Amendments to N.J.A.C. 7:9A Regarding Cesspools and Inspections for Real Property Transfers - An Update

- The adopted amendments will appear in the New Jersey Register on April 2, 2012

- The rule requires that cesspools be replaced at the time of real property transfer. This requirement does not apply to wastewater disposal systems which by definition do not include cesspools. Seepage pit systems or older traditional septic systems that do not meet current standards are not required by the rule to be upgraded.

- The rule does not specify who is responsible for necessary upgrades during a real property transfer (seller or buyer); this should be negotiated during the real property transfer process.

- The adopted rules provide for delayed implementation for 60 days of the requirement to upgrade functioning cesspools at the time of property transfer in order to accommodate property transfers already in process.

- If a conforming system cannot be installed on the property, the local authority has discretion to allow a nonconforming system, provided the system design is protective of human health and the environment. Also, as is currently provided for in the standards, if no 'reasonable system' can be installed on the property, the least preferred option is for the property owner to apply for a Treatment Works Approval for a holding tank.

- The rule establishes a protocol for inspecting onsite systems during real property transfer. The rule does not mandate its use nor does it require an upgrade to the system as a result of that inspection. This portion of the rule provides buyers and sellers with information based on a comprehensive evaluation of the system and can assist in negotiations for the transaction. Unsatisfactory results, unless they indicate the system is malfunctioning, do not require that anything be done immediately (although any work done on the system must be properly permitted locally).

- If something is observed during the inspection that is indicative of a malfunctioning condition, it must be reported to the local health department and addressed as a report of a malfunctioning system. Since 1990, property owners with a malfunctioning system had an obligation to report the malfunction to the health department immediately. The inspection report is a new way of gathering and reporting information characterizing a malfunctioning system. A copy of the report must be sent to the local administrative authority in order to meet the requirements of the inspection protocol.

- Under the previous rules, and until April 2, 2012, a property owner with an existing cesspool can (with a permit from the local health department) add a septic tank in front of the cesspool. This effectively converts the cesspool to a seepage pit system and that seepage pit system would not be subject to the requirement to immediately upgrade. On April 2, 2012, any cesspool requiring repairs must be upgraded; there is **no** 60 day delay for this provision. Addition of a septic tank in front of the cesspool will no longer be allowed.