

***NJDEP PWTA Amendments to N.J.A.C. 7:18 - The Regulations Governing the Certification of Laboratories and Environmental Measurements, Effective 9/16/02***

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**ENVIRONMENTAL PROTECTION  
DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL  
PROGRAMS**

**Regulations Governing the Certification of Laboratories and Environmental Measurements**

**Private Well Testing**

**Adopted Amendments:** N.J.A.C. 7:18-1.1, 1.7, 1.9, 2.4, 2.9, 2.11, 4.1, 4.6, 5.1, 5.6, 6.1, 6.4, 8.1, 9.1, 9.2 and 9.4.

Proposed: May 6, 2002 at 34 N.J.R. 1613(a)

Adopted: Bradley Campbell, Commissioner  
Department of Environmental Protection.

Filed: as R.d. with technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1E-1 et seq.; 13:1K-6 et seq., 26:2D-70 et seq.; 58:10-23.11 et seq., 58:10A-1 et seq., 58:12A-1 et seq., 58:12A-26 et seq.

DEP Docket No.: 09-02-04/306

Effective Date:

Expiration Date: June 11, 2006

The New Jersey Department of Environmental Protection (Department) is adopting amendments to N.J.A.C. 7:18, "Regulations Governing the Certification of Laboratories and Environmental Measurements." These adopted amendments and the adopted new rules at N.J.A.C. 7:9E, contained elsewhere in this New Jersey Register, are necessary to support the implementation of the Private Well Testing Act (PWTA), N.J.S.A. 58:12A-26 et seq., which was enacted into law on March 23, 2001.

N.J.A.C. 7:18 governs laboratory facilities, personnel, equipment and instrument calibration and maintenance, quality assurance/quality control, laboratory records, data reporting and maintenance, and other laboratory practices. The Department evaluates compliance with these standards through both in-house reviews of documentation maintained by environmental laboratories and on-site audits of environmental laboratories. Under the laboratory certification program, analytical results can only be accepted to establish compliance with the Department's rules if the environmental measurements are performed by a laboratory certified by the

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Department. To obtain and maintain its certification, a laboratory must meet the standards given in N.J.A.C. 7:18.

The adopted amendments to N.J.A.C. 7:18 specify the incorporation of the authority of the PWTA into N.J.A.C. 7:18, sampling and data submittal requirements, procedures for conducting a 48-Hour Rapid Gross Alpha Test and the reporting of the presence of fecal coliform, *E.coli* or nitrates above maximum contaminant levels to the client and local health authority.

The Department is concurrently adopting new rules at N.J.A.C. 7:9E entitled the Private Well Testing Act Rules. That adoption appears elsewhere in this New Jersey Register. The rules at N.J.A.C. 7:9E include definitions of words and terms used in the chapter; parameters to be tested in water samples; requirements for laboratories reporting analytical results and other sample-related information to the Department and to the client; notification procedures for the exceedance of certain drinking water standards, action levels or recommended upper limits; and confidentiality requirements. Consistent with the requirements of the PWTA, N.J.A.C. 7:9E requires that the testing of samples from those wells subject to the PWTA be conducted by a laboratory that is certified in accordance with the provisions of N.J.A.C. 7:18.

The proposed amendments to N.J.A.C. 7:18 and the proposed new rules at N.J.A.C. 7:9E were published in the New Jersey Register at 34 N.J.R. 1613(a) and 34 N.J.R. 1606 respectively on May 6, 2002. The comment period for the proposed amendments to N.J.A.C. 7:18 closed on July 5, 2002. 17 individuals commented on the proposal.

**Summary of Hearing Officer Recommendations and Agency Response:**

On Tuesday, June 4, 2002 and Thursday, June 6, 2002, the Department held public hearings on the proposed amendments to N.J.A.C. 7:18 as well as the new rules at N.J.A.C. 7:9E. Barker Hamill, Chief of the Bureau of Safe Drinking Water served as the hearing officer for both public hearings. Mr. Hamill recommended that the proposed rules be adopted with the changes described herein. Given that the public hearings addressed both the proposed amendments to N.J.A.C. 7:18 and the proposed new rules at N.J.A.C. 7:9E, the responses to comments relating to N.J.A.C. 7:9E are not addressed herein, but are addressed in the adoption to the Private Well Testing Act rules at N.J.A.C. 7:9E, which appear elsewhere in this New Jersey Register.

Interested persons may inspect the public hearing record or obtain a copy upon payment of the Department's copying charges, by contacting:

Karen L. Hershey, Esq.  
Office of Legal Affairs  
New Jersey Department of Environmental Protection  
P.O. Box 402  
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The PWTA, which becomes effective on September 14, 2002, applies to buyers, sellers and lessors of certain real property as follows:

1. Effective September 14, 2002, all contracts of sale for real property the potable water supply for which is a private well located on the property, or any other real property the potable water supply for which is a well that has less than 15 service connections or that does not regularly serve an average of at least 25 individuals daily at least 60 days out of the year, shall include a provision requiring, as a condition of the sale, the testing of that water supply for certain parameters. Closing of title on the sale shall not occur unless both the buyer and the seller have received and reviewed a copy of the water test results.

2. By March 14, 2004, the lessor of any real property the potable water supply for which is a private well for which testing of the water is not required pursuant to any other State law, shall test that water supply for certain parameters. Testing is required at least once every five years thereafter. Within 30 days after receipt of the test results, the lessor must provide a written copy of the results to each lessee of a rental unit on the property. The lessor must also provide a written copy of the test results to new lessees of rental units on the property.

Summary of Public Comments and Agency Responses

The following persons testified at the public hearings and/or provided written comments on the proposed amendments to N.J.A.C. 7:18.

1. Robert Barrett, Aqua Pro-Tech Laboratories
2. Christiana Cooke-Gibbs, Washington Township Health Department
3. Daniel N. Coronoto, Deputy Mayor, Hampton Township
4. Michael Furrey, Agra Environmental Services
5. Thomas Hines, QC Laboratories
6. Rob Hulit, Mount Holly Municipal Utilities Authority
7. Stephen Kroemer, Water Works Laboratory
8. Miriam Murphy, Tewksbury Township Environmental Commission
9. Jane Nogaki, New Jersey Environmental Federation
10. Norman Primost, New Jersey Ground Water Association
11. Willie Richter, Re/Max Realtors
12. Mark Riether, Morning Star Enterprises
13. David Speis, Accutest
14. David Speis, Environmental Laboratory Advisory Committee
15. Linda Tatro, Environmental Laboratory Advisory Committee
16. Richard Wilson, Frankford Township Board of Health
17. Phillip Worby, QC Laboratories

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The following is a summary of comments received and the Department's responses. The number(s) in parentheses after each comment corresponds to the commenter(s) listed above.

1. COMMENT: Several comments were received regarding the proposed definition of "authorized representative" and the use of persons other than those who are employees of a certified laboratory for the collection of samples under the PWTA. The commenters stated that the definition of the authorized representative is too broad and that samples should only be collected by an employee of a certified laboratory, unless those persons were certified by the State. The reasons provided for the objection are the lack of control the certified laboratories have over those collecting samples, the liability involved in accepting samples from third parties, that the certified laboratory does not have control authority for "authorized representatives" who collect samples, and, that the laboratories are subservient to the authorized representative as the supplier in a client/supplier relationship involving the exchange of monetary funds for services. A commenter suggested creating a sampler certification program modeled after the program the State established for swimming pools. (5,13)

RESPONSE: The PWTA specifically allows the collection of samples for conformance with the act by persons other than employees of a certified laboratory. Specifically, N.J.S.A. 58:12A-30.c.(4) states that, "The name of the employee or authorized representative of the laboratory who collected the well sample ...shall be included in the information submitted to the Department." Existing N.J.A.C. 7:18-9.1 contains specifications for a certified laboratory accepting regulatory samples that have been collected, preserved and handled by persons other than the laboratory, in order to provide reasonable assurance that the sample has been collected, preserved and handled in accordance with N.J.A.C. 7:18. The adopted amendments will serve to better ensure that samples are collected in accordance with the procedures contained in N.J.A.C. 7:18 and the applicable analytical methods. As currently stated at N.J.A.C. 7:18-9.1(c), if the laboratory is unable to obtain reasonable assurance that the applicable sampling methods have been followed for the samples they are receiving, "it shall not submit results of the analysis of the sample for regulatory purposes. The laboratory shall reject any such sample and request a new sample." Persons can be considered an "authorized representative" in conformance with these rules only where they are using procedures approved by the Department as indicated on the Annual Certified Parameter List (ACPL) of a certified laboratory as stated at adopted amendment N.J.A.C. 7:18-9.1(d). The Department will, however, evaluate the need for training of individuals for sampling procedures for PWTA sampling. If such a need becomes apparent, the Department will develop an appropriate sampling training program and offer it to interested participants. In addition, each laboratory has the discretion as to whether to appoint a person as its authorized representative.

2. COMMENT: The commenters questioned whether sufficient laboratory capacity exists to conduct the testing required by the PWTA. Some commenters stated that sufficient capacity exists and others stated that sufficient capacity may not be available. (9,16)

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RESPONSE: Currently there are over 150 laboratories certified in the Safe Drinking Water Program to conduct the various types of testing required by the PWTA. Over 30 of those laboratories are considered full service laboratories as they are certified in all PWTA testing categories, with the exception of the gross alpha. Many of these full service laboratories have stated to the Department that sufficient capacity exists to accommodate the testing that is anticipated. Certified laboratories have not indicated that adequate laboratory capacity will be a problem. With regard to the 48-hour Rapid Gross Alpha Method, there are currently 14 commercial laboratories certified for the USEPA 900.0 Method, on which the Department's modified 48-hour Rapid Gross Alpha method is based. The Department anticipates that most of these 14 laboratories will seek certification in the 48-hour Rapid Gross Alpha method. Discussions with five of these laboratories indicate the capacity to conduct over 2000 samples a month. In addition, in order to ensure sufficient time for laboratories to become certified for the 48-hour Rapid Gross Alpha method and to provide adequate capacity, the PWTA rules phases in the requirement for this type of testing over a period of 18 months. See adopted new rule N.J.A.C. 7:9E-2.1(d).

3. COMMENT: Under the proposed rules, laboratories will be required to notify local health authorities in the event of an exceedance for a number of parameters. A commenter questioned whether the Department will publish a listing of those local public health entities that the laboratory must notify. The commenter was concerned that the information would not be adequately available to the laboratories. (6)

RESPONSE: The list requested by the commenter is currently available on the New Jersey Department of Health and Senior Services (DHSS) website at [www.state.nj.us/health/lh/lhdirectory.pdf](http://www.state.nj.us/health/lh/lhdirectory.pdf). Laboratories are currently required to notify this same set of municipal health agencies under the current rules at N.J.A.C. 7:18-4.6(k) and N.J.A.C. 7:18-5.6(i), when testing is performed for coliforms and nitrate/nitrite. The Department has had no indication that this has been a problem to date, and therefore does not anticipate problems in the future.

4. COMMENT: A commenter expressed concern and some confusion over whether pH testing is required to be performed by certified laboratory personnel. It was questioned that if pH must be done within 15 minutes of a sample being taken, how can anyone who is not an employee of a certified laboratory really collect samples, unless the sampler could actually collect the sample, transport it to the laboratory, and have the laboratory analyze the sample within 15 minutes. The commenter asked whether the Department foresees an enormous request for certification for pH from persons who would like to become certified laboratories for pH only thereby, allowing them to analyze pH tests in the field. (1)

RESPONSE: In accordance with the definition of authorized representative at N.J.A.C. 7:18-1.7, anyone may become an authorized representative of a certified laboratory provided that the certified laboratory "accepts drinking water well samples and also accepts responsibility for such samples in accordance with the requirements of N.J.A.C. 7:18-9.1(c)." The commenter is correct that an employee of a laboratory that is certified for pH testing only

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may conduct sampling for all other PWTA parameters, as long as the requirements for sampling certification adopted as amendments at N.J.A.C. 7:18-9.4(b)7i. are met. However, only employees of laboratories certified for the conduct of pH testing may analyze for pH, for purposes of conformance with the PWTA. The Department is unable to determine at this time whether a large number of businesses will seek certification for pH and PWTA sampling. There are already a number of businesses that maintain certification for pH and other analyze immediately parameters. The Department does expect some of these firms to apply for certification in the PWTA sampling category.

5. COMMENT: A commenter suggested that rather than waiting for a temperature variance, it would be easier to have a specific time that the water must run before collecting a sample. In some cases where the water is being used all day it might be difficult to get a temperature difference. The commenter suggested that N.J.A.C. 7:18 be revised to include requirements to run the water for 15 minutes or 30 minutes to be sure they are getting the sample from the well as opposed to water that has been stagnant in the pipes. (1)

RESPONSE: The requirements relating to temperature variance are consistent with those contained in USEPA's "Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures, Quality Assurance," Fourth Edition, EPA 815-B-97-001, March 1997. The only time period referenced therein is "maintaining a steady water flow for at least two minutes (until the water changes temperature)." The Department believes the time periods of 15 or 30 minutes suggested by the commenter is excessive. However, the Department believes that the addition of the phrase "at least two minutes" is appropriate and will minimize questions regarding the amount of time necessary to achieve a temperature variance. This clarification to N.J.A.C. 7:18-9.4(b)7ii will read as follows:

"Samples taken from any tap or spigot shall be collected by maintaining a steady water flow for at least [several] **two** minutes [and] **(until the water changes temperature)**. Water taps used for sampling are to be free of aerators, strainers, hose attachments, mixing type faucets , and purification devices. "

6. COMMENT: A single comment was submitted stating that a fecal coliform analysis done as a confirmatory bacteria test will put an enormous burden on the laboratories to get the samples back to the facilities and in the incubators within six hours. This is because the fecal coliform test has a much shorter holding time than the total coliform test (six hours for fecal coliform versus 30 hours for total coliform). A recommendation was provided that the Department either use an *E. coli* positive for confirmation or use another total coliform as a confirmation for fecal coliform, unless there is a specific reason to use the fecal coliform tests. (1)

RESPONSE: The six hour holding time to which the Department believes the commenter is referring only applies to wastewater samples and does not apply to drinking water samples (N.J.A.C. 7:18-9.4(c), Table 9.2.) The time from sample collection to initiation of analysis for total coliforms, and fecal coliforms, or *E. coli* as a confirmatory test in drinking water

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must not exceed 30 hours, consistent with the applicable analytical methods and USEPA's Manual for the Certification of Laboratories previously referenced.

7. COMMENT: A comment was submitted relating to the use of test kits by homeowners. Specifically, it was stated that for \$40 a citizen can buy a basic kit to test the well water; for an additional cost, they can test for more sophisticated problems. This is a volunteer process. The individual homeowner buys the kit and collects the water, which is then taken to a laboratory to be tested. The commenter questioned whether the new rules will eliminate the possibility for an individual homeowner to buy a kit, take the water sample and see that the results are delivered through the South Branch Watershed Association to the laboratory. (8)

RESPONSE: These rules do not limit an individual homeowner's ability to test his or her own well water. In fact, the Department encourages homeowners to test their well water on a regular basis. Both N.J.A.C. 7:9E and the amendments to N.J.A.C. 7:18 apply only to testing conducted as a requirement of the PWTA. Citizens should be aware, however, that if they intend to use their test results to comply with PWTA requirements regarding real estate transactions, the sampling and testing must comply with these rules. The use of test kits by homeowners would not conform to the requirements of N.J.A.C. 7:18, unless the homeowner meets the definition of a certified laboratory in accordance with N.J.A.C. 7:18.

8. COMMENT: Several comments were submitted relating to the sampling location that is required, i.e. that samples are required to be collected prior to any point of entry or point of delivery treatment device. The comments questioned why the Department is requiring the testing of water that is already failing, and that has already been determined to need treatment. (4, 7)

RESPONSE: The PWTA repeatedly refers to the testing of "wells," "well water," and "water supplies." Furthermore, the PWTA at N.J.S.A. 58:12A-30f requires the Department to compile data obtained "for the purposes of studying ground water supplies or contamination in the State." Data on treated water would not enable the Department to study ground water supplies or contamination as required. If treated water contains a contaminant, it is impossible to tell whether the contaminant originates in the groundwater, in the treatment system, in the plumbing, or in the faucets. If contaminants are found in untreated water, the consumer can evaluate the problem and apply appropriate treatment. For well owners or potential well owners who wish to obtain data on their treated water, the Department is developing guidance to assist them in obtaining and interpreting test results. Regarding situations where a water treatment system cannot easily be disconnected or disabled, it may be necessary to modify the water system, in order to provide a sample that will comply with the PWTA and these rules.

9. COMMENT: A comment was submitted requesting whether there will be a grace period to retest and notify the seller to correct the problem. (3).

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RESPONSE: The requirements regarding a retest in the sampling provisions contained at N.J.A.C. 7:18-9.4(b)6viii have resulted in some confusion concerning the need to collect additional samples where a well test failure occurs. Since retesting is not a requirement of the PWTA, N.J.A.C. 7:18-9.4(b)6viii has been deleted on adoption.

10. COMMENT: A commenter stated that it was mentioned that there would be sampling line items in each category for the various testing and questioned whether there would be any rules and regulations that will be set forth regarding how the sampling is going to proceed. For instance, the Department has had for some time a field sampling manual regarding environmental sampling. The commenter questioned whether there will be something like this that will give the laboratories and/or anyone else involved some set of standards that can be used. (17)

RESPONSE: Many of the analytical methods incorporated by reference as Department Sanctioned Analytical Methods (DSAMs) in N.J.A.C. 7:18 as well as many of the specific requirements contained in N.J.A.C. 7:18, already specify sampling procedures. The Department's "Field Procedures Manual" to which the commenter refers contains some guidance on the collection of drinking water samples. However, it must be noted that this manual is only guidance. Therefore, where there is a conflict between the "Field Procedures Manual" and either N.J.A.C. 7:18 or a DSAM contained in or incorporated by reference in N.J.A.C. 7:18, the requirements of N.J.A.C. 7:18 or the applicable DSAM shall govern. In addition, as stated above, the Department will continue to evaluate the need for training and guidance in the area of sample collection, and where the need arises, will develop such training for certified laboratories and/or members of the public.

11. COMMENT: A commenter stated that laboratories should not be assessed additional fees in order to comply with the regulation, especially in terms of sampling certification. (4)

RESPONSE: The changes incorporated in N.J.A.C. 7:18 for most laboratories that currently have certification in the drinking water program will result in no additional fees in terms of sampling certification. As stated at N.J.A.C. 7:18-2.9(h), the Department has waived the modification fee specified at N.J.A.C. 7:18-2.9(b), which would ordinarily be associated with modifying an existing certification to include an additional sampling Department Sanctioned Analytical Methods (DSAM). In addition, DSAMs for sampling have been created in such a manner as to significantly reduce and in most cases eliminate any fees associated with obtaining certification for sampling under the PWTA.

12. COMMENT: A commenter noted that there were several inconsistencies in the definition of coliform. In the summary portion of the proposal the Private Well Testing Act rules at N.J.A.C. 7:9E, coliform is addressed. In the amendments to N.J.A.C. 7:18 regarding this requirement, you required to test for total coliform. If it is positive, you are required to test for fecal coliform and then you must notify appropriately based on those results. It was recommended that the Department evaluate the inconsistency in the use of the terms "fecal coliform," "total coliform" and "coliform," and specify when notification is required. (2)



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RESPONSE: The term "coliform" is used in the rules to refer to either total coliform or fecal coliform. The requirements relating to notification are contained at N.J.A.C. 7:18-4.6(m)2. Specifically, N.J.A.C. 7:18-4.6(m)2 states that notification is necessary "where the presence of Fecal coliform or *E. Coli* is detected."

13. COMMENT: A comment was submitted questioning where a list of those qualified to perform the testing under the PWTA can be obtained. (11)

RESPONSE: A list of laboratories certified to conduct the testing required by the PWTA can be obtained by contacting the Office of Quality Assurance at (609)292-3950, or from the Department's website, [www.state.nj.us/dep/pwta](http://www.state.nj.us/dep/pwta).

14. COMMENT: A commenter asked if there is going to be a cost for the PIN number through the Office of Quality Assurance. (12)

RESPONSE: There are no costs for obtaining a PIN number through the Office of Quality Assurance.

15. COMMENT: A commenter questioned how problems with obtaining samples at the locations specified in the rules would be handled. Specifically, a commenter stated that problems will arise when a sampling technician enters a home and finds out that there is a point of entry treatment system and there is no way to divert the water so that they are sampling untreated water, (some older systems have no way to divert the water). The sampling technician would then be in a position to either not sample or collect the treated sample. Chances are the homeowner would prefer that they collect a sample, which, in accordance with the rule, would constitute inappropriate sample collection from a raw water source. That sample makes its way through the laboratory, a report is generated and it gets to the State. The possibility exists that it could be rejected for that reason and then it becomes a question of who is responsible for the rejected sample. It seems that the laboratory would be the one at fault since they should not have sampled. The commenter is curious about what the Department will do if this hypothetical occurs. The sampling technician is there to collect the sample, not to re-plumb a water system. So, the commenter asks, should the sample be collected, submitted and analyzed, or should it not be collected and the homeowner hire a plumber to divert around the treatment system, so that an untreated sample can be obtained. (12)

RESPONSE: Consistent with the requirements of N.J.A.C. 7:18-9.4(b) only samples representative of water that has not been treated in any manner are considered acceptable for testing for conformance with the PWTA. Where an appropriate sample location does not exist, the client will need to take measures, including the installation of a sampling tap, to provide an acceptable sampling location. A laboratory or authorized representative conducting sampling will have available to them, copies of the applicable regulations at N.J.A.C. 7:18, as well as a Department approved Standard Operating Procedure. The

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requirements contained therein will clearly state acceptable sampling locations. It is the responsibility of the samplers to notify a client when the sampling location chosen by the client is inappropriate for conformance with the PWTA.

16. COMMENT: A commenter stated the testing should not be required by the seller of the property. When property is sold, the attorneys for both parties take care of this in the contract and this testing requirement is an added cost. This requirement should be performed and paid for by both the seller and buyer. (3)

RESPONSE: The PWTA does not specify who must obtain the data. It specifies the testing of that water supply for at least the parameters prescribed by the Act and that closing of title on the sale of the real property shall not occur unless both the buyer and the seller have received and reviewed a copy of the water test results.

17. COMMENT: A commenter submitted a question as to the cost of the testing required under the PWTA and whether a standardized fee schedule has been developed. In addition, the commenter asked whether laboratories are located in the areas where counties have private wells for potable water so sample costs could be minimized. (3)

RESPONSE: The PWTA does not require the Department to determine a standardized fee for testing. It does, however, require that the testing be performed by a laboratory certified by the Department to conduct the testing. Laboratories are independent, in most cases commercial businesses who determine their fees based on many factors, thus, those fees may vary between laboratories. The Department will make available lists of laboratories that are certified to conduct the required testing to the public. A homeowner could then contact several laboratories and choose a laboratory considering the fees each of the laboratories estimated for testing. Laboratories certified for the testing required by the PWTA are located throughout New Jersey as well as neighboring states.

18. COMMENT: A commenter questioned how long it will take to get results, so not to delay sale for both parties, once testing has been completed. (3)

RESPONSE: N.J.A.C. 7:9E-3.1(c) requires that the analysis shall be deemed complete once all analytical results have been received by the reporting laboratory. N.J.A.C. 7:9E-3.1(a)2 further requires that the reporting laboratory provide the information to the person(s) who requested the test within five business days after completion of analysis of water samples. Expedited results can be requested from a laboratory where a closing schedule may be affected by a delay in the results.

19. COMMENT: A commenter questioned whether the local health department and municipality are going to accept the litigation costs associated with the well failure. (3)

RESPONSE: As discussed in the adoption of the Private Well Testing Rules, N.J.A.C. 7:9E, contained elsewhere in this register, the PWTA does not address the cost of remediation in

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the case of well test failure. In addition, lawsuits that arise due to PWTA results are beyond the scope of these rules.

20. COMMENT: The proposed rules state that resampling to determine whether a contaminant comes from a well or the house plumbing shall be made from the plumbing where the water has been sitting for at least six hours. Such a procedure is not suitable for determining the source of lead contamination or coliform. If a sample from the flushed plumbing system shows either of these contaminants, then a stagnant sample taken from the plumbing will likely give the same or worse results. The New Jersey Ground Water Association feels that the only way to be sure whether the source of total coliform contamination is the water source or the plumbing is to test the water at either the well head or bottom of the well tank. Member well drillers of the Association know that old houses frequently have "dead-ended" water pipes resulting from alterations. These pipes hold stale water that can harbor bacteria and result in positive bacteria counts regardless of whether the water has been flushed for sampling or standing for hours before sampling. However, samples taken at the well tank may be found free of bacteria, especially when a replacement well has been drilled. The remedy to rid these old pipes of bacteria is to chlorinate and flush them until the bacteria are gone. (10)

RESPONSE: The purpose of the sampling requirements contained at N.J.A.C. 7:18-9.4(b)6, (sampling prior to treatment) is to determine the level of the various contaminants in the well. If a homeowner, potential buyer or lessor wishes to determine the level of those contaminants after treatment of the water by an existing unit, they may elect to collect and test an additional water sample collected after the treatment unit. However, the requirements of the PWTA will only be satisfied if the data submitted to the Department represents a sample that was collected prior to any treatment. The homeowner, purchaser or other persons at their own discretion may collect additional data.

21. COMMENT: The sampling approach specified in N.J.A.C. 7:18-9.4(b)7 conflicts with the USEPA drinking water sampling requirements that samples for lead be collected as first draw samples. The Federal Drinking Water regulations, 40 CFR 141.86(b) states as follows: (1) all tap samples for lead and copper collected in accordance with this subpart shall be first draw samples; (2) each first draw sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First draw samples from a non-residential building shall be collected at an interior tap from which water is typically drawn for consumption.

New Jersey Water sources do not typically contain lead as a contaminant. The origin of lead in drinking water can be found in the consumers home plumbing. Corrosive water standing in the home plumbing over extended time periods leaches lead from the pipes or the solder used for sealing pipe joints, resulting in elevated lead concentrations in drinking water in the first flush sample. The sampling approach in the proposed rule is valuable for secondary samples that can be analyzed when lead is detected in the first draw sample. The

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first flush sample would then provide definitive information on the source of lead present in the drawn water. The sampling approach in the proposed rule would not indicate elevated lead concentrations caused by leaching from the home plumbing. It is the opinion of the Environmental Laboratory Advisory Committee that this section be changed to reflect the initial lead sample being collected as a first draw sample. This approach is consistent with the USEPA drinking water regulations, which provide definitive data on lead in drinking water that pose potential risks to drinking water consumers. (14,15)

RESPONSE: Consistent with the collection of untreated well water samples, the PWTA rules require the collection of a flushed sample for lead. Untreated well water quality can only be determined through a flushed sample, because a first draw sample reflects the contribution of lead from the plumbing system or fixtures. There are some aquifers in New Jersey that can contribute lead to well water. Regarding the suggestion that both flushed and first draw samples be required, please see the discussion of untreated versus treated water sampling in the response to comment eight. The EPA drinking water requirements referred to by the commenter apply to municipal and other public potable water systems. These requirements are designed to evaluate the contribution of lead to treated drinking water by the public water distribution system, as well as by plumbing within the consumers' home. They are not designed to evaluate untreated water quality, nor to be applied to a private water supply.

### Summary of Agency - Initiated Changes

The Department has determined that changes to N.J.A.C. 7:18-1.7, 1.9 and 9.4(b) are necessary upon adoption.

N.J.A.C. 7:18-1.7, the definition of local health authority, has been modified on adoption to clarify that the term also refers to counties which do not have a certified County Environmental Health Act agency, in accordance with N.J.S.A 26:3A2-21 et seq.

N.J.A.C. 7:18-1.9 has been revised to provide consistency in the use of terms used within the Department for the electronic transmittal of data, as well as to include the updated website address.

N.J.A.C. 7:18-9.4(b)6, covering sampling location requirements has been reworded for clarity and brevity, and several provisions have been recodified for ease of understanding.

- N.J.A.C. 7:18-9.4(b)6i, which addresses where water samples shall be collected, has been modified for clarity on adoption. First, introductory language is added to clarify that 6i addresses water systems without treatment units. Second, the phrase "used for consumption from" has been deleted. This phrase was confusing because, in cases where a treatment system has been installed on the water system, it could be construed to require testing of a treated water sample. However, the rules require testing of untreated samples in all cases. The phrase

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"that draws from, or feeds water to" has been added for clarity since samples do not have to be collected from a location used for consumption in order to be considered representative under the PWTA. Samples need only be collected from a location that is representative of the water source for the property, which has not been treated in any manner.

- In N.J.A.C. 7:18-9.4(b)6ii, the terms "point of delivery water treatment device" and "point of use water treatment device" are replaced by the more general phrase "water treatment system." In addition, the option of sampling at a location prior to a treatment system, rather than disconnecting or disabling the treatment system is added at N.J.A.C. 7:18-9.4(b)6ii for brevity. Accordingly, N.J.A.C. 7:18-9.4(b)6iii has been deleted.
- In N.J.A.C. 7:18-9.4(b)6iv, has been modified on adoption to remove references to specific procedures for lead and coliform sampling. Specifically, the cross-reference to N.J.A.C. 7:18-9.4(b)6i and 6ii contained at N.J.A.C. 7:18-9.4(b)6iv required that coliform and lead sampling be conducted at an identical location as is required for all other parameters. Because there is no difference between the sampling location specifications for coliform, lead or any other parameter, this sentence is redundant, and is removed. "Shall" has been changed to "may" since samples collected as specified at N.J.A.C. 7:18-9.4(b)6i are also considered acceptable for conformance with the PWTA.
- N.J.A.C. 7:18-9.4(b)6v has been deleted upon adoption because it is duplicative of the requirements found at N.J.A.C. 7:18-9.4(b)6i which defines where a sample is to be taken.
- N.J.A.C. 7:18-9.4(b)6vi which specified that where sampling locations were deemed inappropriate, "an additional well sample should be collected and analyzed in accordance with N.J.A.C. 7:9E." Since N.J.A.C. 7:9E only allows the collection of samples in accordance with adopted N.J.A.C. 7:18-9.4(b)6i discussed above, N.J.A.C. 7:18-9.4(b)6vi is redundant and has been deleted.
- N.J.A.C. 7:18-9.4(b)6vii has been deleted on adoption since, as stated in the changes to N.J.A.C. 7:18-9.4(b)6i above, samples need only be collected from a location that is representative of the water source for the property which has not been treated.
- As discussed in the response to comment 9, N.J.A.C. 7:18-9.4(b)viii has been deleted upon adoption in order to avoid confusion as to whether re-testing is required by the PWTA when a well test failure occurs. This provision has been deleted since re-testing is not required by the PWTA.

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As discussed in the response to comment 5, N.J.A.C. 7:18-9.4(b)7ii has been revised on adoption to clarify that a sampling tap need only be run for a minimum of two minutes prior to sample collection. This clarification is necessary to accommodate incidences where a temperature change does not occur in a reasonable time period.

Federal Standards Analysis

Executive Order No. 27(1994) and N.J.S.A 52:14B-1 et seq. require that administrative agencies which adopt, readopt, or amend State regulations that exceed any Federal standards or requirements, include in the rulemaking document, a comparison with Federal law.

The existing rules establish a certification program for laboratories performing environmental analyses, and establish the administrative procedures to be followed by certified environmental laboratories and by laboratories seeking to become certified environmental laboratories. The adopted amendments extend these requirements to samples collected in accordance with the PWTA. The Federal government does not administer a corresponding laboratory certification program, and has no law that corresponds to this aspect of either the current rules or the proposed amendments. Therefore, a federal standards analysis is not required.

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

7:18-1.7      Definitions

The following words and terms, when used in this chapter, shall have the following meanings. If a definition in this section differs from the corresponding definition in any regulation or other document incorporated by reference under N.J.A.C. 7:18-1.5, the definition in the document incorporated by reference shall control.

...  
"Local health authority" means a county, regional or municipal health agency that serves as the lead point of contact with the Department on environmental issues. This agency would ordinarily be the local health agency certified pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. In those counties that do not have a certified \*[local] \* **CEHA** health agency, the local health authority **is the agency** that serves as the lead for administering the Local Information Networks and Communication System (LINCS) as designated by the Department of Health and Senior Services.

7:18-1.9      Signatories

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

(c) Upon written notice from the Department, monitoring results may be submitted to the Department electronically. Prior to submitting data electronically, the

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laboratory shall register with the Department by accessing the Department's **\*electronic\*** website **\*portal, located\*** at **\* [www.state.nj.us/dep/online] \*** **\*www.njdeponline.com\*** to obtain a Department issued personal identification number (PIN) by printing, completing and signing the authorization form provided at the website and mailing to the Department at the address specified in N.J.A.C. 7:18-1.6(a).

(d) (No Change.)

7:18-9.4 Requirements for sample handling and preservation for specific parameters.

(a) (No change.)

(b) Drinking water samples shall be handled and preserved in accordance with the requirements of Table 9.1 and the requirements of (b)1 through 12 below. Table 9.1 includes applicable requirements from 40 CFR 141.23, 141.24 and 143.4, and from the USEPA's September 1992 "Labcert Bulletin," EPA-814-k-92-002. If there is any conflict between Table 9.1 and the USEPA rule or publication (including any amendments or supplements) on which any part of Table 9.1 is based, the USEPA rule or publication shall control.

1.-5 (No change.)

6. Sampling location for conformance with the PWTA shall be determined as follows:

i. **\*If there is no water treatment system in use on the subject property,\*** **[S]** **\*s\***amples shall be collected from a primary cold water, non-aerated spigot or tap, **[used for consumption from]** **\*that draws from, or feeds water to\*** the potable water system for the subject property.

ii. Where a **[point of delivery water treatment device or point of use water treatment device is located]** **\*water treatment system is in use\*** on the **[spigot or tap]** **\*subject property\***, the **[device]** **\*water treatment system\*** shall be disconnected or otherwise disabled prior to the collection of the water sample**[.]** **;**

**[iii.** Where a point of entry treatment device is used to treat the drinking water entering the subject property, the device shall be disconnected or otherwise disabled prior to the collection of the water sample,**]** **or the sample shall be collected at a location prior to the** **\*water treatment system.\*** **[point of entry treatment device.]**

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- \* [iv.] \* **iii.** \*In the case of new well construction where there is no spigot or tap on the subject property, the sample *[shall]* \* **may** \* be collected directly at the well head, as set forth at N.J.A.C. 7:10-12.30. *[Raw water samples shall be analyzed for parameters set forth in N.J.A.C. 7:9E, with the exception of coliform and lead. In such case coliform and lead analyses shall be collected in accordance with N.J.A.C. 7:18-9.4(b)6i and 6ii above.]*\*
  - \*[v. Where there is no spigot or tap on the subject property, the water sample shall be collected from an appropriate alternate direct consumption location as defined in N.J.A.C. 7:9E-1.2.
  - vi. If the sampling location is deemed inappropriate by the Department, an additional well sample shall be collected and analyzed in accordance with N.J.A.C. 7:9E.
  - vii. Sampling locations that are considered inappropriate include outdoor spigots, locations before the storage tank, and outlets directly at the well head except as provided in 6iv above.
  - viii. Samples collected for the purposes of re-testing shall be collected at the same location as the original water sample, unless collection at a different location is specifically authorized or directed by the Department. ]\*
7. PWTA samples shall be collected in accordance with the following requirements.
- i. Collection, handling, and preservation of samples to be analyzed under the PWTA shall adhere to the sampling, identification, and transfer procedures described in the latest edition of Standard Methods approved by the USEPA. If there is any conflict between the collection, handling and preservation requirements in Standard Methods and the corresponding requirements in this subchapter, the requirements in Standard Methods shall control.
  - ii. Samples taken from any tap or spigot shall be collected by maintaining a steady water flow for at least *[several]* \* **two** \* minutes \* *[and]* \*\*(\*until the water changes temperature\*)\*. Water taps used for sampling are to be free of aerators, strainers, hose attachments, mixing type faucets, and purification devices.
  - iii. (No change.)



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8.-12. (No Change.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequence of the adopted amendments. I hereby authorize the adoption of these rule amendments.

Date 8/23/02 /S/  
Bradley M. Campbell, Commissioner  
Department of Environmental Protection