant potential to have a serious adverse effect on human health, including a violation of the MCL for *E. coli*. To ensure that the public water system learns of an *E. coli* MCL violation in a timely manner, the Regulations Governing the Certification of Laboratories and Environmental Measures at N.J.A.C. 7:18-4.6(k) specify that the certified laboratory must notify the public water system within 24 hours when a sample tests positive for *E. coli*.

With regard to notification when samples are total coliform-positive, in 2013, the USEPA promulgated the RTCR (see 78 Fed. Reg. 10,270) to update the 1989 Total Coliform Rule (1989 TCR) because it determined that, unlike the presence of *E. coli*, which is a direct threat to public health, the presence of total coliform is more appropriately considered an indicator of a potential pathway of contamination into the distribution system. Thus, finding total coliform is not itself a violation of the RTCR and the public water systems are no longer required to conduct public notification as was required under the 1989 TCR. Instead, public water systems with multiple

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detections of total coliform (but not *E. coli*) must conduct an assessment to identify pathways of contamination and correct any sanitary deficiencies within a specified timeframe.

4. COMMENT: The timeframe in which a water supplier must complete corrective action after the triggering events including coliform-positive samples or an *E. coli* maximum contaminant level violation is described as "as soon as possible," which is vague. A definite response time should be required. (1)

RESPONSE: As explained in the Summary of the notice of proposal, and in accordance with the RTCR, a supplier of water must take corrective action to address any sanitary defect or defects identified during a Level 1 or Level 2 assessment, and must complete the corrective action as soon as possible after being notified or otherwise learning of the exceedance of a Level 1 or Level 2 treatment technique trigger. The appropriate timeframes for completion of corrective action are dependent on the type of sanitary defect(s) identified and the complexity of the necessary corrective action. For example, if the necessary corrective action is that the public water system must drill a new well or install treatment, the corrective action cannot be undertaken until the appropriate permit approvals are obtained from the Department or administrative authority. The Department will ensure that the timetable for completion of corrective action in an approved corrective action plan requires the work to be done as expeditiously as possible under the particular circumstances. The Department will track the public water system's completion of corrective action through the use of the Safe Drinking Water Information System (SDWIS) Federal reporting program and will take enforcement action

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as necessary in accordance with 40 CFR 141.860(b) and N.J.A.C. 7:10-3 if the system does not abide by the timetable established in the corrective action plan.

Parties Approved to Perform a Level 2 Assessment

5. COMMENT: The Department and CEHA staff conducting the Level 2 assessment should have the same credentials as those working outside the Department. Because the Level 2 assessment is more involved than a routine compliance inspection, this provision should be either eliminated or clarified to state that anyone conducting a Level 2 assessment has the requisite qualifications as included in the rule proposal to ensure the objective of protecting public health is met. (4)

6. COMMENT: The criteria for the individuals performing the Level 2 assessment should be equivalent regardless of status of the individuals performing the Level 2 assessment, specifically in regards to engineering issues within distribution systems, as well as systems that may require both a T and W Licensed Operator. (2)

RESPONSE TO COMMENTS 5 AND 6: In promulgating the RTCR, the USEPA stated that Level 2 assessments must be conducted by a party approved by the State, including the State itself, a third party, or the public water system where the system has staff or management with the required certification or qualifications specified by the State. (See 78 Fed. Reg. 10,289). At N.J.A.C. 7:10-5.8(e), the Department has established the approved parties who are able to perform Level 2 assessments, in accordance with N.J.A.C. 7:10-5.8(d). The rule provides flexibility so that each public water system can employ a Department-approved party who has the appropriate credentials and expertise to conduct the assessment based on the type, size, and

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complexity of the system, and to identify and address the sanitary defect that is the cause of the microbial contamination at the particular system.

The Department will provide guidance to individual systems as needed in order to identify the most appropriate Department-approved party, which may include a CEHA-certified agency. CEHA-certified agencies inspect public nontransient noncommunity water systems and public transient noncommunity water systems to ensure compliance with State and Federal rules, and, thus, are familiar with the components and operation of those systems. The Department does not anticipate that it will perform many Level 2 assessments but will do so as necessary to ensure the protection of public health. In such cases, Department staff with appropriate expertise will conduct the assessments.

For those public water systems that must employ a licensed operator, it is likely that the operator will conduct the assessment as the operator is qualified pursuant to the rule to do so. A licensed operator who is employed at a public community or a public nontransient noncommunity water systems must hold a license equal to or superior to that required to operate that water system pursuant to N.J.A.C. 7:10A-1.10 and 1.14. Under N.J.A.C. 7:10A-1.10, a T licensed operator is permitted to operate a public water treatment system and a W licensed operator is permitted to operate a public water distribution system. If a system employs a T and a W operator, the system would decide whether one operator or both will conduct the assessment based on the particular circumstances.

7. COMMENT: The Department should perform Level 2 assessments at all county-owned or county-operated public non-community water systems. (3)

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RESPONSE: As stated above in the Response to Comments 5 and 6, the Department does not anticipate performing Level 2 assessments on a regular basis, but will conduct assessments, where appropriate, to ensure that all water system components are adequately evaluated, such as where persistent or chronic contamination exists or where there are concerns about the quality of the assessment. Counties have the ability to select an appropriate Department-approved party under the rule. Some CEHA-certified agencies may prefer to conduct assessments at county-owned or county-operated public noncommunity water systems based on their familiarity with the components and operational and maintenance practices of the systems they inspect. Therefore, each water system, including systems that are owned or operated by a county, has the flexibility to employ the Department-approved party with appropriate credentials and expertise to conduct the assessment at the particular system.

Extension of the 24-hour Limit for Collection of Repeat Samples

8. COMMENT: The Department rightly allows for an extension of the 24-hour limit for collection of repeat samples when it determines that a weather event precludes timely sample collection. However, there may be cases, such as a local wildfire or state of emergency, where a public water system is not able to collect a repeat sample within the 24-hour limit. The Department should amend the rule to allow for the extension of the 24-hour limit when conditions other than weather prevent the safe collection of such samples. (4)

RESPONSE: N.J.A.C. 7:10-5.8(g) provides that the 24-hour limit for collecting repeat samples may be extended during extreme weather conditions where there is a risk to the health and safety

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of the individual(s) responsible for the collection and transport of the repeat samples because, in the Department's experience, extreme weather is most likely to create such a risk. As a wildfire that prevents the collection of a repeat water sample is likely to be at least in part attributable to a weather-related event (for example, lightning strike) or condition (for example, lack of rain), the commenter's concern can be addressed under the rule. For non-weather related catastrophic events that might prevent timely collection of repeat samples, the State has emergency powers that could be exercised.

Start-up Procedures for Seasonal Water Systems

9. COMMENT: A seasonal water system that triggers the start-up requirements to collect five additional groundwater samples should consult with the Department within 30 days when any sample tests positive for *E. coli*. Since *E. coli* can immediately affect human health, the proposed notification period should be shortened. (1)

RESPONSE: The Department acknowledges the commenter's concern regarding the health threat posed by a positive finding of *E. coli* in a water sample, and notes that the 30-day timeframe for consulting with the Department with respect to appropriate corrective action is predicated on (1) the coliform testing, and any follow-up testing for *E. coli* that is triggered, being conducted before the system begins operating and serving water, and (2) the prohibition against serving water to the public that is triggered by an *E. coli*-positive sample, which will be lifted through written notice only when the Department, or other administrative authority,

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determines that the supplier of water has complied with the sampling and corrective action requirements. The procedures, thus, ensure the public health is protected.

Summary of Agency-Initiated Changes

The adopted amendments to the Regulations Governing the Certification of Laboratories and Environmental Measures at N.J.A.C. 7:18-4.6(k) delete reference to fecal coliform, which is no longer used as an indicator of fecal contamination, and require a certified laboratory to notify affected parties when it determines that *E. coli* is present in a drinking water sample. On adoption, the Department is making corresponding administrative changes to the Private Well Testing Act rules at N.J.A.C. 7:9E-2.1 and the Safe Drinking Water Act rules at N.J.A.C. 7:10-12.3, which both cross-reference N.J.A.C. 7:18 for requirements regarding total coliform and *E. coli* analyses, to likewise delete reference to fecal coliform.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Statement.

The Department's Safe Drinking Water Act rules at N.J.A.C. 7:10 incorporate by reference the National Regulations, 40 CFR 141, promulgated by the USEPA pursuant to the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., including all siting requirements, filtration and disinfection requirements, maximum contaminant levels, monitoring and analytical

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requirements, reporting requirements, public notification requirements, and recordkeeping requirements as the New Jersey primary drinking water rules, applicable to all public water systems. The Department's safe drinking water rules are, therefore, the Federal standards, except with respect to those areas in which the Department has exercised the discretion that the National Regulations allow and has established in its rules New Jersey-specific requirements.

As explained in the summary of the notice of proposal, the Department's existing rules do not allow for reduced microbiological monitoring for those public water systems (that is, public water systems using only groundwater and serving 1,000 or fewer persons) for which the National Regulations do allow states to reduce monitoring on a case-by-case basis based on certain criteria. The Department is adopting rules to continue the existing monitoring requirements with amendments that bring them into alignment with the express terms of the RTCR, but do not change the types of systems to which these provisions apply or the premise that the Department will not reduce the microbiological monitoring frequencies for those systems. The Department is also adopting a new provision to make clear that it will not reduce the monitoring frequency for seasonal water systems, which are a subcategory of public noncommunity systems for which specific provisions are now established under the RTCR, including a requirement to sample monthly during the operating season. As the Department's rules comport with the monitoring frequencies in the Federal rule, the Department has determined that the proposed microbiological monitoring provisions do not exceed any Federal standards or requirements.

The RTCR gives the states discretion to either extend the 24-hour limit to collect repeat samples on a case-by-case basis or, alternatively, outline criteria for waiving the 24-hour limit to collect repeat samples if a water system has a logistical problem beyond its control. The

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Department is adopting amendments to extend the 24-hour limit to collect repeat samples either on a case-by-case or Statewide basis if, due to extreme weather conditions, it determines there is significant risk to the health and safety of the individual or individuals responsible for the collection and transport of the samples. As the adopted amendments comport with the criteria in the Federal rule, the Department has determined that the extension of the 24-hour limit microbiological monitoring provisions does not exceed any Federal standards or requirements.

The Department is adopting New Jersey-specific start-up procedures for seasonal water systems. The RTCR requires seasonal water systems to comply with a state-approved start-up procedure, but provides each state with the discretion to establish what those start-up procedures will entail. Accordingly, as the Department's rules comport with the requirements of the Federal rule, the Department has determined that the New Jersey-specific start-up procedures for seasonal water systems do not exceed any Federal standards or requirements.

The Department is adopting a definition of a seasonal water system that tracks the definition of seasonal system in the RTCR but provides that the starting up and shutting down for the operating season may apply to either the system in its entirety or just a part of the system. The USEPA has acknowledged that its definition of seasonal system does not include systems that operate year-round but shut down part of their distribution system for a portion of the year. (See 78 Fed. Reg. 10,277). However, the USEPA anticipated that such systems may pose the same or similar risks as systems that are expressly included in the Federal definition, and left the decision of establishing requirements that mitigate risks associated with the operation of these systems open to the states. Because of the lack of water or stagnation of water in the portions of public water systems that are shut down between operating seasons, the Department has determined that such systems do have the same or similar contamination risks as seasonal

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systems that, as defined in the Federal rule, entirely shut down after the operating season, and that such systems must comply with start-up procedures prior to serving water to the public.

Under the Department's adopted rule, seasonal water systems, including those systems that shut down only part of their distribution systems between operating seasons, are required to perform monthly microbiological monitoring during the operating season. Sampling costs are anticipated to be minimal (approximately \$100.00 per sample), and must be balanced against the paramount goal of both the RTCR and the Department's rules of protecting the customers of seasonal businesses from coliform-related illness. By requiring systems that shut down in part to comply with New Jersey-specific monitoring requirements and the seasonal start-up procedures, the rule will help ensure protection of public health and decrease the contamination risks associated with opening parts of water systems that have been shut down after the end of the operating season. In the absence of such procedures, health risks may not be identified until after the public has been exposed to contaminated water.

The changes to the Regulations Governing the Certification of Laboratories and Environmental Measurements at N.J.A.C. 7:18 that modify the microbiological and chemical testing reporting provisions to provide for notice to the Department by telephone within 24 hours of an *E. coli*-positive drinking water sample result or of a nitrate/nitrite MCL exceedance do not exceed any Federal standard or requirement because no Federal law or regulations govern the standards or procedures for the certification of laboratories to perform environmental analyses.

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

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CHAPTER 9E

PRIVATE WELL TESTING ACT

SUBCHAPTER 2. SAMPLING AND TESTING REQUIREMENTS

7:9E-2.1 Parameters for which testing is required

(a) Each water sample shall be analyzed for the following parameters:

1. (No change.)

2. If the sample tests positive for total coliform bacteria, the sample shall be analyzed for *[fecal coliform or]* Escherichia coli, in accordance with N.J.A.C. 7:18-4.6;

3. – 8. (No change.)

(b) – (d) (No change.)

SUBCHAPTER 12. STANDARDS FOR THE CONSTRUCTION OF PUBLIC

NONCOMMUNITY WATER SYSTEMS AND NONPUBLIC WATER SYSTEMS

7:10-12.30 Water quality analysis and treatment

(a) Upon completion of construction of a water system, the owner of a public noncommunity or nonpublic water system shall sample and analyze the microbiological quality of the raw water from the system and submit a copy of the results of the analysis to the administrative authority.

1 – 2. (No change)

3. Microbiological quality shall be determined by analysis for total coliform. If the sample is total coliform positive, the total coliform positive culture medium must be analyzed to

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determine if *[fecal coliforms]* ***E. coli*** are present*[, except that E. coli may be tested for in lieu of fecal coliform]*. Analysis shall be conducted in accordance with N.J.A.C. 7:18.

(b) – (i) (No change.)