

**PROPOSED AMENDMENTS TO THE RULES  
OF THE DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION DIVISION  
RELATING TO SAFE DRINKING WATER, CHAPTER 391-3-5**

The Rules of the Department of the Natural Resources, Chapter 391-3-5, Safe Drinking Water, are hereby amended and revised for specific Rules, or such subdivisions thereof as may be indicated.

**[Note: Underlined text is proposed to be added. ~~Lined-through~~ text is proposed to be deleted.]**

**CHAPTER 391-3-5 SAFE DRINKING WATER**

**391-3-5-.04 Approval Required.**

(1) **Approval.** No person shall erect, construct, or operate a public water system, nor undertake substantial enlargements, extensions, additions, modifications, renovations or repairs to any public water system, including storage, distribution, purification, or treatment components, without having first secured the Division's approval of: the source of water supply; the means and methods of treating, purifying, storing and distributing said water; and obtaining a permit to operate a public water system, except as provided by paragraph (2) of this Section. The approval of the Director must be obtained prior to the dividing of a public water system. For purposes of these rules "substantial" as used in this Section shall not include routine maintenance.

(2) **Limited Additions.** Governmentally owned public water systems and water authorities with qualified staff and meeting operating criteria developed by the Division may, with prior approval from the Division, approve limited additions to the water system. These additions will be limited to water distribution lines to serve subdivisions, apartment complexes and shopping centers. The review of other additional types of water distribution system additions and/or extensions may be delegated to those local governments that have demonstrated the capability for such reviews. All delegations shall be by written agreement. Additions approved by the water system must be reported annually in a format prescribed by the Division.

(3) **Local Governmental Approval.** Before a person may initiate construction of a new public water system or increase the capacity of an existing public water system, the person shall notify the local government in which the system is located and obtain the local government's approval for development of the project within its jurisdiction, prior to the submittal of the plans and specifications to the Division for approval. To the extent practicable, the person should avoid locating part or all of the new or expanded facility at a site which:

(a) is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water system or a portion thereof; or

(b) except for intake structures, is within the floodplain of a 100- year flood or is lower than any recorded high tide where appropriate records exist; or

(c) is on or in close proximity to an abandoned landfill or any other site used for waste disposal.

~~(4) **Trust Indenture.** The requirements of this paragraph shall apply to all non-governmentally owned community public water systems that have been issued a permit to operate by the Director or have applied for a permit before January 1, 1998. To assure the continuity of operation and maintenance of a non-governmentally owned and operated public water system when the water customers own the property being served by the supplier, the supplier of the water system shall file with the Division an executed Trust Indenture as prescribed by the Division and approved by the Director. The Trustee should preferably be a governmental authority. When a governmental authority is not available, the Trustee should be a property owners association organized to guarantee the operation and maintenance of the public water system. The association must be made up of members who are owners of properties served by the water system. The Articles of Incorporation and By-Laws of the association are to be submitted to the Division for review and/or approval. If a Trustee other than a unit of local government or property owners association is proposed, it will be necessary to determine that there is no identity of interest between the owner or the system and the Trustee. For new or proposed systems, the legal documents shall be submitted with the plans and specifications. When the supplier is or desires to serve water to property not individually owned by the water consumer, a legal document assuring the continuity and maintenance of operation may not be required.~~

**(54) Connect to Local Governmental Public Water System.** Any person who desires to own or operate or who desires to commence the operation of a public water system shall first evaluate connecting to an existing local governmentally owned and operated public water system.

**(65) Approval for No Connection to Local Governmental Public Water System.** No approval of the plans and specifications for the development of a separate source of water supply or the construction of the water system will be made and no permit to operate will be issued until the owner has provided acceptable certification to the Division outlining the reasons why the system cannot connect to an existing local governmentally owned water system.

**(76) Pre-Operating Compliance Conditions.** Beginning January 1, 1998, the Division shall require compliance with the following conditions prior to the issuance of the initial permit to operate to a new privately owned community public water system:

(a) The owner shall provide written certification from the local government in which the system is located, that the local government is in concurrence with the development of the privately owned public water system. The certification shall be provided to the Division with the submission of the permit application and prior to or concurrently with

the submission to the Division of the plans and specifications for construction of the proposed public water system.

(b) The owner must retain a Professional Engineer, registered in the State of Georgia, to prepare plans and specifications for approval by the Division for the construction of the proposed public water system, and the owner shall submit to the Division a certification from the engineer that the water system was constructed according to the plans and specifications approved by the Division. The public water system must be designed and constructed in accordance with the Division's "Minimum Standards for Public Water Systems", latest edition.

(c) The owner must submit to the Division for approval, a multiyear business plan which adequately demonstrates the water system's managerial and financial capacity to comply with all drinking water regulations in effect, or likely to be in effect. The business plan shall be prepared in accordance with the Division's "Minimum Standards for Public Water Systems", latest edition. The business plan shall be updated at intervals determined by the Director.

(d) The owner must provide an approved back-up water source, such as an additional well, capable of providing adequate water service if the primary source becomes nonfunctional. The requirement for an approved back-up water source may be waived by the Director for systems with less than 25 service connections.

~~(e) The owner must submit a recorded copy of a trust indenture or other legal agreement approved by the Division that has been executed with the local government in which the system is located, which assures the operation and maintenance of the public water system in compliance with the drinking water regulations established pursuant to the Act. If the local government is not available or agreeable to be the Trustee for a proposed privately owned community public water system, written documentation from the local government certifying it has no desire to act in this capacity shall be provided to the Division. When the local government is not available or agreeable to be the Trustee, the owner shall obtain a Trustee acceptable to the Division and execute a trust indenture or other legal agreement approved by the Division. If a Trustee other than a local government or a property owners association is proposed, it will be necessary for the owner and the Trustee to certify in writing to the Division that there is no identity of interest between the owner of the system and the Trustee. For new or proposed community water systems, the recorded copies of the legal documents shall be submitted with the plans and specifications.~~

**(87) Treatment Products and Materials.** Products added directly to drinking water for its treatment or introduced indirectly into drinking water through its contact with surfaces of materials or products used for its treatment, storage, transmission, or distribution shall not adversely affect drinking water quality and public health.

(a) All treatment chemicals that come into contact with drinking water shall be certified for conformance with American National Standards Institute/National Sanitation

Foundation Standard 60 (ANSI/NSF Standard 60) by an American National Standards Institute (ANSI) approved third-party certification program or laboratory.

(b) All products that come into contact with drinking water during its treatment, storage, transmission or distribution shall be certified for conformance with American National Standards Institute/ National Sanitation Foundation Standard 61 (ANSI/NSF Standard 61) by an American National Standards Institute (ANSI) approved third-party certification program or laboratory.

(98) **Infrastructure Security.** Public water systems must provide appropriate measures to protect and secure its critical drinking water supply infrastructure, including its water source, treatment, distribution, and any other component that is deemed pertinent to the safe operation and maintenance of the drinking water supply system.

#### **(9) Performance Bond or Letter of Credit**

(a) A performance bond or letter of credit may be required by the director to further assist in the assurance that a public water system serving year-round residents maintains compliance with the established contaminant levels and the provision of an adequate supply of water at or above the required minimum pressure. Such a performance bond or letter of credit shall be required of the owner or operator of any public water system serving year-round residents if:

1. After the first violation of contaminant or water supply standards or requirements, the owner or operator of the public water system fails to make the necessary corrections after receiving a notice from the director specifying:

(i) The corrections which must be made; and

(ii) A reasonable period of time for the completion of necessary corrective action; or

2. After a second violation of contaminant or water supply standards or requirements, the director makes a determination, based on factors such as past performance, frequency and severity of violations, and timeliness of corrective action, that a performance bond or letter of credit is required.

(b) Any owner or operator of a public water system serving year-round residents who is required to obtain a performance bond or letter of credit pursuant to Rule 391-3-5-.05(9)(a) shall file with the director the following:

1. A performance bond, payable to the director and issued by an insurance company authorized to issue such bonds in this state; or

2. An irrevocable letter of credit, issued in favor of and payable to the director, from a commercial bank or other financial institution approved by the director.

(c) The bond or letter of credit required in Rule 391-3-5-.05(9)(b) shall be:

1. Conditioned upon faithful compliance with the Georgia Safe Drinking Water Act of 1977, the Rules for Safe Drinking Water Chapter 391-3-5, and the conditions and terms of the permit issued for the operation of the public water system;

2. In such amount as determined by the director as necessary to ensure the continued lawful operation of the public water system for a period up to ten years in the event the owner or operator fails to do so; provided, however, the range shall be as follows:

(i) Systems with 25 service connections or less -- an amount not to exceed \$30,000.00;

(ii) Systems with 26 to 50 service connections -- an amount not to exceed \$40,000.00;  
or

(iii) Systems with more than 50 service connections -- an amount not to exceed \$50,000.00;

3. Subject to termination or expiration only upon 120 days' written notice to the director;  
and

4. Conditioned upon coverage for any violation occurring during the term of the bond or letter of credit of which written notice has been given to the owner or operator prior to 120 days after said term even though the initial or final determination of the violation occurs after the term of the bond or letter of credit.

(d) If an existing bond or letter of credit is to expire or terminate, the owner or operator of the public water system shall file a replacement bond or letter of credit meeting the requirements of this subsection at least 60 days prior to the termination or expiration of the existing bond or letter of credit.

(e) Upon a determination by the director that an owner or operator has violated the Georgia Safe Drinking Water Act of 1977, the Rules for Safe Drinking Water Chapter 391-3-5, or the terms or conditions of a permit, the director may, after written notice of the violation to the owner or operator:

1. Forfeit or draw that amount of such bond or letter of credit that the director determines necessary to correct the violations determined and continue the lawful operation of the public water system; and

2. Expend such amount for such purposes.

(f) No action taken by the director pursuant to this subsection, including the forfeiture of a bond or the drawing of funds from a letter of credit, shall relieve the owner or operator of a public water system from compliance with all provisions of this part, including the

requirement to maintain in full force and effect a bond or letter of credit meeting the requirements of this subsection.

(g) Every permit issued under the Rules for Safe Drinking Water, Chapter 391-3-5, shall be conditioned upon compliance with Rule 391-3-5-.05(9).

(h) The provisions of Rule 391-3-5-.05(9) shall not apply to:

1. Any public water system of the state, an agency of the state, a county, a municipality, or of any other political subdivision or governmental entity;

2. Any water system owned by a church or other religious institution;

3. Any water system owned or provided by an employer and used primarily to serve employees; and

4. Any water system which is jointly owned by private individuals who are the users of the water supplied by the system.

Authority: O.C.G.A. Sec. 12-5-170 *et seq.*