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PUBLIC NOTICE

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Notice of Action on Petition for Rulemaking

Water Resource Management

Petition to Adopt a Rule Allowing the Department to Accept Certification from Additional Organizations for Advanced Wastewater Pretreatment Components

N.J.A.C. 7:9A

Petitioners: AquaKlear, Inc., AquaKlear of New Jersey, Gulf Coast Testing

Take notice that the Department of Environmental Protection (Department) has determined to refer the petition for rulemaking filed by Frances B. Stella, Esq., on behalf of AquaKlear, Inc., AquaKlear of New Jersey, and Gulf Coast Testing (collectively, petitioners), for further deliberation. The Department received the petition on August 3, 2023, and published notice of receipt of the petition in the September 18, 2023, New Jersey Register.

The Petition

Petitioner AquaKlear, Inc. is a manufacturer of aerobic wastewater systems, also referred to as advanced wastewater pretreatment systems or devices. Petitioner AquaKlear of New Jersey is a distributor of advanced wastewater pretreatment systems developed by AquaKlear, Inc. Petitioner Gulf Coast Testing is an American National Standards Institute (ANSI) accredited testing and certification company.

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The petitioners state that the Department's rules for Individual Subsurface Sewage Disposal Systems at N.J.A.C. 7:9A-8.3 restrict the Department to accepting certifications of advanced wastewater pretreatment systems from only the National Sanitation Foundation International (NSF). Petitioners request that the Department amend N.J.A.C. 7:9A-8.3 to accept certifications of advanced wastewater pretreatment systems from all American National Standards Institute (ANSI) accredited organizations, of which NSF is one, so long as the system is certified to NSF/ANSI Standard 40 and/or Standard 245 by those ANSI accredited organizations.

In support of the petition, the petitioners state that by accepting NSF certification only, the Department's rules at N.J.A.C. 7:9A-8.3 cause a "negative economic impact," leading to less competition and higher costs. The petitioners assert that other ANSI-accredited organizations can certify advanced wastewater pretreatment components in the same manner and to the same standards as NSF. The petitioners additionally note that only one other state in the country "limit[s] the certification of advanced treatment units to only one vendor," and that other adjacent states, such as New York, Pennsylvania, and Delaware, "allow other ANSI accredited companies to certify the wastewater systems." The proposed amendment would, according to the petitioners, have a positive economic impact by increasing competition and driving down costs and benefiting human health and the environment.

The Department's Response to the Petition

The Department is in the process of analyzing the implications of amending N.J.A.C. 7:9A-8.3 as requested by petitioners, and whether the proposed amendments would conform to the purposes of the Standards for Individual Subsurface Sewage Disposal Systems at N.J.A.C. 7:9A-1.1. Advanced wastewater pretreatment devices treat sewage prior to disposal, and the amendments proposed by petitioners concern the Department's certification requirements for these

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devices. These certification requirements assure consumers and regulators that approved devices meet certain minimum qualifications for function, health, and safety. Given the public health and safety and environmental concerns implicated by the proposed amendments, as well as their technical nature, additional time is needed to ensure that any change that may be determined appropriate is protective of these considerations. In accordance with N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-4.2(a)3, the Department is referring this matter for further deliberation to provide time for this analysis to be completed.

A copy of this notice has been mailed to the petitioners, as required by N.J.A.C. 1:30-4.2.