

The Water Quality Accountability Act: Making the Case for Investment In Water Infrastructure



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I. Water Quality Accountability Act Statutory Requirements

1. Effective Date.

- a. The Water Quality Accountability Act was approved as P.L. 2017, c.133 on July 21, 2017.
- b. The Act is effective on the 90th day after the date of enactment, or on October 21, 2017.

2. Subject Parties.

- a. The Act applies to “water purveyors” which is defined to mean any person that owns a public water system with more than 500 service connections.

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b. “Public water system” is defined to mean: “. . . a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes: (1) any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system; and (2) any collection or pre-treatment storage facilities not under such control which are used primarily in connection with such system.” N.J.S.A. 58:12A-3.

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3. Public Water System Inspection

a. **Valve Inspection.** Each water purveyor must inspect each valve in its public water system to determine (1) the accessibility of the valve for operational purposes, and (2) the valve's operating condition. A water purveyor shall repair or replace any valve found to be broken or otherwise not operational.

b. **Valve Inspection Frequency.** Each water purveyor must inspect each valve that is 12 or more inches in diameter at least once every 2 years, and all other valves at least once every 4 years, except that these inspection requirements do not apply to any service connection valve or customer shut-off valve. At a minimum, each valve inspection must include:

(i) clearing of the area around the valve to ensure full access to the valve for operating purposes;

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(ii) cleaning out the valve box;

(iii) dynamic testing of the valve, by opening and then closing the valve for either of the following number of turns: (a) the number of turns recommended by the valve manufacturer to constitute a credible test, or (b) the number of turns which constitutes 15% of the total number of turns necessary to completely open or completely close the valve; and

(iv) compliance with any other criteria required by NJDEP pursuant to rules and regulations adopted under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et. seq.

c. Each water purveyor must, once a year, test every fire hydrant in its system to determine the hydrant's working condition and formulate and implement a plan for flushing every fire hydrant in its public water system, and every dead end of a main in its system. The plan for flushing may be combined with the annual testing of the fire hydrants.

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- d. Each water purveyor must keep a record of all inspections, tests and flushings conducted under the Act for a period of at least 6 years.
- e. Each water purveyor that owns, solely or jointly, a fire hydrant shall mark each hydrant with the symbols of its name, abbreviation of its name, corporate symbol, or other distinguishing mark or code by which ownership may be readily and definitely ascertained. Each fire hydrant shall be marked by a number of symbols, or both, by which the location of the hydrant may be determined on the water purveyor's office records. The markings may be made with paint, brand, or with a soft metal plate, and shall be of such size and so spaced and maintained as to be easily read.
- f. Each water purveyor shall identify, to the extent possible, the geographic location of each valve and fire hydrant in its public water system using a global positioning system based on satellite or other location technology.

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4. Development of Cybersecurity System.

a. Within 120 days after the effective date of the Act, or by February 21, 2018, each water purveyor must develop a cybersecurity program, in accordance with requirements established by the Board of Public Utilities that define and implement organization accountabilities and responsibilities for cyber risk management activities, and establish policies, plans, processes, and procedures for identifying and mitigating cyber risks to its public water system. As part of the program, a water purveyor must conduct risk assessments and implement appropriate controls to mitigate identified risks to the public water system, maintain situational awareness of cyber threats and vulnerabilities to the public water system, and create and exercise incident response and recovery plans.

b. A copy of the water purveyor's cybersecurity program shall be provided to the New Jersey Cybersecurity and Communications Integration Cell established under Executive Order No. 178 (2015) in the New Jersey Office of Homeland Security and Preparedness.

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c. Within 60 days after developing of the cybersecurity program, each water purveyor must join the New Jersey Cybersecurity and Communications Integration Cell and create a cybersecurity incident reporting process.

d. A water purveyor that does not have an internet-connected control system is exempt from the requirement to establish a cybersecurity program and join the New Jersey Cybersecurity and Communications Integrations Cell.

5. Water Purveyor Violations, Mitigation.

a. In addition to any other legal or regulatory requirements, whenever a water purveyor is issued 3 notices of violation under N.J.S.A. 58:12A-10 for any reason or 2 notices of violation related to an exceedance of a maximum contaminant level within any 12 month period, the water purveyor, within 60 days after receipt of the 2nd or 3rd notice, as applicable, shall submit to NJDEP a mitigation plan specifying whether the notice of violation will be addressed through operational changes or will require a capital expenditure, and provide a schedule for implementation of the mitigation plan.

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b. The mitigation plan must include a report prepared by the licensed operator of the public water system and a professional New Jersey licensed engineer which includes a technical analysis of the notices of violation and an explanation of how the mitigation plan is intended to prevent a recurrence of the issue(s) that resulted in the notice of violation. Any required capital expenditures must be incorporated into the asset management plan required under the Act.

c. In addition to any other certifications required by law or regulations, the responsible corporate officer of the public water system, if privately held, the executive director, if an authority, or mayor or chief executive officer of the municipality, if municipally owned, as applicable, shall certify in writing each year to NJDEP and, if applicable, the Board of Public Utilities, that the water purveyor complies with all federal and state drinking water regulations, including water quality sampling, testing and reporting requirements; the hydrant and valve requirements of the Act; the notice of violation mitigation plan requirements of the Act, if applicable; and the infrastructure improvement investment required under the Act.

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6. Asset Management Plan; Report.

a. Beginning no later than 18 months after the effective date of the Act, or by April 21, 2019, every water purveyor must implement an asset management plan designed to inspect, maintain, repair, and renew its infrastructure consistent with standards established by the American Water Works Association. The asset management plan must include:

(i) A water main renewal program designed to achieve a 150-year replacement cycle, or other appropriate replacement cycle as determined by a detailed engineering analysis of the asset condition and estimated service lives of the water main serving the public water system;

(ii) A water supply and treatment system designed to inspect, maintain, repair, renew and upgrade wells, intakes, pumps, and treatment facilities in accordance with all federal and state regulations, standards established by the American Water Works Association, in any mitigation plan required under the Act; and

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(iii) Any other programs, plans, or provisions required by NJDEP under rules and regulations adopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et. seq.

b. Each water purveyor must dedicate funds on an annual basis to address and remediate the highest priority projects as determined by its asset management plan.

c. All asset management plans and system condition reports must be certified to by the licensed operator or professional engineer of the public water system and the responsible corporate officer of the public water system, if privately held, executive director, if an authority, or mayor or chief executive officer of the municipality, if municipally owned, as applicable. The replacement cycle shall be determined by dividing the miles of water main located in the public water system by 150 or other appropriate demonstration set forth in the certified asset management plan.

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d. At least once every 3 years, each water purveyor must provide to NJDEP and the Board of Public Utilities, if applicable, a report based on its asset management plan identifying the infrastructure improvements to be undertaken in the coming year and the cost of those improvements, as well as identifying the infrastructure improvements completed in the past year and the cost of those improvements. A municipal water department or municipal water authority shall also submit the report to the Division of Local Government Services in the Department of Community Affairs.

e. NJDEP, the Board of Public Utilities, and the Department of Community Affairs must create a centralized portal allowing for electronic submittal of the report. The lack of a centralized portal does not negate the requirement for a water purveyor to submit the report.

II. Water Quality Accountability Implementation Issues

1. New Jersey Department of Environmental Protection (“NJDEP”) Implementation of Water Quality Accountability Act.

a. NJDEP has not yet determined how it will implement the Water Quality Accountability Act. In a September 25, 2017 website posting by the NJDEP Division of Water Supply & Geoscience, NJDEP stated that it was coordinating with the New Jersey Board of Public Utilities, the New Jersey Office of Homeland Security and Preparedness, and the New Jersey Department of Community Affairs regarding their roles in implementation of the Act, and advised that it would solicit stakeholder input in the near future in coordination with those agencies.

b. Reports of discussions in the New Jersey Water Supply Advisory Council (WSAC) indicate that NJDEP is reviewing its implementation approach to the Act with the other agencies and will solicit stakeholder input.

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2. The New Jersey Board of Public Utilities Cybersecurity Program Requirements.

a. The Act requires that within 120 days of its effective date (October 21, 2017) or by February 21, 2018, each water purveyor must develop a cybersecurity program in accordance with requirements established by the Board of Public Utilities.

i. In discussions with Board of Public Utilities staff, we were advised that the Board is not actively working on the cybersecurity program requirements for the Act and that it could be 6 months or longer before those requirements might be established.

b. Joining the New Jersey Cybersecurity & Communications Integration Cell. The Act requires each water purveyor (with an internet connected control system) within 60 days of developing its cybersecurity program to join the New Jersey Cybersecurity and Communications Integration Cell (NJCCIC) established pursuant to New Jersey Governor's Executive Order No. 178 (2015), and to create a cybersecurity incident reporting process.

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i. Joining NJCCIC can be obtained by accessing NJCCIC's website at www.cyber.nj.gov. There is an NJCCIC Fact Sheet which can be downloaded from the website explaining that NJCCIC is the state's one-stop shop for cybersecurity information sharing, threat analysis, and incident reporting. NJCCIC is located at the Office of the Regional Operations Intelligence Center (ROIC) and NJCCIC is involved in partnership with federal homeland security and law enforcement authorities, and engages in sector specific information sharing and analysis.

3. Implications of Filing Annual Certifications of Compliance With Federal and State Drinking Water Regulations.

a. These certification requirements regarding compliance with federal and state drinking water standards, with certification responsibility placed on the responsible corporate officers of the public water system, the authority executive director, or the mayor or chief executive officer are significant and far reaching.

About Our Speaker



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John Scagnelli is Environmental Counsel of the New Jersey State League of Municipalities. His environmental law practice covers the entire environmental law field, including environmental compliance, environmental litigation, environmental auditing, environmental permitting and environmental counseling. John has had extensive legal experience servicing law firms, businesses and public entities. He serves as environmental counsel for banks and lending institutions, commercial and industrial companies, states and municipalities, real estate development organizations, and other organizations.

John earned his JD from Yale Law School and his BA from Yale University.