



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WATER RESOURCE MANAGEMENT
OFFICE OF THE ASSISTANT COMMISSIONER

401 East State Street

P.O. Box 402, Mail Code 401-02A
Trenton, New Jersey 08625-0420
Tel. (609) 292-4543 • Fax (609) 292-0913
www.nj.gov/dep

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

SHAWN M. LATOURETTE
Commissioner

June 13, 2024

Borough of Hopewell
88 East Broad Street
Hopewell, NJ 08525
Attn: Douglas Walker, Borough Administrator
Via Email Only: doug.walker@hopewellboro-nj.us

Subject: Water Infrastructure Protection Act – Borough of Hopewell
Emergent Condition(s) Certification and Supporting Information
New Jersey Department of Environmental Protection - Determination

Administrator Walker:

The purpose of this letter is to provide the Department of Environmental Protection's (Department) determination regarding the Borough of Hopewell (Borough) Emergent Condition Certification, in accordance with the Water Infrastructure Protection Act (WIPA), N.J.S.A. 58:30-1 et seq. In furtherance of its certification and consistent with WIPA's requirements, the Borough submitted Resolution No. 2024-69, dated May 13, 2024, certifying that Emergent Conditions exist. The Borough also provided, and the Department reviewed, additional supporting information and documents, including but not limited to, the "Emergent Condition Analysis," report prepared by Boswell Engineering and dated May 2024, as well as mayor, administrator, and council certifications in support of WIPA's Emergent Condition No. 3 (deficiency or violation of maximum contaminant levels) and Emergent Condition No. 5 (lack of financial, technical, or managerial capacity) and "Water System Evaluation Report – Borough of Hopewell," report prepared by Phoenix Advisors, LLC, dated March 28, 2024.

Based upon a review of the information provided, and after consultation with the New Jersey Department of Community Affairs (DCA) the New Jersey Infrastructure Bank (I-Bank), and New Jersey Board of Public Utilities (BPU) staff members, the Department approves the Borough's Emergent Condition Certification as to Emergent Condition No. 3 but denies the Borough's Emergent Condition Certification as to Emergent Condition No. 5 for the sale or long-term lease of their water system. The basis for this determination is below.

Regarding Emergent Condition No. 3, the Department has determined that the Borough's certification and supporting information, demonstrate a deficiency or violation of maximum contaminant levels established pursuant to the "Safe Drinking Water Act," P.L. 1977, c.244 (C.58:12A-1 et seq.) concerning

the availability or potability of water as provided at N.J.S.A. 58:30-5(b)(3). According to the “Emergent Condition Analysis” report, the Borough is presently working with the Department and Borough consultants to take corrective action to comply with the following:

- a. The Department's July 7, 2022, Notice of Non-Compliance that notified the Borough of its 2nd quarter 2022 Maximum Contaminant Level (MCL) violation for perfluorooctane sulfonic Acid (PFOS) for Well No. 4; and
- b. The Department's September 14, 2023, Notice of Non-Compliance that notified the Borough of its failure to remediate the 2nd quarter 2022 PFOS MCL violation within one year pursuant to N.J.A.C. 7:10-5.7(a).

Although contaminant levels do not presently exceed the PFOS MCL, the Department requires that the Borough take corrective action to remediate this condition at Well No. 4. Currently, Well No. 4 is the only active well within the Borough's water system.

Water from Well No. 6 contains arsenic at concentration levels above the Safe Drinking Water Act standards. Accordingly, Well No. 6 has been inactive since 2000. Preliminary engineering estimates indicate that the cost to remediate Well No. 4 and to return Well No. 6 to service is \$2.34 million.

Additionally, Well No. 2 and Well No. 5 have been removed from service. In 2006, Well No. 2 and Well No. 5 were inactivated due to naturally occurring radium and uranium at concentration levels exceeding Safe Water Drinking Act standards. Following a pilot study and cost assessment, the Borough determined that it was unable to meet the financial impact of treatment and subsequently permanently decommissioned these wells in 2014.

Since April 2016, the Borough has been unable to produce a sufficient volume of water using its own assets to meet the system demand. As a result, water must be purchased from New Jersey American Water (NJAW) to meet the demand. Well No. 4 provides approximately 40% of the water needed to operate the system, with 60% being purchased from NJAW.

Considering the foregoing, the Department has determined that there is a present deficiency concerning the availability or potability of water and, therefore, Emergent Condition No. 3 is demonstrated.

Regarding Emergent Condition No. 5, the Department has determined that the Borough's certification and supporting information does not demonstrate a lack of 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, as provided at N.J.S.A. 58:30-5.b(5).

The independent financial advisor report, prepared by Phoenix Advisors (Phoenix Report), presents the current cashflows of the system and different multi-year projections based on the pathways available for the system. Table III in the Phoenix Report outlines the requirements for the Borough to continue its ownership and operation of the system and undertake the \$6 million of capital improvements currently necessary, to be partially debt-financed with the remainder covered through the U.S. Environmental Protection Agency's “Emerging Contaminants in Small or Disadvantaged Communities” (EC-SDC) grant program. In addition to the 55% rate increase currently under review by the Borough, this pathway



would require a 14% rate increase for CY2025, followed by annual increases of 2% to 3%. As such, the Phoenix Report has outlined a financially viable pathway for the system to continue operating under the Borough's ownership and undertake the required capital improvements necessary to come back into compliance. Furthermore, this pathway would eliminate the need to bulk purchase water from NJAW, which the Phoenix Report highlights as one of the primary causes for the increase in the Borough's operational costs.

Though the Emergent Conditions Analysis report prepared by Boswell Engineering (Boswell Report) discusses the likelihood of additional costs beyond those outlined in Table III in the Phoenix Report arising in the next 10 years, the Boswell Report does not delineate how much of those anticipated maintenance costs may be covered under the increased pay-go line item that was included in its financial projections, which is an increase over the currently allocated pay-go appropriation in the system's annual budget.

Therefore, the Department deems that there is insufficient evidence to approve Emergent Condition No. 5 currently.

Given the Borough's current operational and ownership configuration, it is eligible for several financing opportunities, such as the EC-SDC grant program, which could significantly reduce costs associated with the remediation of PFOS. However, if the Borough proceeds with the sale of its system pursuant to WIPA, there is no guarantee that that system would remain eligible indefinitely for those same funding opportunities. If the system ultimately merges with a larger utility, such operational or classification changes could alter that status.

According to the Department's Bureau of Water Allocation & Well Permitting's file review, the Borough does not have a contract with NJAW for bulk purchase that would commit the necessary amount of water to be sold to the Borough, which typically provides less expensive water than emergency contracts. However, the Department notes that the Borough has an agreement with NJAW to provide water to the Borough if available.

Also, during the April 30, 2024, pre-application meeting, the Borough indicated that it also owns, operates, and maintains a wastewater system, but can do so while keeping rates low.

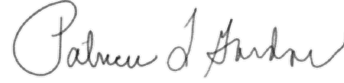
Thus, in accordance with N.J.S.A. 58: 30-5.b and e, the Department approves the Borough of Hopewell's certification as to the existence of Emergent Condition No. 3. In accordance with N.J.S.A. 58:30-5.f, the Borough must publish notice of this approval if it chooses to proceed with the sale or long-term lease of its water assets to a capable private or public entity. The notice must state that the emergent condition certification is in anticipation of a long-term lease or sale of water assets to capable private or public entity and must be published on the Borough's official website and at least once in one or more newspapers circulating in the Borough. The notice must prominently state that a petition may be filed within 45 days of the publication of the notice to require a referendum before a resolution authorizing the long-term lease or sale of water or wastewater assets may take effect. For information regarding additional steps in the process, visit the [WIPA website](https://dep.nj.gov/wipa/) (<https://dep.nj.gov/wipa/>).

Nothing herein shall be construed to satisfy any other obligations under WIPA or any other applicable laws.



If you have any questions, please feel free to contact Chelsea Brook of my staff at Chelsea.Brook@dep.nj.gov.

Sincerely,



Patricia Gardner
Assistant Commissioner
Water Resource Management

CC:

[Regina Toth](#), Borough Clerk, Hopewell Borough
[Lisa M. Maddox](#), Borough Attorney, Hopewell Borough
[Michael Kammer](#), Senior Advisor, Division of Water, Board of Public Utilities
[Terel Klein](#), Deputy Attorney General, Division of Law
[Jason R. Martucci](#), Esq., Division of Local Government Services, NJ Department of Community Affairs
[Kristen Heinzerling](#), Deputy Attorney General, Division of Law
[Elizabeth Delahunty](#), Deputy Attorney General, Division of Law
[Alysia Walsh](#), Deputy Director, Office of the State Comptroller
[Carlton Dudley](#), Director, Division of Water and Land Use Enforcement
[Patricia Ingelido](#), Director, Division of Water Supply & Geoscience
[Ryan Knapick](#), Advisor, Water Resource Management
[Keiona Miller](#), Director, Office of Local Government Assistance
[David Zimmer](#), Executive Director, New Jersey Infrastructure Bank

