

WIPA Process Steps

Determination of existence of emergent condition(s)

Public water system owner determines one or more of the following emergent conditions applies:

- Emergent Condition #1 – the system is located in an Area of Critical Water Supply Concern I or II, or any Consultation with other agencies as needed.
- Emergent Condition #2 – 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 the Department of Environmental Protection (DEP) or is substantially out of compliance with an administrative consent order, settlement agreement, or has entered a stipulation of settlement or judicial consent order with the 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 the DEP, or material damage to the infrastructure of the system; or
- Emergent Conditions #5 – the system 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.

Schedule pre-application meeting, recommended

To ensure that the owner/municipality effectively navigates the Act and minimize the risk of missteps along the way, it is strongly recommended that the municipality schedule a pre-application meeting with the DEP, Office of the State Comptroller (OSC), Board of Public Utilities (BPU), and Department of Community Affairs (DCA) by emailing wipa@dep.nj.gov.

Additionally, as soon as a municipality decides they will be submitting materials/a request to DEP regarding WIPA, they should send an email to the wipa@dep.nj.gov to request an authorization code and instructions for submission of documents through our online system. Any documentation to be submitted to DEP regarding WIPA, must be submitted through the My NJ Portal with their approved authorization code.

Hire independent financial advisor to evaluate the public water utility

The owner will hire an independent financial advisor* to review, analyze, and report on the value of the system and the short- and long-term impacts to rate-payers of the cash-flow structure of the proposed transaction and to provide an estimate as to the financial requirements necessary to address the emergent conditions and to operate and maintain the system. Upon completion of the analysis and review, the independent financial advisor shall transmit its report to the owner.

- * The procurement of the independent financial advisor shall comply with Local Public Contracts Law. Municipalities should note that an independent financial advisor does not meet the definition of professional services under the Local Public Contracts Law. N.J.S.A. 40A:11-2. These consultant services, however, may be procured pursuant to N.J.S.A. 40A:11-4.1(m).
- * The independent financial advisor report should be prepared by a qualified entity or individual not currently employed or engaged by the municipality and distinct from the engineering firm providing the certification that emergent conditions exist.

Within 10 days of the approval of the report by the owner, the owner shall transmit copies to the Board of Public Utilities, the DCA, and the DEP and shall make the report available for public review.

Public hearing on proposed emergent condition(s)

A public hearing on the proposed emergent condition certification shall be held. The owner shall provide notice of the public hearing no less than 30 days prior to the date of the hearing. The notice shall prominently state the findings upon which the certification of emergent conditions 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.

Notice of the public hearing shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality. Notice of the public hearing shall be published on the official Internet website of the county and at least once in one or more newspapers circulating in the county. If an applicable official website does not exist, notice of the public hearing shall be published on the official Internet website of the Department of Community Affairs.

Governing body resolution

After the public hearing, the governing body of the municipality will, by resolution adopted by at least two-thirds of its authorized membership, certify that one or more emergent conditions exist, and that the owner/municipality intends to sell or long-term lease its water or wastewater assets to a capable private or public entity to address these emergent conditions and to operate and maintain the system.

Within five days of the adoption of the resolution, the governing body shall transmit a true copy of the resolution, to the DEP, the BPU, and the DCA.

Approval of emergent conditions by DEP

Within 30 days of the receipt of the resolution, the Department will approve or reject the owner's emergent conditions certification as contained in the resolution. It is recommended that [DEP's Guidance Document – Municipal Certification of Emergent Conditions](#) be used to ensure that the appropriate supporting information is provided to DEP for its review.

Public notice of DEP's approval

Upon receipt of the approval of the emergent conditions certification by DEP, the owner shall publish notice of the approval if the owner chooses to proceed with the sale or long-term lease of its water or wastewater assets to a capable private or public entity. The notice shall prominently state that the certification is in anticipation of a long-term lease or sale of water or wastewater assets to a capable private or public entity. Notice of the approval shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality.

The public notice shall prominently state that a petition, as described below, may be filed within 45 days after the publication of such notice to require a referendum before a resolution authorizing the long-term lease or sale of water or wastewater assets may take effect.

A petition may be filed with the municipal clerk, no later than 45 days after the notice of the approval of the emergent conditions certification is published, protesting the lease or sale of water or wastewater assets without a public referendum. If the petition is signed by a number of legal voters of the municipality equal to at least 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected, a resolution to lease or sell water or wastewater assets shall not take effect unless the lease or sale of such assets is approved pursuant to R.S.40:62-4 and R.S.40:62-5. If a petition is not filed pursuant to this subsection, a resolution to lease or sell water or wastewater assets shall not be subject to a public referendum.

Advertisement, selection of buyer and negotiation of sale

Once the steps above are completed, the owner may issue a request for qualifications (RFQ) pursuant to the Act, and negotiate for a contract for lease or sale of their drinking water or wastewater utility.

Office of the State Comptroller (OSC) review

Though not specifically required through WIPA, transactions of this size, typically trigger OSC review.

For WIPA transactions valued greater than \$12.5 million, pursuant to N.J.S.A. 52:15C-10(b):

- Pre-Advertisement notice must be submitted to OSC for review at least 30 days before advertisement of the RFQ under N.J.S.A. 58:30-6(a)
- The appropriate OSC submission form (FORM B1), which includes detailed submission instructions, may be found at:
https://www.nj.gov/comptroller/about/work/procurement/docs/osc_compliance_form_12_5b_1_pre.pdf

For WIPA transactions valued greater than \$2.5 million, but less than \$12.5 million, pursuant to N.J.S.A. 52:15C-10(a):

- Post-award notice must be submitted to OSC no later than 20 business days after the resolution awarding to the qualified respondent under N.J.S.A. 58:30-6(c)
- The appropriate OSC submission form (FORM A), which includes detailed submission instructions, may be found at:
https://www.nj.gov/comptroller/about/work/procurement/docs/osc_compliance_forma_2_5m.pdf

Any questions or concerns regarding OSC submission requirements for WIPA transactions may be addressed to: OSC's Procurement Division at contracts@osc.nj.gov

Board of Public Utilities (BPU) review of proposed sale or long-term lease of contract

The proposed contract for the sale or lease of the system must then be approved by the Board of Public Utilities (BPU) by the filing of a petition. The Division of Rate Counsel should be served with a copy of the petition. Following the submission of the proposed contract, the BPU has 90 days to approve or reject. If the BPU does not act on the proposed contract within the 90-day time period, it is deemed approved.

The proposed contract submitted to the BPU must include the rent or sale price, any appraisals supporting the rent or sale price, documentation regarding the defeasance of debt, and any other information requested by the BPU.

For the purposes of rate making and recovery, the BPU is required to accept the negotiated sale price between the owner and the buyer/lessee as the new rate base effective as of the date of the approval of the long-term lease or sale, provided the price is found to be reasonable. N.J.S.A. 58:30-7(c)(2) sets forth the criteria for the BPU to consider when determining whether the contract is reasonable.

Note: If another municipally owned water utility acquires a municipal water utility under WIPA, the transaction and expanded franchise may require BPU approval if, after the acquisition, the combined water utility serves 1,000 or more individually billed customers outside the acquiring municipality's municipal boundaries pursuant to N.J.S.A. 40A:31-1, et seq. This does not apply to transactions involving municipally owned wastewater (sewer) utilities.

For the BPU, filings should be made to:

Sherri Golden, Secretary
Board of Public Utilities
44 S. Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, NJ 08625
Board.secretary@bpu.nj.gov

The BPU has waived the requirement to file hard copies of document until further notice. See the attached BPU Order. See also: N.J.A.C. 14:1-5.1 et seq.

For Rate Counsel:

Brian O. Lipman, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
P.O. Box 003
Trenton, N.J. 08625
njratepayer@rpa.state.nj.us

Separate petition for approval of the municipal consent by BPU

A separate petition(s) for the approval of the municipal consent(s) by the BPU may also be necessary pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5. Municipal consent proceedings require notice and hearing and may not be completed until after the WIPA proceeding is concluded.

Seeking approval from DCA on use of sale proceeds

The owner needs to send an application for the use of sale proceeds to the Director of Local Government Services in the Department of Community Affairs at dlgs@dca.nj.gov. At a minimum, the application must include the following:

- The rent or sale price for the system
- The total amount required to satisfy all system debt and any costs associated with compliance with the Internal Revenue Code or other tax code that may arise from the transaction
- A detailed description of the municipality's proposed use of the proceeds

After defeasance of system debt and tax code-related compliance costs, the WIPA statute requires distribution of any remaining proceeds to be dedicated as follows, in order of priority:

- Compliance with the Pollution Prevention Act (42 U.S.C. §13101 et seq. (1990)), Realty Improvement Sewerage and Facilities Act (N.J.S.A. 58:11-23 et seq. (1954)), and the Safe Water Drinking Act (42 U.S.C. §300f et seq.)
- Any outstanding fees or fines owed by the entity to any federal, State, or local governmental units
- Capital improvements
 - The amount dedicated to capital improvements shall both comply with a previously adopted long-term capital improvement or asset management plan and represent at least 50 percent of the remaining proceeds once the debt is defeased.
- Community improvements
 - DLGS will consider debt repayment for non-system related infrastructure as going toward community improvements.
- General purposes of the municipality

In considering proposed use of proceeds for community improvements and general purposes, the Division will only approve uses that are compatible with the municipality's long-term fiscal stability.

DCA review period

The Director of DLGS shall approve or reject the municipality's proposed use of proceeds within 30 days of receiving a complete proposal. If no disposition is made within 30 days, the proposed use of the proceeds shall be deemed approved.

**Water Infrastructure
Protection Act (WIPA)
Process**



Identify at least 1 Emergent
Condition (EC)



Schedule a pre-application
meeting



Hire an independent financial
advisor to evaluate the public
water utility



Municipal governing body
adopts resolution certifying
existence of EC's and submits
copy to DEP, BPU, and DCA



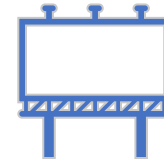
Hold a public hearing about
the proposed EC



Submit financial advisor report to
BPU, DCA, DEP along with a
certification from the mayor and
engineer that noted EC's exist



DEP has 30 days to approve or
reject the existence of the EC



Public notice of DEP's
approval of the EC (if granted)



Proceed with advertisement,
selection of buyer and
negotiation of sale



BPU has 90 Days to approve/
reject the proposed contract



Send the proposed sale or
long-term lease contract to
BPU for review



Office of State Comptroller
sale or long-term lease
agreement review



Separate petition for approval
of the municipal consent to
BPU



After BPU approval, seek
approval from DCA on use of
sale proceeds



DCA has 30 days to approve or
reject the use of sale proceeds