

Westchester County Board Of Legislators
Committee on Environment & Energy
Septic Sub Committee
Meeting Minutes, January 22, 2009

The meeting was called to order at 3:40 pm

In attendance:

Committee Members:

Subcommittee Chair: Hon. Peter B. Harckham

Ed Barnett, Putnam County Watershed Information Coordinator; Administrator, Putnam County
Septic Repair Program

Gina D'Agrosa, Water Master, Westchester County

Ed Delaney, Bibbo Associates

Susan Gerry, Westchester County Executive's Office

William Harding, NYS Department of State: Executive Director, Watershed Protection and
Partnership Council

Michael J. Meyer, Program Manager, Bureau of Water Supply NYCDEP

Leonard Meyerson, Westchester County Department of Health

Hon. Mary Beth Murphy, Supervisor, Town of Somers

Hon. Richard Lyman, Board Member, Town of Pound Ridge

Hon. Dan Welsh, Board Member, Town of Lewisboro

Roberta Wiernik, LWV Environmental Committee

Guests & Visitors

Natalia Baage, Bedford Record Review

Cynthia Curtis, Town of North Salem

Jerry Faiella, Administrator, Town of New Castle

Adam Kaufman, Town of North Castle

Hon. Lee Roberts, Supervisor, Town of Bedford

Hon. Don Peters, Supervisor, Town of Yorktown

BOL Staff: Chris Crane, Wendy Wild

Peter Harckham called the meeting to order at 3:40 pm.

The minutes for the December 11, 2008, meeting were approved.

After welcoming the group and asking those present to introduce themselves, Peter announced that at the subcommittee's next meeting Ed Barnett and Ed Delaney will present a seminar on alternative septic technologies, and there would be a few minutes set aside at the end of today's meeting to discuss this.

Peter gave an overview of the history of the subcommittee for those attending a meeting for the first time, noting that the group was formed here at the Board to discuss all things septic, and to invite those who are “stakeholders” in the septic conversation (New York State, New York City, Towns, County government, including the Health Department, private industry and environmental groups, etc.) to join the group and through consensus, identify issues, concerns and proposals, especially in light of the State’s new MS-4 Septic requirements for towns in the Croton watershed.

Peter noted that this subcommittee is different from other Legislative committees, in that they are given proposed legislation to consider, while this group starts with a blank slate and works to build consensus from the ground up. When this subcommittee discusses a law, the members are not given a written model law for consideration, but rather asked to have a conversation about how such a local law might look from the perspective of the municipalities involved.

The State has issued a new requirement for the MS-4. The NWWC is handling a shared service approach to the stormwater portion of these requirements, and this subcommittee was asked by the NWWC to develop a shared approach to the MS-4 septic component.

Copies of Peter’s correspondence with Ken Kosinski (NYSDEC) were distributed and it was noted that these letters are summaries of where we stand today. Chair Harckham indicated that the group wanted to look at how we could take a shared approach to the septic requirements and the subcommittee has held a number of discussions about this both independent of the DEC and with our colleagues at DEC. The State requires that each covered municipality must have its population of septic systems inspected every three years but the process was not clear beyond that. Our DEC colleagues have given us latitude as to how we shape this.

Westchester County has a reporting system emanating from its Septic Collector Licensing Law which took effect in January 2008, aimed at preventing ground and drinking water contamination by requiring contractors who pump out septic systems to file reports with the county's Health Department about every septic collection they make. The County Department of Health logs the data collected and if a visual issue is found, the DOH dispatches a Department Sanitarian This County reporting mechanism was presented to DEC and they said that this program would satisfy the requirement for the state MS4 Septic inspection program since there is a follow up mechanism for troubled sites. The problem being is that right now this (Septic Collector reporting) is a voluntary process, occurring only when a homeowner chooses to call for a pump-out. The State is looking for every system to be inspected within each municipality.

The shared services component piece of the Committee’s work was then reviewed. Peter noted that the County is creating a septic service map and each parcel will be a data repository. This information will be part of an online data base available to local communities to aid them in implementing the MS4 requirement. The County will help with consumer education, and is coordinating the discussion about a model local ordinance to require every homeowner within a municipality to pump out the septic once every three years, which will then trigger an inspection process (which is understood at this point to really be an observation, but is acceptable to DEC as a starting point) That would get everybody into the “loop”.

Peter also noted that Ken Kosinski has agreed to these steps thus far. Last time he appeared before the subcommittee we discussed the premise of a local ordinance. Essentially the DEC wants to see some teeth; to see an ordinance that said pumping would occur every three years, with penalties, some sort of punitive process, and as with all things MS4, a reporting requirement. The State wants to have localities show compliance levels and what steps are being taken to comply. The septic data base currently being developed by the County will assist with this since the municipalities will have an online database of all parcels in their municipality.

Peter said that the group is now at the point where it makes sense to start again conceptually to see if we can reach agreement on a model ordinance. Recognizing that our various communities have different temperaments and feelings about this, the subcommittee's approach is to build from the bottom up and seek some common agreement.

In response to a question by Roberta Wiernick, whether a reply has been received from Ken Kosinski, Peter indicated he would be following up on this.

Peter noted he is just the facilitator for discussion. The subcommittee needs to hear from supervisors and town board members since they will have to implement and enforce the law. The language of the law requiring the inspection is fairly straightforward. The more difficult tasks will be the implementation and enforcement of any new statute.

NY State DEC forwarded a model law last year. Gina, Sue and Peter reviewed it and noted that the model ordinance included the whole MS4 program, rather than being limited only to the septic component. There is a small italicized portion of the model ordinance that related to communities that also wanted to regulate septic systems. Since a septic inspection program was not required of communities when this model ordinance was developed, communities which might have adopted a stormwater ordinance probably left this part out. If they did adopt a similar law, Gina noted that the model document discussed annual inspection which was a source of concern at public information sessions, where it was noted that a normal inspection requirement would be every three to five years. Because of these issues, Peter said, the model ordinance was not circulated to committee members. He thought it would be more productive, since we are just talking about the narrow septic component, to start from scratch.

Richard Lyman, of Pound Ridge, expressed a concern that the septic haulers were not really trained sufficiently to perform a professional inspection, and their town wanted to go beyond the idea under discussion of using a pump-out inspection report as an "inspection".

In response to a procedural question from Cynthia Curtis, Peter explained that when a homeowner requests a septic pump-out, the company goes to the site and they fill out a reporting form and the pump-out data (including visual site observations) is submitted to the County Department of Health. If there is concern about the reported data, e.g. water on ground, the report might trigger further inspection by DOH. This level of review was acceptable to Ken Kosinski for purposes of the current MS-4 septic program.

Addressing the concerns of Pound Ridge wanting a more stringent inspection, Peter noted that every town is its own MS-4 and can take its own approach to the requirements. The advantage of using the

septic hauler inspection is that a system to report is already in place, and the County is already working on the septic data base as a shared tool for municipalities to use without cost

Richard Lyman explained that the Pound Ridge Town Board is opposed to mandatory pumping for the sake of pumping and believes an inspection should be performed leading to a pump-out not the other way around. The Town wants someone who is really a trained observer and this person should do an inspection, and if the inspection results raise concern, then that should lead to pumping.

After a discussion about the level of expertise of inspectors, the expense to each town for an inspection program was raised. As opposed to a program which puts the inspection burden on the homeowner and, because private septic companies perform the pump-out, this is a no cost approach for the municipality.

Dick expressed concern that County certified haulers are really not trained inspectors. However, Peter noted that after an inspection, a report is filled out and the County receives data. Only if they see that there is an issue would further inspection be warranted. Therefore the proposal could lead to identification and remediation of failing septic, and thus this protocol is acceptable to the State.

Bill Harding reiterated that since each town is its own MS4, they can take their own approach and go beyond this level of inspection, however the advantage of the proposal before the committee is that a reporting system and a data base are already in place. He highlighted potential costs for hiring inspectors, as well as the issue of how to get the inspectors on everyone's private property. Ed Delaney said that as an engineer, he might challenge the State's description of what they accept as an inspection. However, as a professional concerned about moving forward toward a public benefit, since the State accepts this definition for our purposes, we should take this route as a starting place.

Peter also emphasized that because the County's current inspection program had potential for follow up with a trained inspector that is why this was good enough for the State. This protocol provides a major incremental step toward getting every tank pumped, looking at every system with the possibility of a trained sanitarian coming to the property. Every town can handle the process as they choose. Sue Gerry also added that a technically detailed inspection might cost each homeowner \$1000- \$1,500, far higher than a routine septic pump-out. This issue might surface at a time of a home's sale. Either way a full inspection has a taxpayer impact.

Bill Harding emphasized the benefits of shared services, saying that there are regional discussions on many levels regarding regional services and septic is one of the concerns. This is a regional, not a statewide mandate. He understood the concern of engineering professionals as to the nature of an inspection and qualifications, but noted that since the State did not have a lot of experience with what an "inspection" should be. The first task undertaken by DEC was to define inspection. To their credit, the DEC decided that they should ask local MS-4 officials for this definition and ask what can they accomplish in a practical sense, even though the practical accomplishment might not yet dovetail with a technical standard. DEC is willing to accept the committee's approach as a good start, realizing that from the State's perspective this may not be the end, but for the present it is an acceptable definition of inspection to the DEC. The dialogue with DEC needs to continue. Our choice is to continue debating what is an inspection or accept this definition at present and attack issues of enforcement.

Peter Harckham agreed, urging the committee to follow Bill's suggestion since we have in past meetings reached consensus on defining inspection and towns are free to go beyond this, and urged the group to go forward from here.

Yorktown Supervisor, Don Peters commented that the recommendation of pumping septic every 3 years was reasonable, better for the environment and a good starting process.

Roberta Wiernick raised the possible confusion of homeowners between the septic hauler inspection and the pump-out reimbursement program. In addition she suggested that our approach be a temporary definition of inspection, with a sunset provision, allowing for adjustment and reconsideration of the definition.

Dan Welsh commented that maybe one of the major points of this exercise is to communicate to residents that health of their septic systems is an important public health matter, and if this occurs, the approach is a worthwhile first step.

Sue Gerry added that the septic data base will help everyone, serving to educate through targeted outreach and as a remediation tool for the County and individual municipalities.

Lee Roberts raised the issue that local residents might question the need for the 3 year pump-out requirement as it applies to non full-time residents or those considered "empty nesters" who might have lower household septic use.

Peter noted that this question, in addition to Roberta's concern about a sunset provision, speak to Bill's suggestion that our approach is a starting point, and for both the DEC and localities, the definition of "inspection" will evolve over time, and he reminded the group that the current MS-4 permit expires in 2 years, at which time there may be more information to effectively modify the next phase of permitting. The State can have dialogues with permittees that it never had a chance to have when drawing up initial regulation and can gather experience data, such as the kind Lee raised, for the second and subsequent rounds.

Lee Roberts brought up the concern about places like Katonah with cesspools and the need for a temporary repair prior to sewer hook up to protect public health. Many of these properties do not have land for a septic system. She raised the questions about what to do when a problem is found, how to fix it and associated costs, and fear of finding a failure as an impediment to inspecting a system and the need for funds to help remediate.

Peter noted that options are being explored to aid those on fixed incomes with this cost, perhaps through low interest loans or grants

Peter also added that while the more vigorous inspection is a good idea, the short term benefit of this approach is the collection of data, which if done individually by each municipality, would lose the economies of scale offered by a shared services approach to data collection.

The administrative burden of enforcement - including how to administer - will still fall to each municipality.

Dan Welsh noted that when a failing septic is found the County becomes involved and therefore we are not compromising public health. Sue Gerry added that there are septic out there without individual solutions, and “ focus” areas”, where it can take time to reach a solution.

With regard to a pump-out triggering a sanitarian visit, Len Meyerson noted that a septic problem is usually news to the homeowner as well and it is important to give them an opportunity to repair the problem. If the case is on going and poses a health threat and the homeowner is unwilling to make repairs, then DOH will issue a citation and the legal process takes hold.

Again, the group expressed concern about the ability of fixed income homeowners to afford remediation.

Gina summarized that there are 2 enforcement aspects: according the MS-4 a town must adopt a 3 year inspection provision, and it is a town administrative function to consider waivers from inspection due to occupancy issues, this is different from a waiver request because of financial difficulties.

With regard to financial assistance for owners in need of a repair, the subject was discussed as to whether the County can add a surcharge to residents in affected areas. It was not clear that a small surcharge would provide sufficient funds to make potential repairs, In addition, while there may be public funds available to assist very low income households with repairs (such as through PIP) – http://www.westchestergov.com/pdfs/HOUSING_PIP_Guidelines8-2007.pdf. Many in northern Westchester are above income assistance levels for this program and for state low-income loans, and yet may still be unable to afford the costly required repair.

Peter directed the group back to discussion of a possible ordinance.

Jerry Faiella, mentioned in regard to an inspection versus a pump out, that an inspection without a pump out may cost \$300 - \$400,–virtually the same amount as a pump-out. Since the DEC already accepts our pump-out report as an inspection as a good first step, he recommended that we should run with this. The Town of New Castle would have to hire 5 inspectors if they had to perform the inspection alone, and that cost is prohibitive. The committees’ approach puts responsibility for the inspection on the hauler, with no cost to the town and a guarantee of income for the hauler - a “win win” situation.

He spoke to town Building Inspectors who would be involved with non compliance with a required pump-out (note: a system sanitary failure involves DOH) and concluded that a manageable approach would be to inspect one third of the towns’ septic system each year over the three year permit period. In addition to this tiered approach, the town would encourage pump-outs of neighborhoods or contiguous geographic areas to allow homeowners to economize by scale and keep the costs down for homeowners. He also stressed that enforcement should be as simple as possible.

In sum, he said, a three year pumping requirement makes sense. The Department of Health is already involved in the event of a sanitary issue from a failure, and the local government is responsible for enforcing the town's requirement to pump and for applying sanctions for violations. The County is already taking the lead to develop the data base. This is the best approach to get this done and meeting our MS-4 obligations.

A question was raised as to whether there were enough haulers to handle this. Peter noted that it was a good question, and haulers, as private businesses could always add capacity. He added that when the reporting law went into effect a year ago, during discussions with haulers about consideration of a required pump-out every three years, they were pleased about the prospect for new business. Peter noted that Pound Ridge's interest in having the town perform inspections goes to Jerry's point- if there were not a regional approach as is the case in septic hauler inspection program, then there is a cost to the town if they go above this level. No one environmentally argues with the idea of a tougher standard, but rather the question is administrative. What is most actionable in time for the new requirements? Peter noted that he was meeting with the Pound Ridge Town Board soon to update them on septic issues, as he has done with other Towns in his district, and he would discuss this further. He also offered to come to other towns to present a septic update.

Jerry noted that as required with regard to training contractors, (not only the company owner) a similar requirement for individual training should be included in a septic inspection ordinance, to be certain that the person doing the inspection has proper credentials.

In the case of septic haulers, it was noted that the hauler is usually the licensee, it is not a company license.

Peter asked Jerry about what a fine structure might look like and he noted that each town already has these scales in their town code as they relate to violations. For example, it could be \$ 250 per day - almost the cost of a pump-out. A judge can also dismiss the fine if the homeowner shows proof of compliance. While each town is responsible for its own legislative process, the county can help draft a model law and each town must tailor this to their individual local needs, and hold public hearing as prescribed by local laws.

Ed Barnett offered that people can be trained for minimal inspection/ pump-out and this is a source of revenue for the haulers. It also allows a look at the system at no cost to the county. He urged the committee not to complicate things.

Lee Roberts raised the concern shared by municipal officials about people realizing this is on the horizon, and cited Bedford's experience 15 years ago when they discussed a local septic ordinance. The town will have to present the requirements and the county will have to help each town in this process. Peter agreed that it is critical to build awareness with policy makers at the local level and then filter this out to local community

Mary Beth Murphy shared that Somers periodically has septic information in the town newsletter, offering friendly advice on maintaining a septic system.

All agreed there was a need for education about the benefits of septic maintenance.

And it was noted that many new residents to the northern area of the county come from the city and are not aware of septic systems. Included in the education piece was the issue of disclosure to a new potential buyer and clarification of the situation where a septic system might be within a sewer district.

Peter stated that some good issues were raised at the meeting, including a more stringent definition of an “inspection”, a sunset provision, evolving standards, and a septic surcharge as a potential source of repair funds. All of these are good issues, in addition to the value of Jerry Faeilla’s concept of a shared approach. He asked the group to submit any thoughts or information they may have on a possible local ordinance. Peter said that the effort will go forward using the basis of Jerry’s concept, and he will contact the County attorney’s office to look at possible draft language for the March meeting.

Mary Beth Murphy reiterated that there will be strong public backlash when this type of a requirement is introduced, and therefore we should not look at more stringent requirements than those now acceptable to the DEC. To look at a stronger inspection definition is not being sensitive to the amount of fervor this proposal, even in its minimal stage, will engender from the public when it “hits the street”. She felt that we should start with our current approach, already acceptable to DEC and wait until that is up and running before putting additional burdens on the public. Peter stated that he agreed with this and, the discussion about a more stringent definition of an “inspection” was to be inclusive and lend credence to Ed and Dick’s concern as part of the conversation.

In response to a question about efforts to develop funding for repairs, it was noted that in the next six months there should be a proposal from the NY State Environmental Facilities Corporation for repair funds, and the County has a “PIP” program, which is, as noted previously, available to only very low income households. The State’s EFC proposal would address those who need it and can’t afford it - for example, those who cannot sell a house due to a failed septic system.

Bill Harding asked whether the committee intended to keep septic inspections in the stormwater Law, or would septic language be separate?

Peter noted that this committee’s purview is the septic component and any language we develop can be included, as determined by communities that have watershed and non watershed septic properties.

At the next meeting Ed Delaney and Ed Barnett will present information for the purpose of familiarizing the committee with the subject of alternate septic technology and various options.

The next meeting date was set for Thursday, February 26 at 3:30 P.M.

The meeting adjourned at 4:55 P.M.

Respectfully submitted by Wendy Wild

