

New Jersey Department of Environmental Protection
**Emergent Condition Certification Checklist:
Water Infrastructure Protection Act (WIPA)**

This checklist is intended to serve as a tool for water and wastewater system¹ owners² looking to enter into a long-term lease or sell their water or wastewater assets³ to a capable private or public entity⁴ under the Water Infrastructure Protection Act, or WIPA (N.J.S.A. 58:90-1 et seq.). To proceed under WIPA, system owners are required to submit resolutions of their Emergent Condition certification to the Department of Environmental Protection (DEP) for approval or rejection. In addition to the guidance document, this checklist will assist system owners in determining what should be submitted to the Department. The checklist outlines the information which should be provided to the Department to aid in its review of the Municipal Certification of Emergent Conditions.

¹ **System**, as defined at N.J.S.A. 58:30-3, means the plants, structures, and other real and personal property of an owner that is, or is to be, acquired, constructed, or operated for the purpose of processing water or wastewater, including sewage, for distribution or treatment.

² **Owner**, as defined at N.J.S.A. 58:30-3, means any municipality except a municipality that is a city of the first class with a population of 270,000 or more according to the latest federal decennial census, that owns water or wastewater assets. Municipalities constituting a joint meeting and the joint meeting itself shall not be considered an owner for the purposes of this definition.

³ **Water or wastewater assets**, as defined at is defined at N.J.S.A. 58:30-3, means any system along with other related buildings, equipment of other infrastructure.

⁴ **Capable private or public entity** is defined at N.J.S.A. 58:30-3.

Materials for Department Review of Municipal Emergent Conditions Certification

	WIPA procedure documents ⁵	Notes
<input type="checkbox"/>	Adopted Municipal Resolution Certifying Emergent Condition(s)	
<input type="checkbox"/>	Evidence of Transmittal of Analysis of Independent Financial Advisor to appropriate parties (DEP, BPU, DCA-DLGS) and availability for public review	
<input type="checkbox"/>	Copy of Public Hearing Notice	
<input type="checkbox"/>	Summary of Public Hearing Testimony, if available	
<input type="checkbox"/>	Evidence that municipality is not a first class city with a population greater than 270,000 or a Joint Meeting	
<input type="checkbox"/>	Supporting material, as needed ⁶	

Emergent Condition #1- Location in an Area of Critical Water Supply Concern

	Criteria	Recommended Supporting Information	Notes
<input type="checkbox"/>	Water system is located in an Area of Critical Water Supply Concern (ACWSC)	Water System Name, PWSID #, Water Allocation Permit #, Address, Municipality, and County	
<input type="checkbox"/>		Description of the water system components claiming to be located within the ACWSC ⁷	
<input type="checkbox"/>		Water System Service Area should be delineated. Delineations should be provided on a GIS map ⁷ (digital and paper copies)	

Emergent Condition #2-Significant Noncompliance (*Check all that apply*)

	Criteria	Recommended Supporting Information	Notes
<input type="checkbox"/>	Significant non-compliance of NJPDES permit including submittal of two incomplete DMRs in a six-month period	Written documentation of non-compliance and an explanation why the system owner failed to submit completed DMRs	
<input type="checkbox"/>	Significant non-compliance of NJPDES permit including two serious violations of the same parameter at the same outfall in a six-month period, or	Written documentation of non-compliance and an explanation of the cause of the effluent violations	

⁵ These are evidence that the statutorily required steps prior to DEP review of the Emergent Condition Certification has occurred.

⁶ Examples: Annual Reports, newsletters or communication with community, municipal budgets and/ or narratives, Consumer Confidence Reports, etc.

⁷ The components should be identified on a GIS map (digital and paper copies). Submissions required to meet the Department's data standards for GIS found at http://www.nj.gov/dep/gis/assets/NJDEP_GIS_Spatial_Data_Standards_2013.pdf

<input type="checkbox"/>	Significant non-compliance of NJPDES permit including four minor monthly average violations of the same parameter at the same outfall in a six-month period	Written documentation of non-compliance and an explanation of the cause of the effluent violations	
<input type="checkbox"/>	The owner has been the subject of a formal enforcement action initiated by the Department which has not yet been resolved	Documentation of the formal enforcement action, including _____	
<input type="checkbox"/>	The owner is substantially out of compliance with an administrative consent order, settlement agreement, or stipulation of settlement, or judicial consent order entered into with the Department	A description of the circumstances that caused the permittee to be out of compliance with the administrative consent order, settlement agreement, stipulation of settlement or judicial consent order.	

Emergent Condition #3-Deficiency in Service Provision or Violation of MCL (Check all that apply)

	Criteria	Recommended Supporting Information	Notes
<input type="checkbox"/>	Violation of a maximum contaminant level (MCL) established pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.	Documentation of an MCL violations, identification of the parameter(s) violated, and an explanation of the cause of the MCL violation	
<input type="checkbox"/>	Deficiency in the availability or potability of water including, but not limited to, the provision of water at adequate volume or pressure	A description of the deficiency, current status, capacity, need, and other relevant details for system storage capacity, power source, water source, distribution system, interconnections, unaccounted for water, and/ or areas of the distribution system which experience less than 20 psi at street level.	
<input type="checkbox"/>	Deficiency in the ability to convey or treat wastewater	A description of the deficiency, current status, capacity, need, and other relevant details for the wastewater collection system, wastewater conveyance system, and/or wastewater treatment system	

Emergent Condition #4-Lack of Historical Investment, Repair or Maintenance, or Material Damage (Check which criteria apply)

	Criteria	Recommended Supporting Information	Notes
<input type="checkbox"/>	Demonstrated lack of historical investment, repair, or sustainable maintenance	Written report and/ or through the financial analysis identifying that the owner has not adequately invested in the system or its	

	as determined by the Department	maintenance and the extent of repairs are needed and which the owner has invested in needed repairs and maintenance.	
<input type="checkbox"/>	Material damage ⁸ to the assets of the system.	Each system component with significant material damage, detailing for each whether the damage was from an incident, unexpected failure, exceeding design life, or poor maintenance which occurred over time, any investment made toward repairing damage, a description of how the damaged component affects the ability of the water or wastewater system to meet customer demand, and a description of how the damaged component affects the ability of the water or wastewater system to comply with the applicable drinking water or wastewater standards/requirements.	

Emergent Condition #5-Financial, Technical or Managerial Incapacity (Check all that apply)

	Criteria	Recommended Supporting Information	Notes
	The owner of a drinking water and/or wastewater system demonstrates that it lacks the <u>technical capacity</u> ⁹ to adequately address any of the four preceding Emergent Conditions or own and operate the system in a way that supports economic activity in the municipality on a sustainable basis	Supporting Material for either: 1. The Emergent Condition(s) for which there lacks technical capacity to adequately address; or 2. The inability to support the economic activity in the municipality on a sustainable basis	
<input type="checkbox"/>		Technical Capacity Section of the Capacity Evaluation and Benchmark Criteria Assessment Form (Appendix I of Guidance Document)	
		Documentation that supports the answers given on the Assessment Form	

⁸ The Department considers “material damage to the assets of the system” to include physical damage or avoidable deterioration of assets such as wells, intakes, treatment units, transmission lines, storage units, and any other appurtenant components of the system or personnel assets that prevent a system from complying with all drinking water or wastewater standards/requirements.

⁹ “Technical capacity” is the physical and operational ability of a water or wastewater system. Technical capacity refers to the physical infrastructure of the water or wastewater system, including the adequacy of treatment, and appurtenant infrastructure. It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge.

	The owner of a drinking water and/or wastewater system demonstrates that it lacks the <u>managerial capacity</u> ¹⁰ to adequately address any of the four preceding Emergent Conditions or own and operate the system in a way that supports economic activity in the municipality on a sustainable basis	Supporting Material for either: 1. The Emergent Condition(s) for which there lacks managerial capacity to adequately address; or 2. The inability to support the economic activity in the municipality on a sustainable basis	
<input type="checkbox"/>		Managerial Capacity Section of the Capacity Evaluation and Benchmark Criteria Assessment Form (Appendix I of Guidance Document)	
		Documentation that supports the answers given on the Assessment Form	
	The owner of a drinking water and/or wastewater system demonstrates that it lacks the <u>financial capacity</u> ¹¹ to adequately address any of the four preceding Emergent Conditions or own and operate the system in a way that supports economic activity in the municipality on a sustainable basis	Supporting Material for either: 1. The Emergent Condition(s) for which there lacks managerial capacity to adequately address; or 2. The inability to support the economic activity in the municipality on a sustainable basis	
<input type="checkbox"/>		Financial Capacity Section of the Capacity Evaluation and Benchmark Criteria Assessment Form (Appendix I of Guidance Document)	
		Documentation that supports the answers given on the Assessment Form	

¹⁰ “Managerial capacity” is the ability of a water or wastewater system to conduct its affairs. Managerial capacity refers to the system’s institutional and administrative capabilities. Managerial capacity includes ownership accountability, appropriate staffing and organization, and effective external linkages.

¹¹ “Financial capacity” is the ability of a water or wastewater system to acquire and manage sufficient financial resources. Financial capacity includes revenue sufficiency, credit worthiness, and fiscal management and controls.