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**ENVIRONMENTAL PROTECTION**

**WATER RESOURCE MANAGEMENT**

**DIVISION OF WATER QUALITY**

**Standards for Individual Subsurface Sewage Disposal Systems**

**Adopted Amendments: N.J.A.C. 7:9A-2.1 and 8.3**

Proposed: July 1, 2024, at 56 N.J.R. 1140(a)

Adopted: March 17, 2025 by Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Filed: March 17, 2025, as R.2025 d.044, **without change**

Authority: N.J.S.A. 13:1D-1 et seq.; 26:3A2-21 et seq.; 58:10A-1 et seq., including 58:10A-16; and 58:11-23 et seq.

DEP Docket Number: 06-24-05.

Effective Date: April 21, 2025

Expiration Date: February 4, 2026, N.J.A.C. 7:9A

This rule adoption may be viewed or downloaded from the Department's website at <https://www.nj.gov/dep/rules/adoptions.html>.

The Department of Environmental Protection (Department) is adopting amendments to the Standards for Individual Subsurface Sewage Disposal Systems (Standards), N.J.A.C. 7:9A, to expand the scope of permitted pretreatment devices. Pursuant to existing N.J.A.C. 7:9A-2.1 and 8.3, only advanced wastewater pretreatment devices which are certified to the National Sanitation Foundation International (NSF) Standard 40 and/or Standard 245 by NSF are considered for

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inclusion on the Department's list of pretreatment devices applicable pursuant to N.J.A.C. 7:9A-8.3. The adopted amendments will enable the Department to accept Standard 40 and/or Standard 245 certifications from other accredited organizations in addition to NSF.

**Summary of Public Comments and Agency Responses:**

The Department accepted comments on the notice of proposal through September 10, 2024.

The following individuals provided written comments:

1. Dan Kennedy, NAIOP, Commercial Real Estate Development Association, New Jersey Chapter
2. Randall Querry, American Association of Laboratory Accreditation

The comments received and the Department's responses are summarized below. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

1. COMMENT: The proposed amendment is supported, and the Department applauded for addressing this concern via formal rulemaking. (1)

RESPONSE: The Department acknowledges the commenter's support.

2. COMMENT: The Department's current rules as N.J.A.C. 7:9A-8.3 cause a negative economic impact, leading to less competition and higher costs. The proposed amendment would have a positive economic impact by increasing competition and driving down costs

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all while benefiting human health and the environment because no standards are being lessened. (1)

RESPONSE: The Department acknowledges the commenter's position. As indicated in the notice of proposal Summary, 56 N.J.R. 1140(a), the Department anticipates that the adopted rules will lead to a more equitable marketplace and encourage a diverse and healthy marketplace for pretreatment devices, ideally leading to greater cost benefits for consumers. The Department agrees that pretreatment devices must continue to be tested and certified to the rigorous NSF/ANSI Standard 40 and/or Standard 245. By continuing application of NSF/ANSI Standard 40 and/or Standard 245, ongoing protection of public and environmental health is ensured.

3. COMMENT: The American Association for Laboratory Accreditation, (A2LA), is a non-profit accreditation body with over 4300 actively accredited certificates representing all 50 states and internationally, including 50 product certification bodies. The criteria forming the basis for A2LA's product certification body accreditation program is ISO/IEC 17065:2012 Conformity assessment – Requirements for bodies certifying products, processes and services. A2LA, as an accreditation body, has been evaluated against rigorous standards in providing this accreditation service and is recognized globally as meeting the requirements of ISO/IEC 17011.

It is A2LA's understanding that the purpose of this amendment is to address an unfair marketing advantage posed by the Department's acceptance of NSF certification

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only. To be consistent, this principle needs to be also extended to the accreditation bodies providing the ISO/IEC 17065 accreditation services to the certification bodies. (2)

RESPONSE: The Department acknowledges that there are other national and international organizations providing accreditation to third-party certifying bodies. However, requiring that acceptable third-party certifying programs must be accredited by ANSI reflects the Department's determination that ANSI is the most appropriate entity to ensure continued protection of public health and the environment.

As discussed in its notice of proposal, 56 N.J.R. 1140(a), the Department determined that it is appropriate to follow ANSI's accreditation program due to its thorough and continuing accreditation process. Establishing a program that relies on a third-party necessitates oversight to ensure devices are adequate, and the Department believes that following ANSI, a nationally recognized accreditation organization, will meet the purposes of the Standards.

The International Organization for Standardization (ISO) is a global standards organization. Currently, ISO is made up of members from the national standards bodies of 172 countries. As such, ISO/IEC 17011 and 17065 are international standards applicable to organizations throughout the world. Thus, the amendments requested would open the Department's program to international organizations, organizations outside of the purview of the Department and potentially unfamiliar with the Department's Standards. Additionally, pretreatment devices must be certified to ANSI/NSF Standard 40 or 245, and non-ANSI accredited organizations may not all be able to certify to these standards.

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The Department's program for advanced pretreatment devices must be manageable to ensure protection of public health and the environment. Basing the program on ISO/IEC 17011 and 17065 would be infeasible insofar as the Department would have to, pursuant to N.J.A.C. 7:9A-8.3(a), review reports from a multitude of international organizations. By relying on ANSI, the sole full member of ISO for the United States, the Department believes it has struck the appropriate balance between opening the market to additional third-party certifying bodies and creating a manageable system that serves the purposes of the Standards.

Additionally, the utilization of ANSI as an accreditation body within the Department is not unique to this matter. Since 1997, the Department's Safe Drinking Water Act rules at N.J.A.C. 7:10-8.2(c) require suppliers of drinking water to use only additives "certified by an origination which has been accredited by ANSI to test and certify additives."

4. COMMENT: Within the advanced wastewater pretreatment device definition and clause at N.J.A.C. 7:9A-8.3, the term "ANSI" is used inaccurately. As a standard development organization (SDO) ANSI does not provide accreditation services to product certification bodies. Thus, if left unchanged there would be no stakeholder that could meet this requirement as currently written. (2)

RESPONSE: As discussed in the notice of proposal, 56 N.J.R. 1140(a), ANSI is more than a standards development organization. ANSI, through its subsidiary, the ANSI National Accreditation Board (ANAB), vets and issues accreditations to third-party certification

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bodies that wish to certify products in accordance with the NSF/ANSI standards. Pursuant to the adopted amendments, a certification by any third-party certification body accredited by ANSI, through ANAB, will be accepted by the Department.

ANAB is an accreditation organization operating in accordance with International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) 17011, Conformity assessment – General requirements for accreditation bodies accrediting conforming assessment bodies. ISO/IEC 17011 is an internationally accepted standard that specifies the requirements for the competence, consistent operation, and impartiality of accreditation bodies assessing and accrediting conformity assessment bodies. Thus, ISO/IEC 17011 specifies the requirements and procedures ANAB must adhere to in issuing accreditations to third-party certification bodies.

Since the ANAB is a wholly owned subsidiary of ANSI, the Department maintains that the language of the adopted amendments is accurate.

### **Federal Standards Statement**

N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), requires State agencies that adopt, readopt, or amend State rules that exceed Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The Department's authority for regulating the construction of individual subsurface sewage disposal systems comes solely from State statute, specifically N.J.S.A. 58:11-23 et seq., 58:10A-1 et seq., 13:1D-1 et seq., and 26:3A2-21 et seq. The rules at N.J.A.C. 7:9A are not promulgated pursuant to the authority of, or in order to implement, comply with, or participate in any program

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established pursuant to Federal law or a State statute that incorporates or refers to Federal laws, Federal standards, or Federal requirements.

**Full text** of the adoption follows (additions to the proposal indicated in boldface with asterisks

**\*thus\***; deletions from the proposal indicated in brackets with asterisks \*[thus]\*):

(No change from proposal.)