

Westchester County Board Of Legislators  
Septic Sub Committee  
Meeting Minutes, October 23, 2008

Committee was called to order at 3:40pm.

In attendance:

Committee Members:

Subcommittee Chair, Hon. Peter Harckham,

Hon. John Nonna,

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

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

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, Chair NWWC

Hon. Dan Welsh, Board member, Town of Lewisboro

Roberta Wiernik, LWV Environment Committee

Guests & Visitors

Ken Kosinski, & Robert Capowski , NYS Department of Environmental  
Conservation

Maureen Eckman, Assistant Building Inspector, North Salem

Jerry Faiella, Administrator, Town of New Castle

William C. Harding, NYS Department of State- Exec. Dir.: Watershed Protection  
and Partnership Council

BOL Staff: Chris Crane, Wendy Wild

Chairman Harckham welcomed the group and to underscore the importance of the group's mission, mentioned that earlier in the day, he had hosted a group of high school students from Fox Lane, and that a lively interested discussion followed about septics, water quality and the environment. He also thanked special guests Ken Kosinki and Bob Capowski of the State Department of Environmental Conservation, for driving down from Albany to meet with the group again, for an update on the sub committee's work, and to get DEC feedback on issues such as compliance.

Peter Harckham summarized the group's work so far, including a consensus that since the majority of the septic systems in Westchester are in the northern part of the county, this was a good place to begin. The County has in place several septic initiatives including a 1999 septic contractor licensing requirement and more recently a requirement that Septic Haulers be licensed, and use a pump out reporting system which could trigger a Health Department inspection for questionable findings, and the newly implemented septic pump out reimbursement program which applies to septic systems in eligible sewer districts. While also voluntary, the reimbursement provides an incentive for a regular pump out. These programs provide important data on which to build a data base. Such a data base can identify locations of septic systems for development of a public education effort and allow the county to begin to assess conditions and work toward satisfying the MS4 required septic inspection program. The group also agreed that a frequency of once every three years was a reasonable requirement for residential septic systems.

The Department of Health Hauler Licensing program however is only on a voluntary basis (as opposed to a uniform requirement) based on a hauler service call prompted by homeowner request. After the pump out the hauler fills out a reporting ticket, and results of concern could trigger a visit to the property by a Department of Health sanitarian for a further inspection. The septic haulers visit systems throughout the county and through this program, the County can collect data on septic systems.

These two programs are acceptable to the DEC as a protocol for working towards compliance with the MS4 requirement for septic inspections. While each municipality is its own MS4, a regional approach, as proposed by the subcommittee can offer support to municipalities in this process. While both of Westchester's programs are voluntary they allow gathering of data and satisfy a requirement to begin the process. Based on these two programs, a septic data base is being developed which will allow for an organized approach to consumer education and steps to encourage, and when legislation permits, require a 3 year pump out, and following this take steps to enforce and remediate.

Len Meyerson provided a copy of the reporting form for the septic reimbursement request.

Next phase was to begin to discuss how this would work. Who would administer in terms of compliance? The subcommittee invited Ken Kosinki to this meeting to address this phase. Sue Gerry and Gina discussed a shared approach. After that presentation, the group began to discuss other aspects of compliance such as liability and penalties.

Sue Gerry gave an overview and progress report of the septic data base project. They are still trying to identify where properties are. Of 40,000 septic systems 7,000 are in sewer districts. They plan to identify every property on a septic and electronically compile data regarding each property into a lot based bucket including construction and all historical records from anyone entering on to the property.

John Nonna suggested applying for a shared services grant and it appears that the committee's septic data base project may qualify for this. Sue Gerry and Gina D'Agrosa said the County plans to apply for a grant before Jan. 14, 2009.

The goal is for completion of the data base by the end of 2009 with a real time data base for municipalities to use to see where pump outs have occurred, or are lacking, and where enforcement might come in. The data about a number of aspects of septic health dovetails well with new requirement for a septic inspection program.

Sue passed out the hauler inspection form and reviewed the process. The form is reviewed for its content as well as frequency and multiple pump out reports from various haulers for the same property which can indicate a need to investigate why. Discussion followed about the limited description options on the form, and whether these could be expanded to be more specific about signs of trouble or conditions. Sue Gerry mentioned that additional reporting descriptions might require additional training and or legislation.

In response to a question, Sue Gerry said the data base method presumes most properties are on septic except where a town has sewers. Over the next month visits to each of the 12 Northern communities will be made to look at what can be learned about each. For example, see where there are package plants, etc., and then work backward from a presumption of septic. If a property or an area is sewer, it is then removed from the list.

In areas with sewer districts no one knows which properties actually use septic systems, so the new reimbursement law will help identify the septic systems within the district.

Ken Kosinski asked about how the process works when an inspector visits a property. For the northern Westchester piece, Len Meyerson clarified that the hauler notifies DOH when they see wetness and a sanitarian comes to investigate. This may or may not turn out to be a septic problem. There are also septic contractors who do perform an inspection when called to pump out a homeowner's system as part of the septic reimbursement program.

Ken then asked about the form having a description of the tank. The form is not intended as an inspection report but will, none the less, provide valuable data.

Some in the group suggested adding a place for description. Len Meyerson pointed out this might require a new level of inspector expertise and new legislation.

Peter reviewed that, DEC, based on the first meeting, indicated that the existing Westchester County protocol would satisfy what they are looking for. Returning to the discussion of the County Data Base, each town is its own MS4. The County would share data with each individual town as to who has or has not pumped. Then they must question what is the liability for compliance. Should they send a post card or issue a summons?

Sue Gerry said that there were difficulties when developing and passing the septic hauler law. There was concern about putting responsibility for reporting wetness, etc. on septic haulers, and discussion that if too much responsibility were put on haulers. It would become an inspection program requiring more training which was a major concern on the part of the septic industry.

Ken Kosinski indicated that DEC is ok with calling a pump out an inspection because down the road it might identify a problem, which would be a valuable outcome.

Len said that under the reimbursement program, inspections can only be performed by specific parties and didn't know if this could be put on septage haulers without changing legislation.

Peter said he felt like we were sliding backwards with the discussion. We had a consensus and DEC was comfortable with our pump out protocol. The committee can explore these other issues, i.e., the form, in other sessions. The question now is how do we implement and administer for full compliance?

Sue then asked Ken Kosinski, before we invest time and money into the shared approach, would DEC put in writing that this would satisfy the DEC? Ken Kosinski would like a communication, similar to a written statement of understanding after the first meeting, which would say "here is what we think..." then DEC can respond in writing that all is fine. Peter said the point is to take incremental steps. At this meeting hopefully we can get consensus on next phase and we will send a letter to DEC for sign off.

Harckham continued, now that the protocol is ok – *someone* now has to say you must pump every three years. How do we decide if a town is in compliance? Is it 80% pumped? And if a shared data base is the way a municipality can get information on compliance and whether they are in compliance, how is a town in compliance? How do we define compliance? When DEC was writing this (MS4) what did you have in mind? What kind of guidance can you give us as we work with towns? Were you looking at best faith effort? In response, Ken Kosinski said the DEC wants the Towns to document the process they went through like other MS4 issues.

Discussion followed about what occurs when local laws might require 3 year inspection and a failure triggers a local building inspector and notice of violation and process. There was discussion about load on local courts.

Sue Gerry mentioned that based on recent DOH stats from pump outs, there was pretty good compliance and hoped that the data base can be a basic enforcement tool. There was concern expressed that each locality couldn't handle the number of septic to be inspected. Jerry suggested one way might be to stagger the load. The emphasis of discussion was on the value of mass mailing to educate homeowners.

Discussion followed about how the County might target a mailing. Also discussed were devices to force compliance such as at time of sale. It was said that the \$500 "waiver of disclosure" which is allowed would neutralize this many times. This provision came out of an uproar from the real estate industry when the law was being considered.

Maureen Eckman indicated that bringing people into town court for failing septic wouldn't work if the owner says I cannot afford to pump so the town is in a quandary. The whole issue of cost to a municipality for enforcement was discussed- including the continuum from violation through court process. It was also noted that there is a three year period and numbers of compliance or non compliance might not be known until the period is concluded. Ken Kosinski said that perhaps if they see a low level of compliance at this point, they can work with communities to help with remediation. Ken Kosinski stressed that the important point for DEC is that each municipality have an enforcement process such as citations, fines etc. to add teeth to the local law.

Peter Harckham stressed the need for some sort of a funding mechanism. If we want septic maintenance then we want to "incentivize" people, e.g. people who are retired or on fixed incomes are scared to risk the expense of what they might find.

Ken Kosinki liked the idea of a point of sale incentive, but recognized that we have to deal with lack of resources to fix problems. And perhaps, grants, prepaid programs or low cost loans might be explored.

Bill Harding added that if there is failure to comply with a 3 year pump out, is there a process in place? He suggested we should talk with attorneys as to what form the penalty would take. The group agreed to try to find a uniform approach to enforcement and penalties.

Ken added that DEC just announced a call for grant projects specific to the NYC Watershed. Stormwater/MS4 activities are high priority. Eligible activities are for the planning side of things and not for construction. This information will be sent out by email after the meeting.

Peter Harckham confirmed that, based on this meeting, he will send correspondence to DEC, anticipating their feedback which will serve as affirmation of the process.

In addition, a sub group of towns will brainstorm what might comprise a model ordinance for septic inspections.

The next meeting will be December 11, 2008 at 330pm

Adjourned at 4:55pm.

Respectfully submitted by Wendy Wild