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PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

OFFICE OF LEGAL AFFAIRS

Notice of Receipt of Petition for Rulemaking

Petition to Adopt Regulations to Address Acute and Chronic Effects of Aluminum

N.J.A.C. 7:3, 8, 9B, 14A, 15, 38

Petitioner: Bill Wolfe

Take notice that on September 22, 2022, the Department of Environmental Protection (Department) received a petition for rulemaking from Bill Wolfe (petitioner). The petition was addressed to the Pinelands Commission, the Highlands Water Protection and Planning Council (Highlands Council), and the Department. As discussed below, the Department does not and cannot acknowledge the petition on behalf of the Pinelands Commission or the Highlands Council, to the extent the petition asks for relief that is within the sole jurisdiction of either entity.

The petitioner requests that the Pinelands Commission amend the Pinelands Comprehensive Management Plan to require monitoring and compliance with the Environmental Protection Agency's (EPA) Final Aquatic Life Ambient Water Quality Criteria for Aluminum (2018) (Final Criteria) for regulated activities that disturb soils, generate stormwater, and/or result in point and non-point discharge of pollutants to wetlands and surface waters, including development and forest management activities.

The petitioner requests that the Highlands Council amend the Highlands Regional Master Plan to require monitoring and compliance with the EPA's Final Criteria for regulated activities that disturb soils, generate stormwater, and/or result in point and non-point discharge of pollutants to wetlands and surface waters, including development and forest management activities.

The petitioner requests that the Department:

1. Amend the Surface Water Quality Standards, N.J.A.C. 7:9B, to adopt aquatic protection criteria for acute and chronic effects of aluminum, at least as stringent as, and consistent with, EPA's Final Criteria;
2. Amend the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38; New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, Water Quality Management Planning rules, N.J.A.C. 7:15, Stormwater Management rules, N.J.A.C. 7:8, and regulations governing Total Maximum Daily Load provisions of the Surface Water Quality Standards, N.J.A.C. 7:9B, to mandate compliance with the EPA's Final Criteria;
3. Revise the Forestry Wetlands Best Management Practice (BMP) to mandate monitoring and compliance with the EPA's Final Criteria;
4. Revise the Water Quality Monitoring and Assessment Program under the Federal Clean Water Act sections 303(d) and 305(b) to include aluminum;
5. Revise the Forestry rules, N.J.A.C. 7:3, to include monitoring and compliance with the EPA's Final Criteria; and
6. Revise all the regulations cited above for conformity with the EPA's Final Criteria pending the Department's adoption of a State criteria.

In support of the petition, Petitioner cites to the authority of the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 et seq.), the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.), the Coastal Area Facilities Review Act (N.J.S.A. 13:19-1 et seq.), the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.), the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.), the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.) and the delegated portions of the Federal Clean Water Act (33 U.S.C. §1251 et seq.), the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), the Endangered and Nongame Species Conservation Act (N.J.S.A. 23:1A-1 et seq.), and the general powers of the Department (N.J.A.C. 13:1D-1 et seq.). As justification for the need for the requested action, Petitioner states, “New Jersey’s ecosystems, water resources, and natural resources are particularly vulnerable to the toxic effects of aluminum.” Petitioner cites to a U.S. Geological Survey (USGS) study that EPA cited to in its Final Criteria that the petitioner states identified anthropogenic activities (including soil disturbance, erosion, and runoff) as important sources of aluminum to surface water and identified aluminum as causing serious adverse impacts on water resources, aquatic life, and fisheries. According to the petitioner, forest management activities, including logging, create soil disturbance that causes, among other things, liberation of inorganic monomeric aluminum via stormwater runoff, sediment transport, and erosion.

Petitioner states that the Department has no surface water quality standards for aluminum, despite the fact that EPA adopted aluminum criteria in 1988 and updated the criteria in 2018. He further states that the Department “does not monitor or assess water quality or aquatic ecosystem health for the well-known adverse ecological and water quality impacts of aluminum...does not regulate the water quality and ecosystem impacts of forestry or other development activities that

generate non-point source pollution or point source wastewater discharges, including for the known toxic impacts of aluminum...[and] does not in any way regulate the presence of or discharge of aluminum to the environment...despite the fact that there are known industrial point source wastewater discharges to surface waters and non-point pollutant discharges from development and stormwater runoff, including from forestry.” Petitioner contends that the Pinelands Comprehensive Management Plan and Highlands Regional Master Plan are similarly flawed.

Petitioner provides that his reasons for the petition are to ensure protection of the ecological health of the State’s water and natural resources, based upon the best available science; to ensure that forest management activities do not impair or adversely impact the water quality and/or aquatic life of the State’s surface waters and wetlands; to ensure that the State’s waters are fishable and swimmable, as required by the Federal Clean Water Act and the New Jersey Water Pollution Control Act; to ensure that the Department’s water quality standards, Highlands, freshwater wetlands, stormwater, and forest management policies and regulations are current, reflect the best available science, and conform to minimum Federal standards, criteria, and guidance; to ensure protection of the Pinelands water and natural resources; to ensure protection of the Highlands water and natural resources; and to ensure that the Department’s surface water quality standards' anti-degradation policies are implemented, particularly for Category One Waters (C1), trout production (TP), and trout maintenance (TM) waters.

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 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 rules 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 the 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.