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## **ENVIRONMENTAL PROTECTION**

### **WATER RESOURCE MANAGEMENT**

#### **DIVISION OF WATER QUALITY**

##### **Standards for Individual Subsurface Sewage Disposal Systems**

###### **Proposed Amendment: N.J.A.C. 7:9A-3.17**

Authorized By: Catherine R. McCabe, Commissioner, Department of Environmental Protection.

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.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 02-20-05

Proposal Number: PRN 2020-059.

Submit comments by August 14, 2020, electronically at [www.nj.gov/dep/rules/comments](http://www.nj.gov/dep/rules/comments). Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Gary J. Brower, Esq.

Attn.: DEP Docket No. 02-20-05

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This rule proposal may be viewed or downloaded from the Department's website at

[www.nj.gov/dep/rules](http://www.nj.gov/dep/rules).

The agency proposal follows.

### **Summary**

As the Department of Environmental Protection (Department) has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing an amendment to the Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A (Standards), which govern the location, design, construction, installation, alteration, repair, and operation of individual subsurface sewage disposal systems, commonly known as "septic systems," to remove the requirement that an authorized installer of proprietary technologies possess a National Environmental Health Association (NEHA) Certified Installer of Onsite Wastewater Treatment Systems (CIOWTS) Advanced Level certification.

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Under the existing rule at N.J.A.C. 7:9A-3.17, an authorized installer is required to possess a NEHA CIOWTS Advanced Level certification for the installation of advanced wastewater pretreatment devices, products in lieu of laterals or filter material, and drip dispersal pursuant to N.J.A.C. 7:9A-8.3, 9.8, and 10.8, respectively.

The primary purpose of the NEHA CIOWTS certification was to set a standard of practice and create a baseline of knowledge for nonproprietary onsite wastewater system installations. The NEHA CIOWTS exam encompassed three subject areas including Plan Assessment, Job Staging, and Site Development/Installation. While the NEHA CIOWTS certification covered basic installation knowledge, it was never intended to ensure that the installer had sufficient knowledge to install specific proprietary technologies. Instead, the standards at N.J.A.C. 7:9A-3.17 ensure that these specialized proprietary technologies are properly installed by requiring the manufacturer of the specific technology to certify that the installer has sufficient knowledge to install that manufacturer's proprietary technology.

On July 13, 2017, P.L. 2017, c. 112 was enacted. This legislation invalidated the requirement at N.J.A.C. 7:9A-9.8 that installers possess the NEHA CIOWTS Advanced Level certification in order to install products in lieu of laterals and/or filter material. However, the new statute did not alter the requirement that installers possess the certification in order to install advanced pretreatment and drip dispersal systems. While installers of advanced pretreatment and drip dispersal systems continue to be required to possess the NEHA CIOWTS certification, effective December 2017, the NEHA Board of Directors' Credentialing Committee discontinued offering the CIOWTS examination. Since that time, installers who had not already

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received the NEHA CIOWTS Advanced Level Certification to install advanced wastewater pretreatment devices, products in lieu of laterals and/or filter material, and drip dispersal systems have been unable to obtain the required certification.

Therefore, the Department proposes to amend the Standards to remove the requirement for a valid CIOWTS Advanced Level certification from NEHA. This will create consistency with State law with reference to products in lieu of laterals and/or filter material and eliminate the regulatory requirement that can no longer be met.

However, the requirement that authorized installers provide proof from the device manufacturer that they have been certified to install the proprietary technology will remain. This will continue to ensure that any potential risk to the environment as a result of improper system installations will continue to be minimal.

### **Social Impact**

The Standards provide an overall positive social impact by establishing State minimum requirements for the location, design, construction, installation, alteration, repair, and operation of septic systems. The proposed amendment does not reduce the level of protection for public safety and human health because the rules continue to require that authorized installers provide proof from the device manufacturer that they have been certified to install the proprietary technology. Therefore, the Department does not anticipate negative social impacts resulting from the proposed amendment. As discussed in the Economic Impact

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statement, it is possible the cost of installing some of the advanced septic systems will go down, which could have an associated, if limited, positive social impact.

### **Economic Impact**

As a result of the proposed amendment, system installers will no longer be required to obtain the NEHA CIOWTS Advanced Level certification. As a result, the current holders of the NEHA CIOWTS advanced level certification will no longer need to biennially pay to maintain their certification for the installation of NEHA CIOWTS advanced level certification for the installation of proprietary technologies in New Jersey.

The proposed amendment will only directly impact system installers of advanced wastewater pretreatment devices, products in lieu of laterals and/or filter material, and drip dispersal. It is expected that the vast majority of the industry will welcome this change as it puts less financial burden on individual installers. Based upon information obtained from the NEHA website, there are 135 system installers in the expanded tri-State region (New Jersey, New York, Pennsylvania, Delaware, Maryland, and Connecticut) who have received the NEHA CIOWTS Advanced Level certification. While these installers will lose the competitive advantage they currently have over installers who are no longer able to obtain the required certification, the removal of this requirement will eliminate the need for those already certified to renew their certification. The approximate cost to obtain, and maintain, the NEHA CIOWTS Advanced Level certification is as follows:

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- \$225.00 for National Onsite Wastewater Recycling Association NEHA CIOWTS training course (optional);
- \$170.00 for NEHA CIOWTS exam (when it was offered); and
- \$110.00 every two years for the NEHA CIOWTS Advanced Level certification renewal.

While it is not anticipated that the proposed amendment will have any impact upon existing system owners, there may be a small positive impact on future system owners, as there may be more installers available to install these systems, which may offer more competition in the market and allow for lower installation prices overall.

### **Environmental Impact**

The proposed amendment removes a certification requirement that is no longer obtainable. While the credentialing program provided the installer with additional training for advanced wastewater pretreatment devices, products in lieu of laterals and/or filter material, and drip dispersal, removal of the requirement for the advanced level certification from NEHA will have a minimal negative effect on the environment because the installers will still need to be certified by the specific manufacturers to install the proprietary products. The existing requirements for the location, design, construction, installation, alteration, repair, and operation of septic systems remain unchanged. It is important to note that the amendment will not affect the requirement that ensures the installers are qualified to install proprietary technologies in accordance with the standards.

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### **Federal Standards Analysis**

N.J.S.A. 52:14B-23 requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

There are no Federal standards or regulations for the location, design, construction, installation, alteration, repair, or operation of septic systems. Thus, there are no Federal standards against which such analysis could be conducted.

### **Jobs Impact**

The Department anticipates that this rulemaking will have minimal, but positive, impact on job creation and retention by eliminating the requirement to obtain the NEHA certification and allowing additional individuals to install advanced wastewater pretreatment devices, products in lieu of laterals and/or filter material, and drip dispersal, provided they are certified by the manufacturer. Since this will not directly affect the number of installations required, only the number of individuals who can perform those installations, the Department does not believe that the proposed amendment will result in any adverse impact on jobs.

### **Agricultural Impact**

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Pursuant to N.J.S.A. 52:14B-4(a)2, the Department has evaluated this amendment to determine the nature and extent of the impact on the agricultural industry. The Department anticipates that the proposed amendment will not have any impact on the agricultural industry.

### **Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated any reporting, recordkeeping, and other compliance requirements that the proposed amendment would impose upon small businesses. To the degree the installers are small businesses, it may reduce recordkeeping and reporting by eliminating the need to maintain records on having the certification.

### **Housing Affordability Impact Analysis**

In accordance with N.J.S.A. 52:14B-4.1b, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the amendment to determine the impact, if any, on the affordability of housing. The Department believes it is unlikely that the impacts associated with this amendment would evoke a change in the average costs associated with housing or have an effect on the affordability of housing.

### **Smart Growth Development Impact Analysis**

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the amendment to determine the impact, if any, on

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housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan (State Plan). The proposed amendment is not anticipated to evoke a change in housing production in Planning Areas 1 or 2 or within designated centers.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department has evaluated this amendment and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 3. ADMINISTRATION

##### 7:9A-3.17 System professionals

(a) An authorized installer shall, upon request, provide the Department or the administrative authority with written evidence from those manufacturers and/or system integrators certifying that the installer has sufficient knowledge to install the proprietary technologies in accordance with all manufacturer specifications and this [rule] **chapter** pursuant to N.J.A.C. 7:9A-8.3, 9.8, and 10.8, as applicable. [Beginning January 1, 2013, an authorized installer shall also be in possession of a valid Certified Installer of Onsite Wastewater Treatment Systems (CIOWTS) Advanced Level certification from the National Environmental Health Association (NEHA).]

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(b)-(c) (No change)