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ENVIRONMENTAL PROTECTION

ENVIRONMENTAL REGULATION

Division of Water Quality

Licensing of Water Supply and Wastewater Treatment Operators

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

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

Authorized By: Lisa P. Jackson, Commissioner, Department of Environmental Protection

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.

Calendar Reference: See summary below for explanation of exception to calendar requirements.

DEP Docket Number: 06-08-05/621

Proposal Number: _____

A public hearing concerning this proposal will be held:

Tuesday, August 5, 2008, 10:00 am until close of testimony

New Jersey Department of Environmental Protection

401 East Street

1st Floor Hearing Room

Trenton, NJ 08625

Submit written comments by (60 days after publication) to:

Alice A. Previte, Esq.

Attn: DEP Docket Number 06-08-05/621

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Office of Legal Affairs

Department of Environmental Protection

P.O. Box 402

401 East State Street, Fourth Floor

Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically submitted comments. Microsoft Word 6.0 or above is preferred. Macintosh formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment. This rule proposal can be viewed or downloaded from the Department's website at <http://www.state.nj.us/dep>.

The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The New Jersey Department of Environmental Protection (Department) is proposing to readopt 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.

In accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the rules were due to expire on May 26, 2008. The expiration date was extended by 180 days to November 22, 2008, pursuant to N.J.S.A. 52:14B-5.1c, as a result of the timely filing of this proposal.

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 program is concurrently managed by several programs within the Department. The Division of Water Quality's Treatment Works Approval (TWA) permitting program sets the requirements and standards for individual wastewater facility license classifications. The Division of Water Supply's Safe Drinking Water (SDW) program sets the requirements and standards for individual potable water facility license classifications. The Water Compliance and Enforcement Element (WCEE) ensures individual facility compliance and enforces standards for both water and wastewater facilities. WCEE also assists in setting requirements and standards for both water and wastewater facilities. The Budget and Finance's Examination and Licensing Unit (ELU) administers the applications and examinations of individuals seeking specific licenses or license renewals to operate treatment works or public water systems. ELU also administers the fee program and works with WCEE to ensure compliance with the rules and applicable law.

A Board of Examiners, established by the Commissioner of the Department pursuant to N.J.S.A. 58:11-64 et seq., the Water Supply and Wastewater Operators' Licensing Act, assists the Department in administering the licensing program. The Board, which is composed of three representatives from the water supply field, three representatives from the wastewater field and three representatives from the Department, annually reviews the rules, license qualifications, examination methods and procedures and other materials and issues related to the program and makes recommendations to the Department regarding their improvement.

In addition to the Board of Examiners, an Advisory Committee on Water Supply and Wastewater Licensed Operator Training has been established by the Act. Committee members are appointed by the Commissioner and include a Department employee from the Board; three additional Department employees (one each from the Division of Water Quality, Division of Water Supply and WCEE); two representatives from nomination lists submitted by the New Jersey Section of the American Water Works Association (one shall be a licensed operator, and one a member of the Education Committee of the American Water Works Association); two representatives from nomination lists submitted by the New Jersey Water Environment Association (one shall be a licensed operator and one a member of the Education Committee of the New Jersey Water Environment Association); two representatives submitted by the Association of Environmental Authorities (one shall be from a water authority and one from a wastewater authority); two members selected from environmental groups actively concerned or involved in water quality or wastewater treatment; one representative from a nomination list submitted by the New Jersey Business and Industry Council; two members selected from a list prepared by educational institutions in the State conducting courses in water supply or wastewater treatment operations, or which conducted an appropriate course in the immediately

preceding academic year; and the Director of the Office of Continuing Professional Education at Cook College, the State University of New Jersey. This committee advises the Department, through the Board of Examiners, on the training and licensing requirements of water supply and wastewater operators and on related matters referred to it by the Department. The committee reviews the training programs for, and identifies the training needs of, licensed operators. It also approves the annual allocations of funds for wastewater treatment operators' training programs from sums available in the "Wastewater Treatment Operator Training Account" established pursuant to the Clean Water Enforcement Act.

The types of licenses issued pursuant to this chapter are categorized by the types of systems with which each license is associated. The "S" type license is for sanitary wastewater treatment systems. The "C" type license is for sanitary wastewater collection systems. The "N" type license is for industrial or process wastewater systems. The "T" type license is for certain potable water treatment systems. The "W" type license is for potable water distribution systems. A very small water system (VSWS) license type is defined for small public community water systems with no treatment or public nontransient noncommunity water systems with either no treatment or relatively simple treatment.

There are four classifications for each license category. Class One represents the minimum or least complicated class in each license category, while Class Four represents the maximum or most complicated class in each category. A point system, based upon a variety of technical factors, determines the classification of a facility's treatment system and establishes the minimum class requirement for a licensed individual to operate and maintain a specific treatment system. A facility's collection or distribution system classification is determined by the number of service connections and/or the population that the facility serves.

The Department proposes to readopt the licensed operator renewal requirements with amendments to provide an automatic extension of the renewal date for licensees on active duty in the military. In order that the licensee has time to renew his or her license, the Department will automatically extend the license renewal date until 60 days after end of active duty or deployment.

The proposed amendments would also allow a licensee who has a medical condition or other hardship an extension of time to renew his or her licenses. The licensee would submit documentation to support the hardship claim, and the Board would make a determination on a case by case basis. The proposed amendments also include a new requirement limiting the number of times an applicant may take a licensing exam before the applicant must attend a mandatory training course.

The Department also proposes 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.

Finally, the rules proposed for readoption with amendments include increases in the application fees, initial license fees, annual license fees and late renewal fees to recover the cost of implementing the program.

The following is a summary of the rules proposed for readoption with amendments, as well as proposed related amendments to N.J.A.C. 7:14A.

N.J.A.C. 7:10A LICENSING OF WATER SUPPLY AND WASTEWATER

TREATMENT SYSTEM OPERATORS

Subchapter 1. Water Supply and Wastewater Collection and Treatment Systems; Examining and Licensing of Operators

N.J.A.C. 7:10A-1.1 sets forth the scope and construction of the rules.

N.J.A.C. 7:10A-1.2 sets forth the definitions of terms used in the chapter.

N.J.A.C. 7:10A-1.3 establishes the duties, functions, membership and term requirements of the Board of Examiners.

N.J.A.C. 7:10A-1.4 describes the frequency and general content of the licensing examinations.

N.J.A.C. 7:10A-1.5 establishes the duties, functions, membership and term requirements of the Advisory Committee on Water Supply and Wastewater Licensed Operator Training.

N.J.A.C. 7:10A-1.6 describes the license application procedures.

N.J.A.C. 7:10A-1.7 provides that a license of the appropriate classification will be issued to any applicant who passes the examination and pays the requisite application fee.

N.J.A.C. 7:10A-1.8 establishes the fees for licenses. The existing fees have remained unchanged since 1984. The Department is proposing to increase the fees associated with the application, initial and annual licensing, and late renewal fees. The increases are required to recover the costs of administering the program.

The budget for fiscal year (FY) 2007 was based upon the staff allocation of 2.6 full time employees devoted to processing licensing applications, administering exams, providing support

to the Board of Examiners, and providing data and guidance to applicants, licensed operators, and facility owners. As discussed below, the Department anticipates that an additional full time employee will be required to administer the ongoing program.

The average salary cost for each position in the Office of Licensing and Exams is \$67,195.51. The Department of Treasury has established an employee benefit rate, including the rates for fringe, FICA and Medicare, of 33.15 percent in its OMB Circular Letter No. 08-12-OMB, Employee Benefits Reimbursement Rates, which can be found on the internet at <http://www.state.nj.us/infobank/circular/cir0812b.pdf>. By letter dated December 7, 2007 from the Department of Environmental Protection to the USEPA Financial Analysis and Oversight Service Center, the Department has established for State Fiscal Years 2008 and 2009 the amount of indirect costs as 20.29 percent of salary plus fringe benefits. In addition, approximately eight percent of the average salary is associated with the Department's operating budget. The operating budget includes printing/office supplies, other material and supplies, telephone, postage, information processing (software/LAN maintenance), professional services, other services (Division of Law and Public Safety charges, Office of Administrative Law charges, and training), maintenance, equipment, transportation and information processing equipment, and the like. Taking into account the salary cost, fringe benefits, indirect costs and operating budget, the current budget for administering the water and wastewater licensed operators program is \$293,800.

In FY2007, the Department received \$198,905 in water and wastewater operator application and licensing fees. This revenue was \$94,895 less than the program costs. The Department is basing its analysis on FY2007, because that is the most recent year for which all revenues have been received. A breakdown of revenue received is below.

| <u>Water/Wastewater Operators Licensing</u> | <u>Fee</u> | <u>Revenue</u> |
|---|------------|----------------|
| Applications Reviewed – 1358 | \$35.00 | \$47,530 |
| Initial Licenses Issued - 523 | \$25.00 | \$13,075 |
| License Renewals – 6,915 | \$20.00 | \$138,300 |
| | Total : | \$198,905 |

The Department has also determined that Office of Licensing and Exams will require additional staff for information technology required for tracking and reporting of continuing education requirements, and addressing ongoing enhancements and maintenance to data systems pertaining to operator licensing and testing. The Department has determined that one additional staff person dedicated to these tasks, such as an administrative analyst, is necessary.

Given the State’s current budget constraints, an increase in the application and licensing fees is necessary to meet expected program costs for FY2009. Based upon the average staff salary of \$67,195.51 to administer the program in FY2007, the addition of one full time employee to the program (for a total of 3.6) will raise the cost of administering the water and wastewater licensed operators program to \$406,800. In the Department’s experience, the number of applications and license requests is consistent from year to year. If the number of applications and license requests stays the same, the revenue that the Department anticipates, based upon the proposed fees at N.J.A.C. 7:10A-1.8, is as follows.

| <u>Water/Wastewater Operators Licensing</u> | <u>Fee</u> | <u>Revenue</u> |
|---|------------|----------------|
|---|------------|----------------|

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| | | |
|-------------------------------|---------|-----------|
| Applications Reviewed – 1358 | \$70.00 | \$95,060 |
| Initial Licenses Issued - 523 | \$50.00 | \$26,150 |
| License Renewals – 6,915 | \$50.00 | \$345,750 |
| | Total: | \$466,960 |

The Department proposes to raise the fee for late license renewal from \$10.00 to \$20.00. Because the Department receives so few late license renewal requests, the revenue from this fee was not included in the anticipated revenue figures. However, the Department proposes to increase the late fee in order that it acts as a deterrent to late filing.

The difference between the anticipated budget and anticipated revenue is \$60,160, which will be used to address technical enhancements and equipment maintenance for computer systems related to operator licensing and testing.

N.J.A.C. 7:10A-1.9 provides the criteria, including continuing education requirements, for license renewal. Proposed amendments will limit the number of credit hours in any single area of study that a licensed operator may apply toward the TCH requirements. The Department has found that some licensees will take the same course or seminar several times in a licensing cycle, or attempt to satisfy the TCH requirement by concentrating their courses in a single area of study. The Department proposes to limit the number of TCHs that may be completed in a single area of study, in order that the licensee obtain training in a range of topics. Proposed new N.J.A.C. 7:10A-1.9(f) specifies that as part of the continuing education requirements, the Department will not accept more than one-third of the required training contact hours (TCHs) accumulated for the attendance requirement to be in safety training. In addition, as part of the

continuing education requirements, the Department will not accept TCHs from the same course completed within the three year training period specified in N.J.A.C. 7:10A-1.9(d). This will help ensure that the licensed operator has received adequate and appropriate continuing education needed to keep current on new developments in water and wastewater conveyance or treatment.

Proposed new N.J.A.C. 7:10A-1.9(b)2 imposes a late fee if a licensee does not renew his or her license by the renewal date. The existing rules provide for a late fee in N.J.A.C. 7:10A-1.7(a)4; however, the rules do not specify what triggers the fee.

Proposed new N.J.A.C. 7:10A-1.9(g) provides an automatic extension of the renewal date for a licensee who is in the military and who was deployed or on active duty and unable to renew his or her license on the renewal date. The renewal date will be extended for 60 days following the end of deployment or active duty. In order to receive the extension, the licensee would submit documentation along with his or her license renewal. Military personnel who require additional time to renew or to complete TCHs would submit a request under proposed (h) through (j).

Proposed (h) through (j) will allow the Department to extend the license renewal date or time period for completing TCHs for an operator who has a medical condition or other hardship. The licensee must submit documentation evidencing that circumstances precluded him or her from completing the renewal or TCH requirements. The Board will review the submission and decide on a case by case basis. As a result, the licensee will not risk the lapse of his or her license while the licensee is not in a position to renew it, or complete training requirements. The licensee will not incur a late fee, because the license will not have lapsed.

If, however, the individual contributes to the circumstances that require the extension, the request will be denied. Merely ignoring the renewal deadline or the deadline for completing TCHs would not constitute grounds for the hardship extension. Nor would an extended delay following the end of the circumstances that constitute a hardship or extraordinary circumstance. For example, if a person recovers from an extended illness, but waits an additional six months to apply for the hardship extension, he or she could be deemed to have created a portion of the circumstances, and the extension could be denied. The licensee should have applied for the extension shortly after he or she recovered, when the exceptional circumstance ceased.

Proposed (k) stipulates to those licensees who have received a denial of a request for an extension of the license renewal date that they may appeal the decision pursuant to the procedures outlined in N.J.A.C. 7:10A-2.8.

N.J.A.C. 7:10A-1.10 describes the circumstances under which a licensed operator is required and sets forth the exemptions to those requirements. Proposed amendments to N.J.A.C. 7:10A-1.10(c)2 relate to the exemption for industrial treatment systems for stormwater runoff. Under the proposed amended rule, a facility that is not otherwise required by N.J.A.C. 7:10A to have a licensed operator must have one, if the facility's NJPDES permit specifies that such an operator is required. This amendment is necessary because the Department has developed industry-specific NJPDES general permits for stormwater runoff. Facilities subject to industry-specific NJPDES general permits for stormwater runoff may require active treatment of the stormwater runoff to meet NJPDES discharge limits and, as such, require a licensed operator to ensure the proper operation and maintenance of the treatment works.

Proposed amended N.J.A.C. 7:10A-1.10(g)2 contains contact information for requesting specific licensed operator exemptions.

Proposed amended N.J.A.C. 7:10A-1.10(h) requires a licensed operator who wishes to serve as the licensed operator for more than 10 very small water systems (VSWS) to demonstrate to the Department that he or she is able to comply with these rules. A recent Department review has found that those systems having an operator who is serving as the operator for more than 10 VSWS facilities have a significantly higher number of Federal and State Safe Drinking Water Act violations than other systems. The proposed amendments will provide the Department information on operators who operate more than 10 VSWS, including the amount of time for the proper operation, maintenance and reporting for each facility. The Department will consider the amount of time that it takes the operator to travel among the VSWS, the time the operator anticipates in his or her schedule that the proper operation of each VSWS will require, and the compliance history of the operator's VSWS. Repeated violations at the operator's existing VSWS would indicate that the operator may be unable to properly operate additional systems. A licensed operator who already operates more than 10 VSWS must submit a written demonstration to the Department by March 31, 2009.

N.J.A.C. 7:10A-1.11 provides the conditions by which the Department may issue licenses, without an examination, to such persons who hold valid current licenses in a State, country or territory that recognizes the validity of New Jersey licenses.

N.J.A.C. 7:10A-1.12 describes the duties and recordkeeping requirements for which a licensed operator will be responsible. Proposed amended N.J.A.C. 7:10A-1.12(a)1 requires that the operations and maintenance procedures shall be updated within 30 days after any change to the system that substantially changes the operation and/or maintenance procedures. The proposed amendment also describes the minimum requirements for operation and maintenance

procedures. This proposed amendment is related to the proposed amendment at N.J.A.C. 7:14A-6.12, discussed below.

Proposed amended N.J.A.C. 7:10A-1.12(a)2i identifies the minimum duties a licensed operator shall perform for proper operation and maintenance of the system. The Department also proposes to amend N.J.A.C. 7:10A-1.12(d) to require public water treatment system or public non-community surface water treatment system (T class) operators to conduct routine inspections of wells or surface water sources and watersheds to identify potential sources of contamination. Proposed new N.J.A.C. 7:10A-1.12(e)3 requires public water distribution system (W class) operators shall periodically flush distribution system using hydrants and blow-off valves. The proposed amendments at N.J.A.C. 7:10A-1.12 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.

N.J.A.C. 7:10A-1.14 describes the types of water and wastewater systems that require a licensed operator and provides the method to classify those systems. The systems include public wastewater treatment systems (S), industrial wastewater treatment systems (N), public water treatment systems or public non-community surface water treatment systems (T, VSWS), industrial wastewater treatment systems (N), public wastewater collection systems (C) and public water distribution systems (W, VSWS).

N.J.A.C. 7:10A-1.15 describes the criteria an applicant must meet in order to take the examination for each class of license. Proposed amended N.J.A.C. 7:10A-1.15(a)4 limits an applicant to three attempts to pass an examination, before requiring the applicant to retake the appropriate training course in the subject matter pertaining to the license.

Subchapter 2. Civil Administrative Penalties, Injunctive Relief, Suspension and Revocation of Operator's License, Denial of an Application to Renew a License and Requests for Adjudicatory Hearings

N.J.A.C. 7:10A-2.1 sets forth the purpose of the subchapter, which is to establish the procedures by which enforcement action will be taken for violations of this chapter.

N.J.A.C. 7:10A-2.2 provides that an administrative order may be issued for any violation of this chapter. An order may be issued to assess an administrative penalty, suspend or revoke an operator's license or direct a person to comply with or cease violation of any provision of this chapter.

N.J.A.C. 7:10A-2.3 provides for administrative penalties. This section establishes the penalty amounts for specific classes of violations, the procedure the Department will follow to assess any penalty and the factors the Department will consider in the settlement of any claim for a penalty.

N.J.A.C. 7:10A-2.4 provides the terms and conditions by which the Department will suspend an operator's license and provide notice that a licensee may request an adjudicatory hearing to appeal the suspension.

N.J.A.C. 7:10A-2.5 sets forth those violations which may result in the Department's revoking an operator's license, the terms and conditions under which the Department may deny an application to renew a license, and the right to request an adjudicatory hearing where a person has received notice of the Department's intent to revoke or deny an application to renew a license.

N.J.A.C. 7:10A-2.6 makes it clear that any operator whose license has been suspended, revoked, or for whom a decision has been made not to renew a license, is prohibited from conducting any activities that are authorized by that license.

N.J.A.C. 7:10A-2.7 provides the procedure that the Department will follow when it issues an administrative order, assesses penalties, suspends or revokes an operator's license and/or denies an application to renew an operator's license.

N.J.A.C. 7:10A-2.8 establishes the procedures that a licensee must follow in order to request an adjudicatory hearing to appeal an administrative order issued, penalty assessed, notice of suspension or revocation of license, or Administrative Decision not to renew an operator's license.

N.J.A.C. 7:10A-2.9 describes other enforcement actions available to the Department, such as seeking injunctive relief or civil penalties. These actions may be in addition to or in lieu of any action that may be available pursuant to this chapter.

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subchapter 6. Conditions Applicable to All NJPDES Permits

N.J.A.C. 7:14A-6.12 Operation, maintenance and emergency conditions

N.J.A.C. 7:14A-6.12(c) refers to operation and maintenance manual (O&M) requirements. The manual must be complete, up to date, and available on site at its associated treatment works. The operation of treatment works governed by N.J.A.C. 7:14A-6.12 requires either an S or N class of licensed operator in accordance with N.J.A.C. 7:10A-1.10. The

Department is proposing to amend N.J.A.C. 7:14A-6.12(c) to be consistent with proposed amended N.J.A.C 7:10A-1.12, which specifies in greater detail the minimum requirements of a written O&M procedures, usually in the form of an O&M manual. The proposed amendments further identify the contents of an O&M manual and require updating the O&M manual within 30 days after a change in the treatment works design, construction, operation or maintenance that substantially changes the treatment works operation and maintenance procedures.

Social Impact

N.J.A.C. 7:10A, as proposed for readoption with amendments, will continue to have a positive social impact. The rules governing the licensing of water supply and wastewater operators are an essential part of the Department's efforts to protect public health and the environment by assuring that defined facilities which provide drinking water or which treat and dispose wastewater are operated by individuals with adequate education, training and experience and in a manner which complies with minimum safety standards.

The rules proposed for readoption with amendments establish specific standards and requirements for licensed operator duties, including recordkeeping and reporting, which ensure the availability to the Department of necessary onsite information while providing the owner of the facility and the operator essential information on the proper operation and maintenance of the system.

The rules require all community and nontransient noncommunity water systems to have licensed operators. These rules will have a positive social impact because consumers at the approximately 620 public community water systems and approximately 877 public nontransient

noncommunity water systems are provided water from a facility under the supervision of a licensed operator, who is directly responsible for public health and safety. A Department review in February 2008 showed that this program continues to be a success. Less than one percent of the affected water systems are out of compliance with the licensed operator requirement.

N.J.A.C. 7:10A-2 provides the procedures by which the Department will take enforcement action in response to violations of this chapter and provides the procedures to be followed by an operator in response to such enforcement actions. Its provisions, which detail the factors that the Department may use to raise or lower a penalty, will have a positive social impact by allowing the Department to consider and address the circumstances of each specific case before assessing a final penalty.

The proposed amendments to N.J.A.C. 7:14-6.12(c) should have a positive social impact because they will make the operator requirements for treatment works consistent with proposed amended N.J.A.C 7:10A-1.12, which specifies in greater detail the minimum requirements of written O&M procedures and specifies a time period for updating the O&M manual. This will help ensure the proper operation and maintenance of such facilities.

Economic Impact

N.J.A.C. 7:10A, as proposed for readoption with amendments, will continue to impose the current requirement that defined public water treatment and distribution systems and wastewater collection and treatment systems employ licensed operators, unless exempted. In addition, the rules continue to require all community and nontransient noncommunity public water systems to employ licensed operators. This requirement is necessary to comply with the United States Environmental Protection Agency (USEPA) February 5, 1999 "Final Guidelines

for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems."

A licensed operator is required to be in attendance at a system, anywhere from just several hours a month to 35 hours a week (a full time operator), depending on system complexity. It is estimated that for less complex systems, where an operator is needed for only several hours per month, an operator may charge from \$100.00 to \$400.00 a month. For more complex systems, depending on facility classification, a system's cost to employ an operator can range from approximately \$25.00 to \$65.00 an hour. The Department recognizes these operational costs for affected systems. However, these costs are necessary to ensure that customers of any public community water system or public nontransient noncommunity water system are provided with an adequate supply of safe potable drinking water and that customers of wastewater treatment and conveyance systems have their wastewater removed and treated to ensure public health and environmental standards.

The rules proposed for readoption with amendments include the requirement that the operators update the facility's O&M manual if there has been a substantial change to the system that warrants a change to the manual. In most instances, the manufacturer of the facility's equipment will supply O&M guidelines for each piece of equipment purchased. Accordingly, there should be no cost to the facility or the operator.

The rules proposed for readoption with amendments will continue to require testing and training. The cost of training courses are paid to outside vendors or educational institutions, not to the Department. The vendors or educational institutions charge tuition of approximately \$299.00 to \$1,125 for the 180-hour introductory course needed to obtain a license. The Department has a program to reimburse these training expenses incurred by individuals seeking

certification as a water licensed operator. In addition, the Department established the VSWS license classification in order to minimize the cost in time and money needed for owners and employees of certain public community water systems and public nontransient noncommunity water systems to become licensed operators. The course is approximately 12 hours, and the course providers charge prospective licensees approximately \$25.00. This license classification has less stringent experience, training and testing requirements than either the T or W license. The VSWS license is valid only for those public community water systems without treatment and those nontransient noncommunity water systems that have either no treatment or relatively simple treatment.

The USEPA required all states to comply with its February 5, 1999, "Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Water Systems," by February 5, 2001 or the USEPA would withhold 20 percent of a state's Drinking Water State Revolving Fund (DWSRF) allocation. On June 22, 2001, the USEPA determined that New Jersey's licensing program met those guidelines. This determination not only gives the Department a full allocation of its DWSRF funding, but also allows access to over \$2.5 million dollars in the Federal expense reimbursement grants program that provides applicants with funds for the costs of training and certification for persons operating community and nontransient noncommunity public water systems serving 3,300 persons or fewer. The Department continues to use this money to pay for the cost of VSWS training, the initial license application fee and the initial license fee for those persons pursuing VSWS licensure.

The rules proposed for readoption with amendments also include the requirement that all licensed operators obtain continuing education (in the form of Training Contact Hours (TCHs))

for license renewal. The amount of training required varies with the license classification level. The higher the license level the more TCHs needed. The continuing education requirement was part of the USEPA guidelines for water operator certification programs. In order to defray continuing education training costs incurred by operator licensees, the Department has entered into agreements with Rutgers University's State Operator Training Center, the New Jersey Section of the American Water Works Association, and the New Jersey Water Association to provide free or reduced-cost training seminars.

In addition, licensed operators will incur the increased fees, as discussed in the Summary above. The fee that must be submitted with an application for a license is proposed to increase from \$35.00 to \$70.00. If the application is approved, the initial license will cost \$50.00, an increase from \$25.00 under the existing rules. The annual fee for a license is proposed to cost \$50.00, rather than \$20.00 under the existing rules. If a licensee does not timely submit his or her license renewal, there is a proposed additional fee of \$20.00, increased from \$10.00 under the existing rules. As discussed in the summary above, in FY2007, \$198,905 in fees were collected by the Department. When enacted, the Department anticipates the proposed increase in fees will generate \$466,960, which will help meet the Department's expected program costs for FY2009.

The proposed amendments to N.J.A.C. 7:14-6.12(c) will have no economic impact. The proposed amendments to N.J.A.C. 7:14A-6.12(c) do not change the NJPDES requirement for a licensed operator, the requirement to provide and O&M manual or to update the O&M manual. Therefore, there will be no additional costs as a result of the proposed amendments.

Environmental Impact

N.J.A.C. 7:10A, as proposed for readoption with amendments, will continue to have a positive environmental impact within the State by assuring that those water supply and wastewater systems that are covered by the rules are operated by trained, experienced, licensed personnel and run in a manner consistent with accepted public health, environmental and safety standards. The rules require that licensed operators have direct responsible charge of all community and nontransient noncommunity public water systems, which increases consumer confidence regarding water quality at these systems. In addition, the requirement of continuing education for operator license renewal will help ensure that New Jersey's operators receive ongoing training in the regulatory, technical and safety requirements needed to understand the public health reasons for drinking water and environmental standards and properly operate water and wastewater systems.

The proposed amendments to N.J.A.C. 7:14-6.12(c) will have no environmental impact.

Federal Standards Statement

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 rules proposed for readoption, 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 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.

Jobs Impact

N.J.A.C. 7:10A, as proposed for readoption with amendments, will continue to require that both water and wastewater treatment or conveyance systems be operated by a licensed operator, unless exempt.

There are approximately 740 wastewater collection systems that require “C” type of licensed operators, approximately 470 industrial wastewater treatment system that require “N” type of licensed operators, approximately 670 sanitary wastewater treatment systems that require “S” type of licensed operators, approximately 650 potable water treatment systems that require a “T” type licensed operator, approximately 420 potable water distribution systems that require a “W” type of licensed operator, and approximately 830 small community water systems or public noncommunity water systems that require a “VSWS” type of licensed operator. The Department anticipates that with the readoption of these rules with amendments, approximately 4,400 employment opportunities for qualified licensed operators will continue, remaining consistent with the number of facilities requiring a licensed operator.

The Department does not anticipate that the proposed amendments to N.J.A.C. 7:14-6.12(c) will have an impact on jobs or employment in the State.

Agriculture Industry Impact

N.J.A.C. 7:10A, as proposed for readoption with amendments, will continue to affect two agricultural businesses in the State of New Jersey. Both of these firms are public nontransient noncommunity water systems with no treatment on their wells. These systems are classified as VSWS. As described previously, VSWS license requirements are much less stringent than the requirements for more complex water systems.

The Department does not anticipate that the proposed amendments to N.J.A.C. 7:14-6.12(c) will have an impact on the agricultural industry in the State.

Regulatory Flexibility Analysis

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed rules would impose upon small businesses.

N.J.A.C. 7:10A, as proposed for readoption with amendments, require that all community and nontransient noncommunity water systems have licensed operators. The rules also apply to systems engaged in the collection and treatment of liquid waste or wastewater. In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that approximately 350 wastewater systems may be considered small businesses. Approximately 480 public water systems affected by these rules are classified as small businesses. Of these 480 small businesses, approximately 60 are public community water systems and 420 are public nontransient noncommunity water systems. Over 90 percent of these public water and wastewater systems require a Class 1, Class 2 or VSWS licensed operator, which are employed on a part-time basis. Small businesses will incur a cost for complying with the rules proposed for readoption with amendments, as licensed operators must be employed to operate the systems.

In order to ease the added cost of employing a licensed operator, the Department does have a VSWS license, which applies to many of these regulated water systems. As outlined in the Economic Impact above, the VSWS license is designed to ease the cost and training requirements for obtaining a license to operate a public community water system without treatment or a public nontransient noncommunity water system, which has either no treatment or relatively simple treatment. The VSWS program is designed to allow owners and employees,

who have previously operated these facilities, to receive the appropriate training and testing to demonstrate the competency to operate these water systems in accordance with regulatory requirements. The USEPA expense reimbursement grant should also ease the costs for small businesses to comply with these requirements.

The Department believes that there are no initial capital costs for compliance with these rules. Annual compliance costs will involve the hiring of a license operator to manage the system. The size and complexity of the system will determine the number of hours a licensed operator needs to be in attendance each week. Small businesses will incur training and employment costs discussed in the Economic Impact, above. They will also incur the fees identified in the Economic Impact. The Department has designed the rules proposed for readoption to minimize adverse effects on small businesses.

The requirement for updating the O&M procedures will have a minimal impact on small business. To ensure that water and wastewater treatment or conveyance systems are operated and maintained, the current rules require that O&M procedures shall be readily available. The proposed amendments provide that the O&M procedures shall be updated within 30 days after any substantial change to the system that warrants a change in the operation and/or maintenance of the system. The impact on small business is only experienced when there is a substantial change to the system and the O&M procedures need updating to reflect current conditions. In most cases, manufacturers of equipment provide O&M guidelines for each piece of equipment purchased.

The Department believes that there is minimal impact on those operators who are responsible for over 10 VSWS water systems. The additional burden for such VSWS operators

will be to demonstrate to the Department that he or she is able to comply with N.J.A.C. 7:10A for each VSWS. However, no application fee is required.

The Department does anticipate that the proposed amendments to N.J.A.C. 7:4A-6.12 will have an impact on small businesses in the State. To ensure that wastewater treatment systems are properly operated and maintained, the current rules already have provisions that O&M procedures shall be readily available and shall be updated when there is a substantial change to the system and the O&M procedures need updating to reflect current conditions. The proposed rule states that the O&M procedures shall be updated within 30 days after any substantial change to the system that warrants a change in the O&M of the system. The impact of these proposed amendments is anticipated to be the same as the corresponding proposed amendments to N.J.A.C. 7:10A, discussed above.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act (N.J.S.A. 52:14B-4(a)), to describe the impact of the proposed rules on the achievement of Smart Growth and implementation of New Jersey State Development and Redevelopment Plan (State Plan).

N.J.A.C. 7:10A, as proposed for readoption with amendments, do not relate to the State's land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan.

Because the proposed rules will further the Department's efforts to protect water quality, the proposed rules support the conservation and environmental protection goals and policies underlying the State Plan.

The Department anticipates that the proposed amendments to N.J.A.C. 7:14A-6.12(c) will have no impact on the achievement of Smart Growth and implementation of the State Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:10A.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [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-1.8 Fees

(a) The fee schedule is based upon the approximate cost to the Department to process the action requiring the fee. All fees submitted to the Department are nonrefundable. The following fees

must be received by the Department before any action shall be taken on the matter requiring the fee:

- | | |
|------------------------|--|
| 1. Application Fee | [\$35.00] <u>\$70.00</u> |
| 2. Initial License Fee | [\$25.00] <u>\$50.00</u> |
| 3. Annual License Fee | [\$20.00] <u>\$50.00</u> |
| 4. Late Renewal Fee | [\$10.00] <u>\$20.00</u> |

7:10A-1.9 License renewal requirements

(a) (No change.)

(b) Each license holder shall renew his or her license by submitting a complete renewal application which shall include the nonrefundable annual license fee to the Division, for a new license prior to September 30, of each year.

1. (No change.)

2. **A licensee who does not submit his or her renewal application prior to the renewal date shall be subject to a late renewal fee.**

(c) – (e) (No change.)

(f) As part of the license renewal requirements specified in (d) above, the Department shall accept only up to one third of the required TCHs per license classification for completion of

safety training. In addition, the Department shall not accept TCHs for the same course completed within the time period specified in (d) above.

(g) The Department shall extend the renewal date of the license of any licensee in the military service of the United States, of the State of New Jersey or of another state, who is deployed or ordered to active duty by Federal or State authorities, until 60 days following the end of such deployment or active duty, to allow the licensee an opportunity to renew his or her license, as required by this section. The licensee shall demonstrate that he or she was deployed or on active duty by providing the Department a copy or copies of the executed deployment and/or activation orders, or a letter from the licensee's commanding officer, on appropriate letterhead, and providing the information required, at the time the licensee submits his or her renewal application.

(h) A license holder who fails to renew his or her license within the time period set forth in this section, or complete his or her TCHs in accordance with (d) above, due to a medical condition or other hardship, may request an extension of his or her license renewal date in accordance with (i) through (k) below, to allow him or her to renew the license without a late fee, and complete the required TCHs.

1. The written request, along with any supporting documentation, shall be submitted to:

New Jersey Board of Examiners

c/o NJDEP Examinations & Licensing Unit

P.O. Box 441

Trenton, New Jersey, 08625-0441

2. The request shall:

i. Explain in detail why the extension of the license renewal date is needed, including a statement of the type and the nature of the medical condition or hardship that prevented the timely renewal of the license or completion of the TCHs; and

ii. Provide appropriate documentation as necessary to support the request for the extension.

(i) The Department shall approve an extension request under (h) above only if it determines that the request and documentation demonstrate that:

1. By reason of a medical condition or other hardship, the applicant was precluded from renewing his or her license during the time period provided in this section, or complete his or her TCHs within the time period provided at (d) above; and

2. The circumstances supporting (h)1 above were not created by the applicant, and the approval of the extension will not unreasonably interfere with the orderly administration of this licensing program.

(j) The Department shall provide written notice to the applicant of its decision to approve or deny the request for extension of the renewal date.

(k) The denial of a request for an extension of the license renewal date may be appealed pursuant to the procedures outlined in N.J.A.C. 7:10A-2.8.

7:10A 1.10 Licensed operator required; exemptions

(a)-(b) (No change.)

(c) A licensed operator is not required for the following systems:

1. (No change.)

2. Industrial wastewater treatment systems for which [a NJPDES general permit] **an** authorization to discharge has been issued **under a NJPDES general permit** pursuant to N.J.A.C. 7:14A, for stormwater runoff only, **unless specifically required in the NJPDES general permit;**

(d)-(f) (No change.)

(g) Unless exempted pursuant to (g)1 through 3 below, class 3 treatment systems and class 4 treatment systems shall have the appropriate full time licensed operator. In addition, class 4 treatment systems should have a licensee possessing any valid treatment license within the appropriate system classification, physically present at the treatment system during that portion of each 24 hour period when the licensed operator is not present.

1. (No change.)

2. A written request for an exemption pursuant to this subsection shall be submitted to [the Examination and Licensing Unit] **the Division of Water Supply, P.O. Box 426, Trenton, New Jersey 08625-0426 for T systems and to the Division of Water Quality, P.O. Box 029, Trenton, New Jersey 08625-0029 for S and N systems,** and shall include the following:

i.-vi (No change.)

3. (No change.)

(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:

i. The name, address, and telephone number of the licensee;

ii. The name and Public Water System Identification Number (PWSID) of each VSWS that the licensee currently operates;

iii. The name and PWSID of each VSWS the licensee proposes to operate;

iv. The number of hours needed to operate each VSWS that the licensee currently operates and proposes to operate;

v. The approximate distance (in miles) of each system above from the licensee's primary residence; and

vi. A proposed monthly schedule, including the time spent at each VSWS and the estimated commute time to and from each VSWS.

2. A licensee serving as the licensed operator for more than 10 VSWS on January 1, 2009 shall submit the demonstration required under (h)1 above to the Department no later than March 31, 2009.

3. The Department will consider the compliance history for each of the operator's VSWS in determining whether the demonstration required under (h)1 is sufficient.

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

7:10A-1.12 Duties, records and reports

(a) At a minimum, all licensed operators shall perform the following duties and maintain the following information for each system operated:

1. Each licensed operator shall have readily available written detailed operations and maintenance (O&M) procedures. The O&M procedures shall be designed to maximize preventive maintenance and operating techniques that will ensure that the system operates in a manner that satisfies all laws, rules, regulations, license conditions and orders relating to this chapter. **The written O&M procedures shall be updated within 30 days after any substantial change to the system that warrants a change in the operation and maintenance of the system. The written O&M procedures shall include, at a minimum:**

i. Standard operating procedures, including a description of each major treatment unit and/or process;

ii. A plan for monitoring system process controls;

iii. An emergency operations plan, which addresses facility and system security, and includes a list of names and telephone numbers of facility personnel to be contacted in the event of emergency;

iv. A schedule of routine inspections and preventive maintenance;

v. For a public wastewater collection system (C class) or a public water distribution system

(W class), a system map;

vi. A sampling and/or water quality monitoring plan, if applicable to the facility;

vii. A schedule of routine meter readings, tests, and chemical use, if applicable to the facility; and

x. An inventory of equipment and supplies necessary to operate and maintain the system.

2. Each licensed operator shall:

i. Properly operate and maintain the system[;], **including, but not limited to, the following duties, as applicable:**

a. Monitor chemical feed and other system components;

b. Monitor effectiveness of treatment;

c. Develop a preventive maintenance plan consistent with the schedule specified in the O&M procedures;

d. Read meters and gauges, making adjustments as needed;

e. Make all process control and/or system component integrity decisions;

f. Assist the system owner in resolving any problems complying with applicable regulations and permits;

g. Collect or oversee the collection of samples in accordance with O&M procedures;

h. Store chemicals in locked areas with proper safety equipment;

i. Inform the system owner of any technical or equipment needs of the system;

j. Assess the efficiency of system components (such as pumps and valves); and

k. Respond in a timely manner to customer complaints.

ii.- v. (No change.)

3. -5. (No change.)

(b)-(c) (No change.)

(d) Each licensed operator or the owner of a Public Water Treatment System or Public Non Community Surface Water Treatment System (T class) shall:

1. Conduct inspections of wells or surface water sources to identify potential sources of contamination; and

2. [s] Submit the monthly Operating Report of Water Treatment Plants, on the form provided by the Department, to the Department before the 10th day of the month following each month for which the data is collected. The report shall include:

[1.] **i.** The plant identification number and classification;

[2.] **ii.** The month for which the report is provided;

[3.] **iii.** The name of the purveyor;

[4.] **iv.** Plant description and its location;

[5.] **v.** The pumpage quantity, both raw and treated water;

[6.] **vi.** Chemical data as specified on the form;

[7.] **vii.** The name and signature of the operator; and

[8.] **viii.** Information related to system processes.

(e) Each licensed operator of a Public Water Distribution System (W class) shall, at a minimum:

1. Exercise all major system valves for emergency interconnections annually; [and]
2. Notify the system owner of any line breaks, pumping failures or water quality complaints relating to treatment[.]; **and**

3. Periodically flush distribution system using hydrants and blow-off valves.

7:10A-1.15 Criteria needed to take the examination for each license

(a) Persons applying to take an examination for a Very Small Water System (VSWS), public wastewater treatment system (S), public water treatment system or public non-community surface water treatment system (T), public wastewater collection system (C) or public water distribution system (W) license shall meet the following requirements and possess the minimum education and experience requirements for the license applied for found in Table IIIA in (b) below.

1.-3. (No change.)

4. Any person who fails a particular examination three times shall not be permitted to take that examination a fourth time until that person submits proof of satisfactory completion of a course pertaining to the license being sought.

(b)-(d) (No change.)

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM
SUBCHAPTER 6. CONDITIONS APPLICABLE TO ALL NJPDES PERMITS

7:14A-6.12 Operation, maintenance, and emergency conditions

(a)-(b) (No change.)

(c) All permittees shall submit written verification to the Department that an operation and maintenance manual for the treatment works, including related appurtenances and collection system, has been or will be completed by the effective date or a compliance date included in a new or renewed NJPDES permit issued subsequent to May 5, 1997. A permittee does not need to submit the operation and maintenance manual to the Department, unless specifically directed to do so. When the Department directs a permittee to submit the operation and maintenance

manual, the Department shall state the reasons for requiring the submittal in a letter requesting the submittal. In the case of a NJPDES permit for stormwater discharges or separate storm sewers which expressly exempts permittees from this provision, the exemption shall apply only to the discharge authorized by the permit. Any affected permittee shall comply with the following operation and maintenance manual requirements:

1. (No change.)

2. The operation and maintenance manual shall be amended [whenever there is] **within 30 days after** a change in the treatment works design, construction, operations or maintenance which substantially changes the treatment works operations and maintenance procedures.

3. An operation and maintenance manual shall describe, at a minimum, the following:

i.-iv. (No change.)

v. A program of regularly scheduled inspection and maintenance;[and]

vi. (No change.)

vii. A plan for monitoring system process controls;

viii. A list of names and telephone numbers of facility personnel to be contacted in the event of emergency;

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ix. A sampling and/or water quality monitoring plan, if applicable to the facility;

x. A schedule of meter readings, tests, and chemical use, if applicable to the facility; and

xi. An inventory of equipment and supplies necessary to operate and maintain the system.

(d)-(e) (No change.)