

State of New Jersey
Department of Environmental Protection
Water Supply Administration
Bureau of Safe Drinking Water

Status Report
On the Implementation of
New Jersey's Capacity Development Program

September 2002

James E. McGreevey
Governor

Bradley M. Campbell
Commissioner

Dear Reader:

I am pleased to issue this report entitled “Status Report on the Implementation of New Jersey’s Capacity Development Program”. This report provides an overview of the efficacy and progress of New Jersey’s Capacity Development Program towards improving the technical, managerial, and financial capacity of public water systems in the State. The report shows that since the program first began, efforts undertaken have improved public water system compliance with the Federal and State Safe Drinking Water Act Regulations.

New Jersey is committed to ensuring that the public water systems of the State provide a safe and plentiful supply of drinking water. The procedures applied, whether technical assistance/guidance or enforcement actions, are designed to promote compliance and improve drinking water quality in New Jersey.

It is my hope that this report provides you with a better understanding of the Department’s efforts to provide residents of New Jersey with a safe and plentiful supply of drinking water.

Sincerely,

Bradley M. Campbell
Commissioner

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SECTION I

Capacity Development Program Goals:

To reduce or eliminate the number of existing public water system's in significant non-compliance with the Federal and State Safe Drinking Water Act regulations by ensuring adequate capacity.

To prevent the formation and operation of any water system (community and non-transient, non-community water systems) that may be non-viable by ensuring adequate capacity.

To provide public water systems with accurate, timely, and appropriate information in a straightforward manner to promote or maintain their technical, managerial, and financial capacity as necessary to ensure compliance with the Federal and State Safe Drinking Water Act regulations.

Introduction:

The New Jersey Department of Environmental Protection (NJDEP) has prepared this Report to provide the Governor and the public with an evaluation and update on the NJDEP's Capacity Development Program. This report is required by Section 1420(c)(3) of the Federal Safe Drinking Water Act and will be required every three (3) years hereafter.

This Report evaluates the extent to which the Program has been formulated and initially implemented consistent with the specific requirements and overall objectives of the Safe Drinking Water Act. This Report also evaluates how the NJDEP is integrating the Capacity Development Program together with other Safe Drinking Water Act initiatives and drinking water programs. These initiatives include the participation of the County Environmental Health Act Agencies, the NJDEP's Enforcement Program's Zero Tolerance Policy and the Drinking Water State Revolving Fund – Small Water System Technical Assistance Program.

Background:

The 1996 Amendments to the Federal Safe Drinking Water Act create a focus on enhancing and ensuring the technical, managerial, and financial capacity of public water systems to comply with the National Primary Drinking Water Regulations.

In accordance with Section 1420 (a) of the federal regulations each state shall have the legal authority to ensure that all new public community water systems and public non-transient, non-community water systems demonstrate adequate technical, managerial, and financial capacity. In New Jersey, Assembly Bill No. 2615 was signed into law on August 2, 1999 (P.L.1999 Chapter 176). This legislation amended the New Jersey Safe Drinking Water Act (N.J.S.A. 58:12A) to give New Jersey explicit legal authority to require new community and non-transient non-community water systems to demonstrate capacity. Consequently, New Jersey adopted a new rule at N.J.A.C. 7:10-13 that establishes the requirements to assure that all new public community and non-transient, non-community water systems have adequate capacity. The effective date of the rule was the date of publication in the New Jersey Register on August 21, 2000. The regulations of N.J.A.C. can be viewed at www.state.nj.us/dep/watersupply/nreg.htm. Prior to the effective date of these regulations the NJDEP adopted an interim policy, effective on October 1, 1999, to implement capacity requirements for new water systems.

In accordance with Section 1420 (c) of the Federal Safe Drinking Water Act regulations each state is required to develop and implement a strategy to assist existing systems in acquiring and maintaining capacity. The United States Environmental Protection Agency (USEPA) approved New Jersey's Capacity Development Strategy on September 28, 2000. Since its approval, New Jersey has been implementing its capacity development strategy. The Strategy can be viewed at www.state.nj.us/dep/watersupply/news.htm.

The Drinking Water State Revolving Fund serves as the primary source of funding for implementing the NJDEP's capacity development strategy. The NJDEP is allowed to set aside up to 10% of each capitalization grant for State program management activities, which includes establishing and funding the Capacity Development Program. The NJDEP has submitted workplans to the USEPA for \$570,000.00 from previous grant applications and has proposed to utilize \$332,400 from the Federal Fiscal Year 2003 allotment.

Also, the NJDEP is allowed to set aside 2% of each capitalization grant for small water system technical assistance and 15% for activities to assist development and/or implementation of source water protection, well head protection, and capacity development, including financial and technical assistance. Although the Drinking Water State Revolving Fund provides the NJDEP with financial support to establish and implement capacity development programs, the USEPA can withhold funds for not meeting required deadlines.

States failing to comply with any provision of Section 1420 of the Federal Safe Drinking Water Act regulations are subject to lose up to 10% of the Drinking Water State Revolving Fund monies in FFY 2001, 15% in Federal Fiscal Year 2002, and 20% in each fiscal year thereafter. The failure to issue the states' Capacity Development Program Report to the Governor, as required by Section 1420(c)(3) of the Safe Drinking Water Act, by September 30, 2002 is grounds for a 20% withholding from the states' Drinking Water State Revolving Fund allotment.

SECTION II

Implementation – Description of Activities:

This section will review the activities conducted to date to implement the Capacity Development Program.

- a. Section 1420(b)(1) of the Federal Safe Drinking Water Act, requires that the NJDEP periodically submit to the USEPA a list of community water systems and non-transient, non-community water systems with a history of significant non-compliance. The first such list was due by August 6, 1997.

On July 30, 1997, the NJDEP submitted such a list containing 55 community water systems and 92 non-community water systems.

- b. Section 1420(a) of the Federal Safe Drinking Water Act requires the NJDEP to obtain the legal authority to assure that all new water systems demonstrate adequate capacity.

On August 2, 1999, the New Jersey Safe Drinking Water Act was amended at N.J.S.A. 58:12A-4c(5)(b) to give the NJDEP explicit authority to require new systems to demonstrate adequate technical, managerial, and financial capacity.

- c. By October 1, 1999, the NJDEP must have a capacity development program in place for new systems.

On September 20, 1999, the NJDEP submitted a plan to the USEPA for ensuring that new community and non-transient, non-community water systems demonstrate adequate capacity. As part of the plan, New Jersey promulgated rules requiring TMF capacity for new systems that were adopted on July 31, 2000. The rules (N.J.A.C. 7:10-13) were published in the New Jersey Register on August 21, 2000. The operative date of the rule was the date of publication in the state register.

- d. Section 1420 (c) of the Federal Safe Drinking Water Act, requires that the NJDEP establish a capacity development strategy for all existing public water systems by October 2000.

On August 3, 2000, the NJDEP's capacity development strategy for existing water systems was submitted to the USEPA. The Strategy was approved by the USEPA on September 28, 2000.

- e. By August 2000, the NJDEP must submit a revised list of public water systems in significant non-compliance to the USEPA.

On August 1, 2000, the NJDEP submitted a revised list of water systems in significant non-compliance to the USEPA containing 51 community and 70 non-community water systems.

- f. By August 6, 2001, the NJDEP must submit a report to the USEPA that details the success of enforcement mechanisms and initial capacity development efforts in helping the public water systems listed as having a history of significant non-compliance to improve their technical, managerial, and financial capacity.

On August 2, 2001, the NJDEP submitted this report to the USEPA. This report was prepared in accordance with the requirements of Section 1420(b)(2) of the Federal Safe Drinking Water Act.

- g. In accordance with the NJDEP's approved Capacity Development Strategy, a Strategy List is required to be developed which identifies those public water systems requiring capacity development. The Capacity Development Strategy identifies the criteria, which was used to identify and prioritize the public water systems. Public water systems were assessed using the following indicators: population served, type of public water system, significant non-compliance status, maximum contaminant level violations, monitoring and reporting violations, formal enforcement actions, and inspection deficiencies. Using the aforementioned criteria, systems were ranked as low, medium, or high. Systems falling into the High category are recognized as not having adequate capacity and consequently, require capacity development.

This report is entitled "Report on Strategy List of Public Water Systems" and was prepared in December 2001. The Strategy List identifies fifteen (15) community water systems and nineteen (19) non-community water systems for a total of 34 systems requiring capacity development. Typically, water systems fail to comply with the Safe Drinking Water Act

regulations due to the lack of expertise, lack of planning, lack of knowledge and/or the lack of revenue. At that time, New Jersey had listed 4,223 public water systems in its inventory. This inventory included 606 community water systems, 915 non-transient, non-community water systems, and 2,702 transient, non-community water systems. Of the 606 public community water systems, 203 appeared on the list of which 15 systems were ranked as High priority, 53 were ranked as Medium Priority, and 135 were ranked as Low priority. Of the 3,617 non-community water systems, 578 appeared on the list of which 19 were ranked as High Priority, 229 were ranked as Medium Priority, and 330 were ranked as Low priority. The Capacity Development Program intends to address all "High" ranked systems in the order specified in the Strategy. That is, to address all community water systems, then to address all non-transient, non-community water systems that are daycare centers, schools, healthcare/medical facilities, and last to address transient, non-community water systems that are campgrounds and restaurants/deli.

- h. In accordance with the NJDEP's approved Capacity Development Strategy, the Program will perform capacity evaluations and provide technical assistance to promote the capacity development of water systems ranked "High" on the Strategy List.

The Strategy List identified 34 public water systems that have or will receive a comprehensive capacity evaluation and improvement plan. These evaluations began in July 2002. Of the 34 system that ranked "High", nine (9) community water systems are currently under evaluation for technical, managerial, and financial capacity. The remaining water systems will be addressed starting in October 2002. Upon completion of their evaluation, each public water system will receive a written report stating the findings and appropriate actions and/or recommendations to achieve and maintain compliance. In addition, the availability of low interest loans and/or grant monies will be identified as resources to promote their compliance.

The appropriate technical assistance will be provided to each public water system throughout the process of capacity development as necessary to assist them in achieving and maintaining compliance with the federal and state Safe Drinking Water Act regulations.

- i. In accordance with the NJDEP's approved Capacity Development Strategy, the Program will provide technical assistance to public water systems to promote their compliance with the Safe Drinking Water Act regulations.

Since 1999, activities have been taken to promote compliance of public water systems with the Safe Drinking Water Act regulations. In 1999, community water systems, a total of 615, were provided with system specific monitoring schedules. This effort carried over for calendar years 2000 and 2001. For calendar year 2002, the Capacity Development Program targeted all community water systems, a total of 620, and all non-transient, non-community water systems, a total of 935, to receive system specific monitoring schedules. Of the 1,555 water systems targeted for schedules, approximately 75% have been completed or 1,161 monitoring schedules. Since the Program activity of issuing system specific monitoring schedules the NJDEP has received many written and verbal notes of appreciation from various community and non-transient non-community water systems. These efforts assist public water systems in meeting the monitoring and reporting requirements of the Safe Drinking Water Act regulations and avoid violations. The NJDEP views the activity of establishing monitoring requirements as an essential task in promoting the compliance of public water systems with the federal and state Safe Drinking Water Act regulations.

- j. In accordance with the NJDEP's approved Capacity Development Strategy, the Program will conduct presentations on the goals and process of the Capacity Development Program.

The goals and process of the Capacity Development Program were thoroughly covered at continuing education seminars offered through Rutgers University. Presentations to licensed operators and water system owners/managers were held on November 30, 2000, January 30, 2001, February 14, 2001, January 8, 2002 and January 15, 2002. In addition, several presentations were provided at courses sponsored by New Jersey Water Association on December 5, 2001, February 5, 2002, February 13, 2002 and May 16, 2002. Also, the Capacity Development Program has sponsored several workshops with county health agencies to review the requirements of the Capacity Development Program as they apply to new non-transient water systems. The continuing education seminars and workshops will continue to be provided.

- k. In accordance with the NJDEP's approved Capacity Development Strategy, the Program will prepare a baseline report to be used for measuring improvements in public water system capacity over time.

The Baseline Report supports the Capacity Development Strategy by establishing a baseline to be used for measuring improvements in public water system capacity over time. Calendar year 1998 was selected for establishing the baseline because it represents a timeframe prior to the implementation of the Capacity Development Program. This report is entitled "Report on Baseline Assessment of Public Water Systems for Calendar Year 1998" and was prepared in July 2001.

- l. The NJDEP's Zero Tolerance Policy is another NJDEP initiative that supports the goals of the Capacity Development Program and has worked in helping to reduce the number of public water systems in violation.

In January 1999 an enforcement initiative referred to as the "Zero Tolerance" policy was implemented for safe drinking water monitoring and reporting violations. Under this policy, community water systems with any confirmed violations are issued formal enforcement actions with administrative penalties. This initiative has been effective in establishing a commitment from community water systems in meeting the requirements of the Safe Drinking Water Act regulations.

Despite having a program in place for many years with the County Environmental Health Act (CEHA) agencies for addressing drinking water violations, including a procedure for the assessment of penalties against chronic violators, the number of violations in the past was high and few penalty assessments were made state-wide. The NJDEP concluded that a more rigorous approach was necessary to ensure safe drinking water quality and over two years ago began a concerted effort to improve the overall enforcement program for the public non-community water systems. This enforcement effort, which started in early 1999, requires the CEHA agencies to 1) assess penalties against any violator determined to be in significant non-compliance on or after July 1, 1999, and 2) assess penalties for confirmed monitoring and reporting violations occurring after July 1, 2000. The July 1, 2000 date expands the "Zero Tolerance" policy to include public non-community water systems (transient and non-transient) and is designed to improve their level of compliance.

The Zero Tolerance policy has affirmed to public water systems that it is their responsibility to achieve and maintain compliance with the Safe Drinking Water Act regulations. In addition, it establishes that their failure to comply with the regulations results in mandatory enforcement actions and penalties by CEHA agencies and the NJDEP. With the adoption of the Zero Tolerance Policy, public water systems are likely to recognize the benefit of entering into a cooperative relationship with the NJDEP to improve their capacity and avoid formal enforcement actions and/or penalties.

- m. Violation evaluation and Small Water System Technical Assistance are other NJDEP initiatives that support the goals of the Capacity Development Program and have worked in helping to reduce the number of public water systems in violation.

Violation Evaluation

Since January 2000, the NJDEP has implemented a process to timely and individually evaluate monitoring and reporting violations generated by the automated compliance determination system. The process involves a comprehensive review of system inventory and data verification for all public water systems to ascertain the accuracy and status of violations.

Through this effort, a more accurate inventory is being maintained and water system owners are being advised of the violation(s) in a more timely manner so that corrective measures can be taken by willing owners.

Where appropriate, violations are returned to compliance or deleted when invalid due to data error. Systems are deactivated as public water systems due to classification changes, going out of business, changes in population served or tying into another public water system. Typically, the drinking water program individually evaluates each maximum contaminant level violation as they occur and the public water system is promptly advised of the requirements. Monitoring and reporting violations are routinely evaluated through the combined efforts of the drinking water program, the enforcement program and the delegated CEHA agencies. This effort has yielded significant reductions in the number of public water systems in significant non-compliance status.

Technical Assistance-Contracted Services

The 1996 Federal Safe Drinking Water Act amendments provided the NJDEP with Drinking Water State Revolving Fund monies for small public water system technical assistance. The NJDEP recognizes that small water systems (serving less than 3,300 people) make up a large portion of systems in significant non-compliance. This category of public water systems typically does not have the resources and more importantly the expertise of the larger systems and faces greater challenges in complying with the Safe Drinking Water Act regulations.

In July 2000, the NJDEP awarded a small water system technical assistance contract to the New Jersey Water Association. This assistance includes training sessions to help small water systems understand Safe Drinking Water Act regulations, and one-on-one onsite technical assistance for systems with compliance issues. Technical assistance is prioritized to those systems that are in significant non-compliance status or have repeated monitoring and reporting violations. Technical assistance whether provided by contract services or directly by the NJDEP is a critical component of the Capacity Development Strategy.

SECTION III

Evaluation – Efficacy of the Capacity Development Program:

This section will review the progress in meeting the objectives of the Capacity Development Program.

a. New System Approval & Disapproval

Community Water Systems

The NJDEP has added 15 new public community water systems to its inventory of public water systems since the effective dates of the interim policy (effective October 1, 1999) and the subsequent new rule (effective August 21, 2000) at N.J.A.C. 7:10-13. Two (2) systems received approval under the Interim Policy and two (2) systems received approval under the Rule. The remaining eleven (11) systems did not meet the definition of “new system” meaning that the community water systems were not newly constructed or required an expansion of their infrastructure to become a community water system and consequently did not require a technical, managerial, and financial review. Most new community water systems were a reclassification of an existing water system or the identification of a previously unregulated water system. To date, no new community water system proposals have been denied approval based on technical, managerial, or financial capacity requirements.

Non-Transient Non-Community Water Systems

The NJDEP added 39 new non-transient, non-community water systems to its inventory of public water systems between the effective dates of the interim policy (effective October 1, 1999) and the subsequent rule (effective August 21, 2000) at N.J.A.C. 7:10-13 and June 2001. New Jersey had intermittent success in implementing the technical, managerial, and financial requirements through the County Environmental Health Act (CEHA) agencies. The process of performing technical, managerial, and financial evaluations was not well documented by the CEHA agencies. Consequently, New Jersey began a concerted effort to improve the overall implementation of the Capacity Development Program and the approval of new non-transient, non-community water systems. This implementation effort started in August 2001 which required members of the Capacity Development Program to 1) visit each CEHA agency and provide training on performing technical, managerial, and financial evaluations, and 2) review the applicability of new systems which require capacity evaluations. This effort would continue until such time that the CEHA agency demonstrated proficiency in performing technical, managerial, and financial evaluations for new non-transient, non- community water systems.

The NJDEP added twenty-two (22) new non-transient, non-community water systems between the period of July 2001 through July 2002. Two (2) of the systems received approval under the Rule at N.J.A.C. 7:10-13. The remaining twenty (20) systems did not meet the definition of “new system” meaning that the non-transient, non-community water systems were not newly constructed or required an expansion of their infrastructure to become a non-transient, non-community water system and consequently did not require approval under the Rule at N.J.A.C. 7:10-13. Most new non-transient, non-community water systems were a reclassification of an existing water system or the identification of a previously unregulated water system.

The NJDEP's success in implementing the technical, managerial, and financial requirements through the CEHA agencies improved substantially during this timeframe. This improvement is attributed to the on-site workshops for the CEHA agencies. These workshops thoroughly covered the capacity requirements at N.J.A.C. 7:10-13 and the processing of capacity evaluations for applicable systems. In addition, the workshops reviewed how to determine the applicability of these regulations to new water systems. To date, no new non-transient, non-community water systems proposals have been denied approval based on the requirements at N.J.A.C. 7:10-13.

b. Progress in Improving Capacity of Existing Water Systems

Although some activities were implemented prior to approval of the NJDEP's Capacity Development Strategy in September 2000, most activities occurred after this date. As such, it may be too early in the process to truly evaluate the progress of the Program. Nonetheless, to evaluate the progress in improving the capacity of public water systems the NJDEP compared the findings of the 1998 Baseline Report to a similarly prepared report for calendar year 2001. This comparison indicates that there has been a significant reduction in the total number of water systems in significant non-compliance between 1998 and 2001. The total number of water systems in significant non-compliance recorded for 1998 was 77 (26 community water systems and 51 non-community water systems) compared to a total number of 39 (4 community water systems and 35 non-community water systems) as recorded for 2001. Most of the 39 public water systems are well on their way to being resolved. The number of public water systems in significant non-compliance identified for 2001 represents a relatively small percentage of the total number of public water systems, approximately 0.9 percent.

This comparison also indicates that there has been a major improvement in public water system compliance and a significant reduction in the number of systems in violation between 1998 and 2001. In 1998, the NJDEP's inventory of public water systems was 4,464 and consisted of 615 CWS, 962 NTNCWS and 2,887 TNCWS. In 2001, the NJDEP's inventory of public water systems was 4,223 and consisted of 606 CWS, 915 NTNCWS and 2,702 TNCWs. The number of public water systems with monitoring and reporting violations in 1998 was 1,769 compared to 831 in 2001. There was a 53 percent reduction of public water systems in violation of the monitoring and reporting requirements of the federal and state Safe Drinking Water Act regulations between 1998 and 2001.

As a result of the increased compliance with the monitoring and reporting requirements of the federal and state Safe Drinking Water Act regulations the number of public water systems monitoring has increased significantly. Hence, the increased monitoring inherently identifies water systems with potential water quality concerns not previously identified due to the lack of monitoring. This has naturally resulted in an increase in the reported maximum contaminant level violations. The number of public water systems with maximum contaminant level violations in 1998 was 260 compared to 396 in 2001. It is important to note that although a system incurs a maximum contaminant level violation it can still be in compliance with the regulations as long as the violation is addressed within one year of the violation in accordance with New Jersey's Safe Drinking Water Act regulations, N.J.A.C. 7:10-5.7. Typically, a public water system will address a maximum contaminant level violation by either providing treatment to remove the contaminant, connecting to another

public water system, replacing the existing source of water with a new source which meets all drinking water standards, or by demonstrating with analytical results that their current source of water no longer exceeds the maximum contaminant level.

The NJDEP attributes this improvement in public water system compliance to the successful implementation of the efforts and mechanisms detailed in this Report under the Capacity Development Program and the coordination of initiatives under the Enforcement Program and the Small Water System Technical Assistance Program. The Capacity Development Program is making progress in addressing non-compliance. There are areas that still need improvement, with the monitoring and reporting violations requiring the greatest improvement. It is anticipated that the collective efforts detailed in this Report will promote compliance and continue to reduce violations overtime.

In summary, the significant elements that have brought about a higher level of compliance are:

1. Zero Tolerance Policy
2. Violation evaluation
 - a. Improved data management
 - b. Maintenance of an accurate inventory of systems and the status/appropriateness of violations.
3. Monitoring Schedules
4. Technical Assistance
 - a. Contracted Services
 - b. By the NJDEP
5. Implementing the activities of the Capacity Development Strategy

Some observed challenges and barriers that limit the effectiveness of the Capacity Development Program are:

1. Need for additional staff to implement capacity development activities
2. Need to bring about a higher level of participation by public water systems
3. Need to coordinate with other drinking water programs and Agencies in promoting the Capacity Development Program.
4. Need to expand communications network (newsletters, pamphlets, notices, etc.)
5. Overcoming potential resistance from a public water system to a regulatory agency offering assistance.

APPENDIX A

Glossary of Terms

Capacity: is the ability to plan for, achieve and maintain compliance with the Federal and State safe Drinking water act regulations and the ability to reliably produce and deliver water meeting all applicable drinking water standards. Capacity is measured by evaluating the technical, managerial, and financial capabilities of the water system.

Technical Capacity: refers to the adequacy, operation, and maintenance of a water system's infrastructure (infrastructure includes the source water, treatment, storage and distribution network of the water system). Also refers to the ability of qualified personnel with technical knowledge to operate and maintain the system.

Managerial Capacity: refers to the expertise required of the personnel who administer the overall water system operations. This type of capacity also refers to the system's demonstration of clear ownership, proper organized staffing, and effective interaction with regulators and customers.

Financial Capacity: Refers to the monetary resources available to a public water system to support the cost of operating, maintaining, and improving the water system. This type of capacity also refers to the demonstration of sufficient revenues, credit worthiness and fiscal management controls.

Capacity Development: The process through which water systems can improve their technical, managerial, and financial capacity to ensure compliance with current and future Safe Drinking Water Act requirements.

Public Water System: A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. A public water system is either a community water system or a non-community water system. Non-community water systems are classified as either a non-transient or transient water system.

Community Water System: A public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Non-Transient, Non-Community Water System: A public water system that regularly serves at least 25 of the same persons per day more than six months in any given calendar year. Examples are schools, factories, offices, industrial parks, and major shopping centers.

Transient, Non-Community Water System: A public water systems that serves at least 25 transient persons for at least 60 days in any given calendar year. Examples are restaurants, campgrounds, and hotels.

Significant Non-Compliance: A term to define a system that has violated one or more National Primary Drinking Water Act Regulations repeatedly over an extended period of more than one monitoring period.

New Water System: For the purposes of the Capacity Development Program, includes both community water systems and non-transient, non-community water systems being newly constructed as well as systems which do not currently meet the definition of a public water system but expand their infrastructure and thereby grow to become a community water system or a non-transient, non-community water system.