

Clarifications on the Outstanding Issues Resolution Process

Introduction

The *Procedure for Obtaining Verification of a Stormwater Manufactured Treatment Device from New Jersey Corporation for Advanced Technology*, dated January 25, 2013, identifies two potential origins of Outstanding Issues. The first consists of issues that may arise between the manufacturer and NJCAT prior to the public comment period; the second consists of issues that may arise between the public and NJCAT during the public comment period. Clarifications are provided for each type, along with information regarding how they arise and what the process entails.

Outstanding Issues Originating Prior to Public Comment

Genesis

The MTD Verification Process is described in the document “Procedure for Obtaining Verification of a Stormwater Manufactured Treatment Device from New Jersey Corporation for Advanced Technology,” dated January 25, 2013, in Appendix A.

- Items 1 – 6 specify the steps involved by a manufacturer and/or NJCAT to complete laboratory testing and generate a preliminary opinion letter identifying any aspects of noncompliance with the applicable laboratory protocol.
- Item 7 sets a deadline for a meeting between NJCAT and the manufacturer to discuss possible resolution to the identified outstanding issues.
- Item 8 establishes procedures for two different outcomes, namely, resolution and non-resolution of the issues from Item 7. Issues not resolved invoke the steps outlined in Appendix C – Outstanding Issues Resolution Process.

Process Summary

Appendix C Section B, Items 1, 2, 3, and 3 [*sic*] specify the subsequent steps involved to complete the Outstanding Issues Resolution process and establish timeframes for each step. These steps include documentation of the issues from the viewpoint of each party, the selection of a Review Panel, the submission of all pertinent information to the Review Panel for review, and the scheduling of a meeting attended by the Review Panel, NJCAT and the manufacturer. Item 4 establishes the deadline for a report from the Review Panel. Item 5 provides the manufacturer with two options to address the findings of the Review Panel.

Process Clarification

NJCAT plans to administer this aspect of the outstanding issues resolution process as written in Appendix C with one major exception – **All communications between the Review Panel and/or the manufacturer and the testing entity must be in writing and go through NJCAT.**

Outstanding Issues Originating from Public Comments

Genesis

In the third sentence of item 8, in Section B, of Appendix A, the public comment period is introduced.

Process Summary

Commenters must notify both the manufacturer and NJCAT of the intent to submit comments within the specified timeframe. Comments and supporting documentation are then due within another specified timeframe. NJCAT endeavors to address those comments within these timeframes. If this cannot be brought to a conclusion, the commenter may request resolution by a Review Panel. Issues not resolved invoke the steps outlined in Appendix C – Outstanding Issues Resolution Process.

Process Clarification

NJCAT plans to administer the public comment aspect of Item 8, Section B, Appendix A, as follows.

- The phrase “during this time” will mean “within 45 days”.
- “Written public comments” shall be public comments written in a succinct and unambiguous manner so as to clearly identify the issue(s) at hand. These comments, along with all supporting information, shall be provided in the 30-day public comment period. No additional issues, or expansion on these issues, including the submission of additional supporting information, will be permitted during the comment resolution process.
 - NJCAT shall forward written public comments and supporting information to the manufacturer within five (5) days of receipt.
 - The manufacturer shall then prepare and submit to NJCAT a rebuttal statement, with all supporting documentation.
- NJCAT will attempt to resolve all issues within 45 days. This may involve several written communications between NJCAT and/or the manufacturer and the commenters, including providing a revised verification report that NJCAT believes addresses the comments.
- If NJCAT is unable to resolve commenter issues within this 45-day resolution period so that it can issue a final verification report, NJCAT will proceed to establish a Review Panel.

NJCAT plans to administer this aspect of the resolution of outstanding issues process as follows.

- All unresolved issues will be submitted to a Review Panel for resolution.
 - Both the manufacturer and commenter(s) will be asked to provide a succinct and unambiguous written statement(s) of Outstanding Issues delineating why the issue(s) raised by the commenter(s) during the 30-day comment period, has or has not been resolved.
 - The specific unresolved comments provided within the 30- day comment period will also be provided to the Review Panel for completeness.
- All communications shall be in writing through NJCAT, who will serve as the mediator. **No party (i.e. the manufacturer, commenters, or Review Panel) involved in the resolution process may communicate with any party other than NJCAT.**
- The Review Panel will be directed by NJCAT that any new issues raised in the written statement(s) are to be disregarded.

- If the Review Panel requires clarification of the written statement(s) or other documents submitted by either the manufacturer or the commenter(s), a request shall be made in writing, within fifteen (15)) calendar days, to NJCAT, which will obtain the requested clarification(s).
- Written responses by the manufacturer or commenter(s) to requests for clarification must be submitted to NJCAT within 10-days of receipt of the request for clarification.
- If clarifications are not requested, the Review Panel will issue its report within thirty (30) days following receipt of materials provided through NJCAT from the commenter and manufacturer. If clarifications are requested, the Review Panel will submit its report within twenty (20) days of receipt of all such clarifications.