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## **ENVIRONMENTAL PROTECTION**

### **NEW JERSEY INFRASTRUCTURE BANK**

#### **Notice of Receipt of Petition for Rulemaking**

#### **Petition to Amend Rules Related to Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals**

**N.J.A.C. 7:22-9**

Petitioner: Gerald T. Reiner, Jr., Bergen County Utilities Authority

**Take notice** that on March 29, 2023, the Department of Environmental Protection (Department) received a petition for rulemaking from Gerald T. Reiner, Jr., on behalf of the Bergen County Utilities Authority (Petitioner). Petitioner states that he is jointly petitioning the Department, the Pinelands Commission, and the Highlands Water Protection and Planning Council (Highlands Council). As discussed below, the Department does not and cannot acknowledge the petition on behalf of the Pinelands Commission or the Highlands Council.

Petitioner states that the purpose of the petition is to aid “the function, purpose and enforcement of the use of 'Awarding Contracts for State Assisted Projects to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals [(SEDs)]’” According to Petitioner, “in practice the administrative rules as applied create a burden to an understaffed and under resourced office within the [Department], and therefore hinder the purpose of the rules concerning inclusion of SED firms. The current process creates an unlevel playing field for SED contractors, and does not encourage SED participation in a meaningful manner. Only contractors who are aware of the paperwork burden are able to compete and

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subcontractors are intimidated in the applicability of the rules.” Petitioner seeks to have the Office of Equal Opportunity and Public Contract Assistance (“Office,” as defined at N.J.A.C. 7:22-9.2) create a template for the SED utilization plan that N.J.A.C. 7:22-9.4 requires each project sponsor to prepare. The suggested template would contain all the necessary elements that a project sponsor must include in the SED utilization plan. Then, according to Petitioner, the project sponsor can market the plan to contracting groups and business associations like the New Jersey Hispanic Chamber, New Jersey African American Chamber, Utility and Transportation Contractor’s Association (UTCA) and more. This proposed template will, according to Petitioner, make the process transparent and effective. Petitioner also seeks to require the Office to prepare and maintain a list of SED contractors and subcontractors.

Although not stated in the summary provided by Petitioner, in Petitioner’s appended “redline” amendments to N.J.A.C. 7:22-9 Petitioner further seeks to require each project sponsor to promulgate a standing and non-project specific SED utilization plan using the proposed template. Petitioner further seeks to require project sponsors to draft a “project plan sheet,” which would be project specific and supplement the SED utilization plan. To this end, Petitioner states that the purpose is to shift away from a project-by-project plan and to instead have a single utilization plan that the project sponsor has approved. Petitioner suggests that a simplified project worksheet could supplement the program sponsor’s approved plan, but the entire plan would not need to be reinvented or reconstructed each time. Additionally, Petitioner seeks to repeal the requirement that contractors submit their own SED utilization plan (also referred to as a “contractor’s plan”) and instead require each contractor to affirm compliance with the project sponsor’s SED utilization plan and “make a reasonable effort” to meet the conditions of that plan.

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The Pinelands Protection Act gives the Pinelands Commission the sole authority to amend the Pinelands Comprehensive Management Plan. N.J.S.A. 13:18A-6. Similarly, although the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., requires the Highlands Council to consult with the Department and other State agencies during the preparation of or revisions to the Highlands Regional Master Plan, the statute gives the Highlands Council sole authority to prepare, adopt, and amend the regional master plan, and to promulgate regulations to exercise its powers and perform its duties and responsibilities under the Highlands Water Protection and Planning Act. N.J.S.A. 13:20-6, -8 and -9. Accordingly, the Department does not acknowledge receipt of the petition to the extent that Petitioner requests amendments to the Pinelands Comprehensive Management Plan and the Highlands Regional Master Plan, or otherwise seeks relief that is beyond the Department's authority.

This notice and the full text of the petition filed in this matter are available on the Department's website at <http://www.nj.gov/dep/rules/petition.html>.

In accordance with N.J.A.C. 1:30-4.2, the Department will subsequently mail to the Petitioner and file with the Office of Administrative Law a notice of action on the petition.