

# New Jersey Department of Environmental Protection Guidance Document – Municipal Certification of Emergent Conditions

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## *Water Infrastructure Protection Act (N.J.S.A. 58:30-1 et seq.)*

**Purpose:** To provide municipalities, their advisors and the public with guidance on the information the New Jersey Department of Environmental Protection (DEP) recommends be provided in order to perform its duties under the Water Infrastructure Protection Act (WIPA or the Act) in reviewing a Municipal Certification of Emergent Conditions. The Act requires the submission of a copy of the resolution certifying an Emergent Condition and this document identifies the recommended supporting information that will aid DEP in rendering a timely decision.

**Background:** The Act authorizes certain owners<sup>1</sup> of water or wastewater systems<sup>2</sup> to enter into a long-term lease or sell their water or wastewater assets<sup>3</sup> to a capable private or public entity<sup>4</sup>, without a referendum, if Emergent Conditions exist. In order to qualify for WIPA consideration, an owner must demonstrate the existence of at least one of the five Emergent Conditions specified by the Act:

**Emergent Condition #1** – the system is located in an Area of Critical Water Supply Concern I or II, or any future designation or newly added area of critical water supply concern;

**Emergent Condition #2** – the owner of the system is a significant noncomplier, as defined pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the system has been the subject of a formal enforcement action initiated by DEP or is substantially out of compliance with an administrative consent order, settlement agreement, or stipulation of settlement or judicial consent order entered into with DEP;

**Emergent Condition #3** – there is a present deficiency or violation of maximum contaminant levels established pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., concerning the availability or potability of water, or concerning the provision of water at adequate volume or pressure, or distribution or treatment of wastewater;

**Emergent Condition #4** – there is a demonstrated lack of historical investment, repair, or sustainable maintenance as determined by DEP, or material damage to the infrastructure of the system; or

**Emergent Conditions #5** – the system owner lacks the financial, technical, or managerial capacity to adequately address any of the foregoing on a sustainable basis or own and operate the system in a way that supports economic activity in the municipality on a sustainable basis.

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<sup>1</sup> **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.

<sup>2</sup> **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.

<sup>3</sup> **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.

<sup>4</sup> “Capable private or public entity” is defined at N.J.S.A. 58:30-3.

**Statutory Requirements:** If an owner determines that one or more Emergent Conditions exists and that it is necessary to take steps to sell or long-term lease its water or wastewater assets to a capable public or private entity, the owner is required to retain the services of an independent financial advisor to review, analyze, and report on the value of the system, the short- and long-term impact to rate-payers of the cash-flow structure of the proposed transaction, and provide an estimate of any financial requirements necessary to address the Emergent Conditions and to operate and maintain the system. Upon completion, the independent financial advisor's analysis and review would be transmitted to the owner. Within 10 days of the approval of the report by the owner, the owner shall transmit copies of the report to the Board of Public Utilities (BPU), Department of Community Affairs (DCA)'s Director of the Division of Local Government Services (DLGS), and DEP, and shall make the report available for public review. (See N.J.S.A. 58:30-5.c.)

After the independent financial advisor has completed its analysis, and presented its report to the owner, a public hearing on the proposed Emergent Condition Certification must be held. The owner must provide notice of the public hearing no less than 30 days prior to the date of the hearing. The notice is required to prominently state the findings upon which the certification is based, a summary of the findings by the independent financial advisor, and that the certification is in anticipation of a proposed long-term lease or sale of water or wastewater assets to a capable private or public entity. (See N.J.S.A. 58:30-5.d.)

After the public hearing, and after giving due consideration to the findings of the independent financial advisor, the governing body of the municipality shall, by resolution adopted by at least two-thirds of its authorized membership, certify that one or more Emergent Conditions exist and that the owner intends to sell or long-term lease its water or wastewater assets to a capable public or private entity to address the Emergent Conditions and to operate and maintain the system. A copy of the resolution must be transmitted to the board, director, and Department within five days of adoption. (See N.J.S.A. 58:30-5.e.)

**Department Role:** DEP plays a limited but important role under WIPA. Within 30 calendar days of receipt of the resolution, DEP must either approve or reject the owner's Emergent Condition Certification (See N.J.S.A. 58:30-5.e.). Therefore, the submission of supporting information with the Emergent Condition Certification is recommended and will ultimately allow DEP to make an appropriate determination. The 30-day review period will begin when DEP confirms that it is in receipt of the Municipal Resolution Certifying Emergent Condition(s), including certification of Mayor, the Mayor's designee of the municipality, and a licensed engineer.

**Submission:** DEP will receive these certifications and supporting material electronically through a secure online system. Once a municipality identifies that it will be submitting a resolution to DEP, it should send an email of intent to: [WIPA@dep.nj.gov](mailto:WIPA@dep.nj.gov). An authorization code and instructions for uploading materials to a secure electronic system will be sent.

#### **Materials for Department Review of Municipal Emergent Conditions Certification Resolutions:**

- Completed checklist (Appendix II);
- Adopted Municipal Resolution Certifying Emergent Condition(s);
- Evidence of Transmittal of Analysis of Independent Financial Advisor to appropriate parties (DEP, BPU, DCA-DLGS) and availability for public review;
- Copy of Public Hearing Notice
- Summary of Public Hearing Testimony, if available
- Evidence that municipality is not a first class city with a population greater than 270,000 or a Joint Meeting

- Supporting material to demonstrate the existence of the Emergent Condition(s) as outlined below

## Guidance for Specific Emergent Condition Certification / Financial Advisor Analysis

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To enable DEP to perform its duties under WIPA the following materials should be considered when the municipality is determining Emergent Conditions and while the independent financial advisor is performing their analysis. An owner may seek a positive determination under one or more of the five Emergent Conditions.

The following guidance summarizes how DEP will use information to evaluate a claim that an Emergent Condition exists. DEP reserves the right to ask for additional information. Each claim of Emergent Condition(s) will be evaluated on a case-by-case basis.

### Emergent Condition #1

#### Criteria

1. Emergent Condition #1 is met when the water system or a portion is located in an area designated by DEP as Area of Critical Water Supply Concern (ACWSC) I or II<sup>5</sup>, or any future designation or newly added area of critical water supply concern.
2. A water system includes water source locations (intakes, wells), treatment facilities, water storage, and/or distribution infrastructure. It does not include an office or other facility serving administrative functions.
3. A water system is considered to have satisfied Emergent Condition #1 if it is located within the geographical delineation of the ACWSC even if it does not derive its water supply from a designated aquifer within the ACWSC.
  - a. For example, in ACWSC II the Potomac-Raritan-Magothy (PRM) is the designated aquifer. A water system that is located within the boundaries of ACWSC II but whose water source is other than the PRM aquifer would still qualify under Emergent Condition #1.
4. Emergent Condition #1 is not satisfied if the water system is located outside of an ACWSC even if purchases water from another water system that is located within an ACWSC.

#### Definitions

“Area of Critical Water Supply Concern” is stated in the Water Supply Management Act N.J.S.A 58:1A. An "area of critical water supply concern" or "critical area" is defined in N.J.A.C. 7:19-1.3 as “a region of the State where excessive water usage or diversion presents undue stress, or wherein conditions pose a significant threat to the long-term integrity of a water supply source, including a diminution of surface

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<sup>5</sup> The ACWSC corresponds to the average potentiometric contour 30 feet below sea level and a 3-mile-wide margin area surrounding this contour. ACWSC can be determined from the plates for the Mt. Laurel-Wenonah, Englishtown, Old Bridge, Farrington, and Upper, Middle and Lower PRM aquifers which are found in the United States Geological Survey’s Water Resources Investigation Report WRI-86-4028, [Water Levels in the Major Artesian Aquifers of the New Jersey Coastal Plain: http://pubs.usgs.gov/wri/1986/4028/](http://pubs.usgs.gov/wri/1986/4028/)

water due to excess groundwater diversion.” A critical area is designated in accordance with N.J.A.C. 7:19-8.2.

### Information to Support Emergent Condition #1

The owner should provide in its Emergent Condition Certification:

1. Water System Name, PWSID #, Water Allocation Permit #, Address, Municipality, and County;

Water System Component	Description	Location <sup>6</sup> using State Plane Coordinates	ACWSC I or II

2. Description of the water system components claiming to be located within the ACWSC. The components should be identified on a GIS map (digital and paper copies) per DEP’s data standards: [http://www.nj.gov/dep/gis/assets/NJDEP\\_GIS\\_Spatial\\_Data\\_Standards\\_2013.pdf](http://www.nj.gov/dep/gis/assets/NJDEP_GIS_Spatial_Data_Standards_2013.pdf)
3. Water System Service Area should be delineated on a GIS map (digital and paper copies) per DEP’s data standards: [http://www.nj.gov/dep/gis/assets/NJDEP\\_GIS\\_Spatial\\_Data\\_Standards\\_2013.pdf](http://www.nj.gov/dep/gis/assets/NJDEP_GIS_Spatial_Data_Standards_2013.pdf)

## **Emergent Condition #2**

### Criteria

Emergent Condition #2 is met if:

1. The owner of the system is a significant noncomplier (SNC) for their NJPDES permit if there has been:
  - a. Submittal of two incomplete DMRs in a six-month period;
  - b. Two serious violations of the same parameter at the same outfall in a six-month period;
  - c. Four minor monthly average violations of the same parameter at the same outfall in a six-month period; and/or
  - d. Ongoing and continuing violations which are in complete or substantial contravention of the intent of the regulations; or
2. The owner has been the subject of a formal administrative enforcement action initiated by DEP which has not been resolved; or
3. Is substantially out of compliance with a Negotiated Enforcement Action such as an administrative consent order, settlement agreement or stipulation of settlement, or judicial consent order entered into with DEP within the past year.

### Definitions

Significant noncomplier is defined in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14A-1.2.

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<sup>6</sup> If the owner is unable to verify its location within an Area of Critical Water Supply Concern, it should contact the Division of Water Supply and Geoscience for assistance at (609) 984-6831. A final determination of whether the system is located inside ACWSC I or II will be made by DEP.

## Information to Support Emergent Condition #2

The owner should provide in its Emergent Condition Certification:

1. Written documentation of non-compliance; and
2. An explanation why the system owner failed to submit completed DMR's; or
3. An explanation of the cause of the effluent violations; or
4. 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**

### Criteria

Emergent Condition #3 is met when there is an inability of the system to function as intended to meet drinking water or wastewater standards/ regulatory requirements. This may include:

1. A violation of a maximum contaminant level (MCL) established pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., or
2. Deficiency in the availability or potability of water including, but not limited to, the provision of water at adequate volume or pressure; or
3. Deficiency in the ability to convey or treat wastewater.

### Definitions

DEP regulates drinking water supplies under the authority of the Federal and New Jersey Safe Drinking Water Act, the New Jersey Water Supply Management Act, and their implementing regulations. The U.S. Environmental Protection Agency (USEPA) and DEP set certain requirements related to drinking water quality, including Maximum Contaminant Levels (MCL), Treatment Techniques (TT), and Monitoring and Reporting (M&R) requirements, that must be met by public water systems. These regulations also establish requirements for public water systems to maintain adequate pressure (a minimum of 20 psi) and to provide a sufficient volume of water to meet daily and peak demands, and emergencies.

DEP regulates wastewater conveyance and treatment through the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the NJPDES permit and treatment works approvals (TWAs). The NJPDES permit establishes effluent limitations that must be met prior to discharge.

## Information to Support Emergent Condition #3

For drinking water systems:

If the owner is seeking certification based on MCL violations, the owner should provide the following information:

1. Documentation of an MCL violation;
2. Identification of the parameter(s) violated;
3. An explanation of the cause of the MCL, TT, and/or M&R violation;

If the owner is seeking certification based on drinking water system deficiencies, the owner should provide the following information:

1. A description of the deficiency, current status, capacity, need, and other relevant details for:
  - a. system storage capacity,
  - b. power source,
  - c. water source,
  - d. distribution system,
  - e. areas of the distribution system which experience less than 20 psi at street level
  - f. treatment system,
  - g. interconnections, and/ or
  - h. unaccounted for water;

For wastewater systems:

If the owner is seeking certification based on deficiencies in the ability to convey and/or treat wastewater, the owner should provide the following information:

1. A description of the deficiency, current status, capacity, need, and other relevant details for:
  - a. Wastewater collection system,
  - b. Wastewater conveyance system, and/or treatment system

## **Emergent Condition #4**

### Criteria

Emergent Condition #4 is met when there is a demonstrated lack of historical investment, repair, or sustainable maintenance as determined by DEP, or material damage to the assets of the system that affects operations, meeting customer demand, and regulatory standards.

### Definitions

1. DEP considers “lack of historical investment, repair or sustainable maintenance” as the failure to operate and maintain the system in conformity with N.J.A.C. 7:10A, N.J.A.C. 7:10A, N.J.A.C. 7:19 and N.J.A.C. 7:14A<sup>7</sup>.
2. DEP 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.

### Information to Support Emergent Condition #4

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<sup>7</sup> Water Supply and Wastewater Operators’ Licensing rules, N.J.A.C. 7:10A-1.12, Safe Drinking Water Act rules, specifically N.J.A.C. 7:10-2.7, -13, and -11.5(c)6, the Water Supply Management Act, rules, specifically N.J.A.C. 7:19-6.6, and the Water Pollution Control Act rules, specifically N.J.A.C. 7:14A-6.12, -22.5, and - 23.5(b)6.

*Historical Investment* – The owner may certify, through the financial analysis or written report, that it has not adequately invested in the system or its maintenance. The report should include the extent of repairs needed and extent which the owner has invested in needed repairs and maintenance.

*Material Damage* – If an owner is seeking certification based on material damage to the infrastructure, the owner should submit a report identifying:

1. Each system component with significant material damage, detailing for each:
  - a. Whether the damage was from an incident, unexpected failure, exceeding design life, or poor maintenance which occurred over time;
  - b. Any investment made toward repairing damage;
  - c. A description of how the damaged component affects the ability of the water or wastewater system to meet customer demand;
  - d. 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

### Criteria

Emergent Condition #5 is met when the owner of a drinking water and/or wastewater system demonstrates that it lacks the technical, managerial or financial (TMF) capacity to adequately address any of the four preceding Emergent Conditions (including, but not limited to, an inability to provide adequate wastewater treatment and/or plentiful and safe drinking water in response to material damage, failure to adequately operate and maintain the system, failure to correct deficiencies and violations under the Federal and State Safe Drinking Water and/or Water Pollution Control (Clean Water) Acts and rules, and/or failure to comply with an Administrative Consent Order on a sustainable basis) or own and operate the system in a way that supports economic activity in the municipality on a sustainable basis.

### Definitions<sup>8</sup>

- "System capacity" is the ability to plan for, achieve, and maintain compliance with applicable drinking or wastewater standards, permits and/ or regulatory requirements and has three components: technical, managerial, and financial. Adequate capability in all three areas is necessary for a water or wastewater system to have "system capacity":
  - "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 and the adequacy of the source water (for drinking water systems). It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge.
  - "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.

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<sup>8</sup> Based on EPA's "Guidance on Implementing the Capacity Development Provisions of the Safe Drinking Water Act Amendments of 1996" at: <http://www.epa.gov/safewater/smallsystems/pdfs/guidfin.pdf>

Managerial capacity includes ownership accountability, appropriate staffing and organization, and effective external linkages.

- "Financial capacity" is a water or wastewater system's ability to acquire and manage sufficient financial resources. Financial capacity includes revenue sufficiency, credit worthiness, and fiscal management and controls.

#### Information to Support Emergent Condition #5

Complete and submit the appropriate section(s) of the "Technical, Managerial, and Financial Capacity Evaluation and Benchmark Criteria Assessment Form" (Appendix I) and appropriate documentation to support answers<sup>9</sup>. Supporting information should also identify the Emergent Condition(s) the owner is unable to adequately address or explain how the system deficiency will not support economic activity of the municipality on a sustainable basis and include the aspect(s) of technical, managerial, and financial capacity with which the owner is certifying as an emergent deficiency.

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<sup>9</sup> The following resources may assist an owner in determining whether it lacks the technical, managerial and financial capacity to address emergent conditions:

- Assessing Water System Managerial Capacity (EPA, <http://water.epa.gov/type/drink/pws/smallsystems/upload/epa816k12004.pdf>).
- EPA's website on "Small Public Water Systems and Capacity Development" (EPA, <http://water.epa.gov/type/drink/pws/smallsystems/>).
- Completion of NJDEP's Capacity Development Program's "Criteria and Benchmarks for Technical, Managerial, and Financial (TMF) Capacity" (NJDEP, <http://www.nj.gov/dep/watersupply/pdf/cap.dev.benchmarks.web.pdf>).

**APPENDIX I:**  
**Technical, Managerial, and Financial Capacity Evaluation and  
Benchmark Criteria Assessment Form**

**TECHNICAL CAPACITY: Owners should answer Yes, No, or N/A (please explain and provide documentation, as applicable).**

1. (a) Is the Water and or Wastewater (W/WW) System in significant non-compliance as defined under Emergent Condition #2 (above)?

Yes      No      N/A

- (b) For Public Water Systems, does the System exceed 11 points using the USEPA Enforcement Targeting Tool?

Yes      No      N/A

2. Does the System have any continuing violations of any pertaining Rules (N.J.A.C. 7:10, N.J.A.C. 7:10A, N.J.A.C. 7:19 and N.J.A.C. 7:14A) and/or its NJPDES Permit?

Yes      No      N/A

3. Is the System operating under a licensed operator of the appropriate license per the Licensing of Water Supply & Wastewater Treatment System Operator rules (N.J.A.C. 7:10A)?

Yes      No      N/A

4. (a) If the System is a S-4 or S-3 wastewater system, does it have an adequate full time licensed operator of the appropriate class on staff and is an appropriate back up operator available to operate the system when the operator of record is unavailable?

Yes      No      N/A

- (b) If the System is a T-3 or T-4 Public Water System, does it have an adequate full time licensed operator or the appropriate class on staff and is an appropriate backup operator available to operate the system when the operator of record is unavailable?

Yes      No      N/A

**MANAGERIAL CAPACITY: Owners should answer Yes, No, or N/A (please explain and provide documentation, as applicable).**

1. Is the owner(s) of the System in receivership?

Yes      No      N/A

2. Does the owner(s) of the System demonstrate clear ownership of the System?

Yes      No      N/A

- a. Is the legal owner or responsible legal party identified?

Yes      No      N/A

- b. Is there legal authority to implement WPCA requirements?

Yes      No      N/A

3. Does the System have a clear and defined organizational structure?

Yes      No      N/A

- a. Is there an organizational chart with detailed job descriptions?

Yes      No      N/A

- b. Does the chart include the license/certification requirements for the personnel listed?

Yes      No      N/A

- c. Does the chart include a listing of all individuals and contracts for services provided by others?

Yes      No      N/A

4. Does the System have written plans, policies, and procedures for:
  - a. Complying with monitoring and reporting requirements?  
Yes    No    N/A
  - b. Interacting with regulators?  
Yes    No    N/A
  - c. Interacting with customers?  
Yes    No    N/A
  - d. Dealing with emergencies (i.e. - have an established emergency management plan)?  
Yes    No    N/A
5. Does the System have a 5-year Capital Improvement Plan?  
Yes    No    N/A
6. Does the System have an Asset Management Plan?  
Yes    No    N/A

**FINANCIAL CAPACITY: Please circle those answers that apply and provide numerical values where indicated.**

*Owners should have a licensed financial professional fill out this form and provide supporting documentation as needed explaining how the answers to these questions affect the ability of the System to sustain operations.*

1. Does the System have a non-investment grade rating from any one of either: Fitch Ratings, Moody's Investors Service, or Standard & Poor's?  
  
Yes    No    N/A
2. Does an effective financial plan exist independently for the System which accounts for sufficient revenues, operating expenses, and capital improvement costs, and has sufficient reserves for both emergencies and the timely replacement of capital assets that have reached their useful lives for the next three (3) years?  
  
Yes    No    N/A
3. What percentage (%) of the median household income for the County of residence is the System's average annual residential bill?  
  
\_\_\_\_\_
4. What is the Asset Replacement Time of the **(ART)\*** of the System? \_\_\_\_\_
5. What is the Debt Ratio **(DR)\*** of the System independent of the municipality? \_\_\_\_\_
6. What is the Cash-on-Hand **(CASH)\*** of the System independent of the municipality? \_\_\_\_\_
7. What is the Coverage Ratio **(CR)\*** of the System independent of the municipality? \_\_\_\_\_

## Definitions:

**System** = Water System, Wastewater Collection System, and/ or Wastewater Treatment System

**SDWA** = Safe Water Drinking Act

**WPCA** = New Jersey Water Pollution Control Act

**NJPDES** = New Jersey Pollutant Discharge Elimination System

**Useful life** is the period of time from the acquisition of a system component to the time when that component, while able to provide a service, ceases to be the lowest cost alternative to satisfy a particular level of service. The useful life of system components may be determined by considering the manufacturer's recommendation (including projected-useful-life tables or decay curves), the component's current condition, and service history.

**Asset Replacement Time (ART)** provides an approximation of the average remaining useful life of the assets of a System, expressed in years. This measure considers depreciation as part of the Net Assets calculation, and provides a proxy of the rate at which a System's assets age.

ART is calculated as follows:

$$\text{ART} = \text{Net Assets} / \text{Average Depreciation}$$

Net Assets = Book Value of assets that are expected to provide benefits, such as equipment, buildings and real estate net of depreciation (excludes operational assets such as accounts receivables)

Average Depreciation = Most recent three (3) year average of a System's depreciation.

**Debt Ratio (DR)** - measures the amount of total outstanding long-term and short-term debt, and long-term leases, relative to the book value of a System's assets. The debt ratio is expressed as a decimal or percentage. It can be interpreted as the proportion of a System's assets that are financed with leverage. A higher ratio indicates a higher percentage of borrowed funds used to finance the System's assets and, as a result, the relative need for greater and more consistent cash flow to pay annual debt service.

$$\text{DR} = \text{Total Net Debt (ST \& LT Debt plus LT Leases)} / \text{Net Assets}$$

Total Net Debt = Outstanding LT Debt plus ST Debt plus LT Leases less restricted debt service reserves (excludes operational liabilities such as accounts payable, salary payable, taxes payable, etc.).

Net Assets = Book Value of assets that are expected to provide benefits, such as equipment, buildings and real estate net of depreciation (excludes operational assets such as accounts receivables)

**Cash-on-Hand (CASH)** – measures a System's ability to meet near term liabilities, particularly in the event of emergencies or other unexpected expenditures. CASH measures in days, the amount of unrestricted funds available relative to a System's total net operating expenses.

$$\text{CASH} = [(\text{Unrestricted Cash} + \text{ST Investments}) * 365] / \text{Net Operating Expenses}$$

Unrestricted Cash & ST Investments = Short term assets readily available as cash for immediate general purpose use by the PWS (excludes debt reserve funds).

Net Operating Expenses = Annual Operating and Maintenance expenditures (excludes noncash items).

**Coverage Ratio (CR)** - measures the ability of a System to pay its current obligations in any given year. CR is a multiple that compares Net Operating Income plus Fixed Costs less Net General Fund Transfers, to the System's debt obligations including interest, principal, sinking-fund and lease payments, plus Fixed Costs due within one year. A number greater than 1.00, the greater the income cushion a System generates to pay its creditors.

$$\text{CR} = (\text{Net Operating Income} - \text{Net Transfers} + \text{Fixed Costs}) / (\text{Annual Debt Service} + \text{Fixed Costs})$$

Net Operating Income = Gross annual revenue attributable to the System (from operating service fees, connection and other source fees, investment income, etc.) less annual Operating & Maintenance expenditures (excluding noncash items).

Net Transfers = Transfers made to the underlying governmental entity's general fund as reimbursements, PILOT payments or post-employment benefit costs (e.g. OPEB).

Fixed Costs = A System's pro-rata share (as determined by the System's share of a wholesaler's total operating revenues) of the total annual debt service payment due by the System's wholesale provider, if any.

Annual Debt Service = Principal, Interest and long-term Lease payments due that year

*n.b. The aforementioned Financial Parameters are used in the following Rating Agency reports:*

1. *Fitch Ratings (September, 2015) U.S. Water and Sewer Revenue Bond Rating Criteria;*
2. *Moody's Investors Service (December 2015) US Municipal Utility Revenue Debt;*
3. *Standard & Poor's Ratings Services (January, 2016) U.S. Public Finance Waterworks, Sanitary Sewer, and Drainage Utility Systems: Rating Methodology and Assumptions*

## APPENDIX II: Certification Checklist

This checklist is intended to serve as a tool to assist system owners in determining what to submit to DEP. The checklist outlines the information to be provided to DEP to aid in it's the review of the Municipal Certification of Emergent Conditions.

Materials for Department Review of Municipal Emergent Conditions Certification			
	<b>WIPA procedure documents<sup>10</sup></b>		<b>Notes</b>
<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 <sup>11</sup>		
<b>Emergent Condition #1- Location in an Area of Critical Water Supply Concern</b>			
	<b>Criteria</b>	<b>Recommended Supporting Information</b>	<b>Notes</b>
<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 <sup>12</sup>	
<input type="checkbox"/>		Water System Service Area should be delineated. Delineations should be provided on a GIS map <sup>7</sup> (digital and paper copies)	
<b>Emergent Condition #2-Significant Noncompliance (<i>Check all that apply</i>)</b>			
	<b>Criteria</b>	<b>Recommended Supporting Information</b>	<b>Notes</b>
<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	Written documentation of non-compliance and an explanation of the cause of the effluent violations	

<sup>10</sup> These are evidence that the statutorily required steps prior to DEP review of the Emergent Condition Certification has occurred.

<sup>11</sup> Examples: Annual Reports, newsletters or communication with community, municipal budgets and/ or narratives, Consumer Confidence Reports, etc.

<sup>12</sup> 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](http://www.nj.gov/dep/gis/assets/NJDEP_GIS_Spatial_Data_Standards_2013.pdf)

	same parameter at the same outfall in a six-month period, or		
<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
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<input type="checkbox"/>	<p>Demonstrated lack of historical investment, repair, or sustainable maintenance as determined by the Department</p>	<p>Written report and/ or through the financial analysis identifying that the owner has not adequately invested in the system or its maintenance and the extent of repairs are needed and which the owner has invested in needed repairs and maintenance.</p>	
<input type="checkbox"/>	<p>Material damage<sup>13</sup> to the assets of the system.</p>	<p>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.</p>	

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

	Criteria	Recommended Supporting Information	Notes
	<p>The owner of a drinking water and/or wastewater system demonstrates that it lacks the <u>technical capacity</u><sup>14</sup> 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</p>	<p>Supporting Material for either:</p> <ol style="list-style-type: none"> <li>1. The Emergent Condition(s) for which there lacks technical capacity to adequately address; or</li> <li>2. The inability to support the economic activity in the municipality on a sustainable basis</li> </ol>	
<input type="checkbox"/>		<p>Technical Capacity Section of the Capacity Evaluation and Benchmark Criteria Assessment Form (Appendix I of Guidance Document)</p>	
		<p>Documentation that supports the answers given on the Assessment Form</p>	

<sup>13</sup> 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.

<sup>14</sup> “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> <sup>15</sup> 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 <u>Capacity Evaluation and Benchmark Criteria Assessment Form</u> (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> <sup>16</sup> 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 <u>Capacity Evaluation and Benchmark Criteria Assessment Form</u> (Appendix I of Guidance Document)	
		Documentation that supports the answers given on the Assessment Form	

<sup>15</sup> “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.

<sup>16</sup> “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.