

LOCAL LAW INTRO. NO. -2007

A LOCAL LAW amending the Laws of Westchester County with respect to the licensing of persons engaged in the business of evacuating, removing, collecting or transporting septage as septage collectors.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. The title and subsection 1. of Section 824.221 of the Laws of Westchester County are hereby amended to read as follows:

Sec. 824.221. Permit required.

1. The discharge of scavenger wastes into the county trunk sewer system and public sewers tributary thereto will be permitted only with the approval of the commissioner. Persons desiring to discharge scavenger wastes into such sewers shall be required to obtain a permit in accordance with section 824.251 of this chapter from the commissioner.

Section 2. Section 824.231 of the Laws of Westchester County is hereby amended to read as follows:

The discharge of scavenger wastes shall be made only at a location(s) approved by the commissioner. The time and conditions for permissible discharge shall be as approved by the commissioner.

Section 3. Section 824.241 of the Laws of Westchester County is hereby repealed.

Section 4. Section 824.251 of the Laws of Westchester County is hereby amended to read as follows:

Each discharge of scavenger wastes by a licensed septage collector under section 873.722 of Article VIII of the Westchester County Sanitary Code shall be made under individual permits

for each load. Permits shall be issued by the commissioner. Such permits shall be of two types as follows:

1. For the discharge of all wastes collected from within the boundaries of Westchester County, a scavenger permit shall be required. There shall be a charge for these permits, such charge to be established by the commissioner and approved by the Board of Acquisition and Contract.

2. Special permit and agreement.

a. For the discharge of sewage sludge from sewage treatment plants of design flow capacity greater than 25,000 gallons per day, located within the County of Westchester, a special permit shall be required. This special permit shall be issued by the commissioner on the basis of a written agreement between the county and the community or individual desiring to discharge sewage sludge into the county trunk sewer system. Such agreement shall set forth conditions of the special permit and a unit price to be paid by the community, or individual, directly to the county for the service. The agreement shall not include cost of transportation which shall be paid by the community, or individual, directly to a licensed septage collector.

3. All revenues received from the issuance of permits pursuant to subsections 1. and 2. of this section shall be credited to the account of the POTW treatment plant or sewer district in which such wastes are processed.

Section 5. Subsection 2. of Section 824.252 of the Laws of Westchester County is hereby amended to read as follows:

2. In addition to any other penalties prescribed in this Article VIII, the County Attorney may maintain an action in a court of competent jurisdiction to restrain by injunction any

violations of the provisions of this article or of any regulations issued by the commissioner pursuant to this article.

Section 6. Subsection B. and C. of Section 873.721 of the Laws of Westchester County is hereby amended to read as follows:

B. *Septic system contractor* shall mean an individual who engages in the performance of any one (1) or more of the following services, or who offers to provide any one (1) or more of the following services for a fee, in Westchester County, with respect to separate sewage disposal systems: construction; installation; repair and/or rehabilitation; and servicing, except for evacuation, removal, collection or transportation of septage.

C. *Licensed septic system contractor* means a septic system contractor who possesses a valid license issued by the Westchester County Commissioner of Health pursuant to the provisions outlined in section 873.722 herein.

Section 7. Section 873.721 of the Laws of Westchester County is hereby amended by adding new subsections J., K., L. and M. to read as follows:

J. *Septage* shall mean the contents of a septic tank, cesspool, or other separate sewage disposal system facility which receives domestic sewage waste.

K. *Domestic sewage* shall mean water-carried human and animal wastes from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration and surface waste as may be present.

L. *Septage collector* shall mean an individual who engages in the performance of any one (1) or more of the following services, or who offers to provide any one (1) or more of the following services for a fee, in Westchester County, with respect to separate sewage disposal systems: evacuation, removal, collection or transportation of septage.

M. *Licensed septage collector* means a septage collector who possesses a valid license issued by the Westchester County Commissioner of Health pursuant to the provisions outlined in section 873.722 herein.

Section 8. Section 873.722 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 873.722. Licensing and instruction requirements for septic system contractors and septage collectors.

Notwithstanding any other provision of this chapter to the contrary:

A. (1) Beginning on April 1, 2002, each and every person who provides or offers to provide services as a septic system contractor in Westchester County shall have obtained a license from the Commissioner in accordance with the requirements of this section. No person may provide or offer to provide services as a septic system contractor after April 1, 2002, without first having obtained such a license, except as may be authorized by the commissioner pursuant to section 873.722 C.(12), below.

(2) Beginning on the effective date of the Local Law entitled, "A Local Law amending the Laws of Westchester County with respect to the licensing of persons engaged in evacuating, removing, collecting or transporting septage as septage collectors," each and every person who provides or offers to provide services as a septage collector in Westchester County shall have obtained a license from the Commissioner in accordance with the requirements of this section. No person may provide or offer to provide services as a septage collector after such effective date without first having obtained such a license, except as may be authorized by the commissioner pursuant to section 873.722 C.(12), below.

B. Application and instruction requirements.

(1) Any individual who seeks to operate as either a septic system contractor or septage collector in Westchester County shall submit an application to the commissioner on a form to be provided by the commissioner, along with the initial nonrefundable application fee in the amount set forth below.

(2) (a) Any individual who seeks to operate as a septic system contractor in Westchester County engaged in the construction, installation, repair and/or rehabilitation or servicing of separate sewage disposal systems shall be required to participate in a licensing instruction program developed and implemented by the department, or its duly authorized designee, which program shall include both course work in the areas of septic system construction, installation and operation and standard examinations relating to the matters covered by such course work.

(b) Any individual who seeks to operate as a septage collector in Westchester County engaged in services involving the evacuation, removal, collection or transportation of septage shall be required to participate in a licensing instruction program developed and implemented by the department, or its duly authorized designee, which program shall include course work in the safe, sanitary and efficient delivery of such services and standard examinations relating to the matters covered by such course work.

(3) As part of the licensing instruction programs set forth in subsection B.(2), above, the department shall hold courses and examinations periodically, at such time and in such locations as the commissioner shall specify. Any person who has completed the application form and submitted the required application fee and licensing instruction program fee for either or both of the licensing instruction programs set forth in subsection B.(2), above, shall be eligible to participate in the next regularly scheduled license instruction program. Pursuant to the licensing

instruction programs set forth in subsection B.(2), above, the department shall conduct such examinations, which may take the form of written, oral and/or practical examinations, as it deems necessary to test the applicants' knowledge of SSDS construction, installation, repair, and rehabilitation and/or evacuation, removal, collection or transportation of septage.

C. Licensing.

(1) Upon the successful completion of the applicable licensing instruction program, including successful completion of the applicable examination to the satisfaction of the commissioner, and the payment of the biennial licensing fee, the commissioner shall issue a license certificate to the individual, which license shall indicate that the holder thereof is entitled to engage in the work or occupation of a licensed septic system contractor or licensed septage collector. All licenses shall expire two years from the date of issuance.

(2) The licensee shall carry the license certificate on his person at all times while engaging in or performing the work for which the license has been issued in Westchester County. Such license shall be shown to any properly interested person, including customers, upon request. The licensee shall also conspicuously post a sign, at the primary public street entrance to the work site, which sign shall contain the licensee's Department of Health license number in a form to be specified by the commissioner.

(3) Licenses issued by the department pursuant to this section shall be utilized only by the person named on such license and shall be non-transferable. The license of one individual shall not be deemed to satisfy the separate licensing requirements applicable to employees, contractors and/or subcontractors of such individual where such employees, contractors and/or subcontractors are performing services which require a license pursuant to this section.

(4) All such construction; installation; repair and/or rehabilitation; and servicing of SSDS in Westchester County, shall be subject to the direct supervision of the licensed septic system contractor, and all such evacuation, removal, collection or transportation of septage shall be subject to the direct supervision of the licensed septage collector. For purposes of this subsection, "direct supervision" shall mean that the licensed individual shall be responsible for all activities on site, and shall, during the course of providing such services, be physically present at the work site.

(5) Exceptions to licensing requirements. The provisions of this section shall not apply to individuals who are employees of any federal or state agencies, when such individuals are acting within the scope of that employment.

(6) Fees. The non-refundable fees which shall be paid to the department in connection with the application and licensing procedures outlined herein shall be:

a. Original application fee: \$200.00 per septic system contractor applicant; \$100 per septage collector applicant.

b. Septic system contractor license instruction program fee (including the cost of examination): \$100.00 per applicant for initial septic system contractor exam; \$25.00 for reissuance of septic system contractor examinations and/or for septic system contractor renewal examinations.

c. Biennial license/renewal fee: \$200.00 per licensed septic system contractor; \$100.00 per licensed septage collector.

(7) The commissioner may require the participation of licensed septic system contractors and/or licensed septage collectors at department-sponsored informational seminars at any time during any licensing term in order to ensure that all licensed septic system contractors and/or

licensed septage collectors are informed of developing issues, technologies, and laws which may impact the performance of services by the licensed septic system contractor and/or licensed septage collector in Westchester County.

(8) All licensed septic system contractors and licensed septage collectors shall comply, at their own expense, with the provisions of all applicable federal, state and municipal laws, rules, regulations or requirements including, but not limited to, all federal, state and municipal laws, rules, regulations or requirements applicable to the licensee as an employer of labor or otherwise. All licensees shall be required to comply with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and others employed to render the services hereunder.

(9) Renewal. No person shall perform the services of a licensed septic system contractor or licensed septage collector after the expiration of the license issued by the department. The licensed septic system contractor or licensed septage collector may seek renewal of their licenses by submitting a renewal application, on the form provided by the department, to the department not less than 30 days in advance of the expiration date of the licensed septic system contractor's or licensed septage collector's existing license. Prior to the approval of the renewal license, the licensed septic system contractor or licensed septage collector shall be required to submit a completed application and pay the appropriate biennial renewal fee, as referenced above, prior to the department's issuance of the renewal license, and may be required to successfully complete a renewal examination. The commissioner may, in his discretion, require any licensee who fails to submit the renewal application within the time frames specified above to submit an application and fees, in accordance with this section, as though the licensee had not previously been licensed by the commissioner.

(10) The commissioner may refuse to issue or renew a license in the event that an individual fails to satisfactorily complete the licensing instruction program, examination, or renewal examination, or fails to comply with the licensing standards outlined herein.

(11) Upon the issuance of a license by the commissioner, the names and contact information for each licensed septic system contractor and licensed septage collector shall be placed on a public registry to be maintained by the commissioner and made available for consumer review and reference.

(12) The commissioner, in his discretion, may issue a temporary license to a prospective licensed septic system contractor or prospective licensed septage collector in the case of an emergency where, in the opinion of the commissioner, the condition of a SSDS poses a threat to public health and safety, provided however, that the duration of such temporary license shall not exceed six months. The commissioner may, in his discretion, refuse to issue a temporary license or suspend any existing temporary license where the commissioner deems the qualifications or work practices of the holder of the temporary license to be unsatisfactory, or where the threat to public health and safety has been eliminated to the satisfaction of the commissioner. The issuance of such a temporary license may be utilized by its holder only with respect to the emergency identified and which formed the basis for issuance of the temporary license, and shall not entitle the holder thereof to provide services as a licensed septic system contractor or licensed septage collector in Westchester County generally. The holder of such a temporary license shall be required to pay pro rata fees, in accordance with the fees established in subsection C.(6), above, on a month-to-month basis for the term of such temporary license.

Section 9. Section 873.723 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 873.723. Standards applicable to licensed septic system contractors, licensed septage collectors, and owners of septage removal vehicles.

A. All licensed septic system contractors and licensed septage collectors shall comply with all provisions set forth in this Article VIII to the extent that such provisions relate to licensed septic system contractors, licensed septage collectors or SSDS, and to any other provision of this chapter which relates to such license holders.

B. All licensed septic system contractors and licensed septage collectors shall comply with all standards of workmanship as may be established in the training programs to be provided by the department, or its designee, pursuant to such licensing programs, or generally in the industry.

C. No person shall knowingly engage in any fraud or material deception of the commissioner, the department, or any Westchester County consumer with respect to the qualifications or licensing status of the individual, its employees, or independent contractors, or the services which are offered or provided to any such consumer, in connection with the services regulated hereunder.

D. No person shall knowingly cooperate with any individual engaged in any fraud or material deception of the commissioner, the department, or any Westchester County consumer with respect to the qualifications or licensing status of the individual, its employees, or independent contractors, or the professional services which are offered or provided by such individual to any such consumer, in connection with the services regulated hereunder.

E. Septage removal vehicles.

(1) Prior to the use of a motor vehicle for purposes of evacuation, removal, collection or transportation of septage, the owner or lessee of such motor vehicle intending use for such purposes in Westchester County, shall obtain a permit from the department approving use for

such purposes. No person shall use a motor vehicle or cause a motor vehicle to be used for such purposes without a permit issued by the department. The provisions of this subsection shall not apply to motor vehicles owned and/or operated for such purposes by a municipality.

(2) All permits required by this subsection shall expire two years from the date of issuance.

(3) The non-refundable fees which shall be paid to the department in connection with the permitting required by this subsection shall be:

- a. Original application fee: \$200 per motor vehicle.
- b. Biennial license/renewal fee: \$200.00 per motor vehicle.

Section 10. Section 873.724 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 873.724. Reporting requirements for licensed septic system contractors and licensed septage collectors.

Notwithstanding any other provision of this chapter to the contrary:

A. Each and every licensed septic system contractor and licensed septage collector shall be required to complete a septic system data form provided by or otherwise approved by the commissioner upon the completion of any on-site services performed with respect to any SSDS or evacuation, removal, collection or transportation of septage in Westchester County, which form shall specify the service provided to the property owner and any other information which the commissioner, in his discretion, may deem appropriate. Each and every licensed septic system contractor and licensed septage collector shall be required to issue a copy of the septic system data form to both the commissioner and to the owner of the facility which is served by such SSDS within thirty business days of the service date. Submission of the septic system data form to the Department of Environmental Facilities at the time of discharge into the County

trunk sewer system shall constitute submission to the commissioner under this section. Such septic system data forms shall include language which informs the property owner that all licensed septic system contractors and licensed septage collectors shall be required to maintain their Westchester County license; shall be required to display such license and license number to the property owner upon request; and shall specify the contact information for the department.

B. In the event that any service provided by the licensed septic system contractor or licensed septage collector indicates that the SSDS presents a significant threat to public health, safety and/or the environment, the licensed septic system contractor or licensed septage collector shall state the existence and nature of such emergency clearly on the face of such septic system data form, and shall issue a copy of the septic system data form to both the commissioner and to the owner of the facility which is served by the SSDS within three business days of the service date.

C. To the extent that the condition of any given SSDS is such that the licensed septic system contractor cannot bring the SSDS into compliance with all applicable federal, state and municipal laws, rules, regulations or requirements, the licensed septic system contractor shall advise the consumer of such condition in advance of providing any services to the consumer with respect to such SSDS, and shall note on the face of any septic system data form prepared with respect to such SSDS both the existence of such condition and the subsequent efforts, if any, made by the licensed septic system contractor to bring the SSDS into conformance with such laws, rules and regulations, and the consumer's assent to same.

D. Licensed septic system contractors and licensed septage collectors shall be required to maintain a copy of each and every septic system data form for a period of not less than six years from the date of service.

E. (i) The commissioner shall maintain a database of the records for each SSDS, which records are to be provided by all licensed septic system contractors, and shall include, but not be limited to, the following information, where applicable:

- (1) Residence address;
- (2) Number of bedrooms;
- (3) Number of bathrooms;
- (4) Square footage of residence/commercial structure;
- (5) Type of sewage disposal system;
- (6) Grade/slope of disposal area;
- (7) Percolation rate at disposal area;
- (8) Distance from well, if applicable;
- (9) Well yield (gallons per minute), if applicable;
- (10) Depth of well (feet), and physical characteristics of well, if applicable;
- (11) Date of system installation;
- (12) Name of licensed septic system contractor;
- (13) A listing of current and previous owners; and
- (14) Maintenance history.

(ii) The commissioner shall maintain a database of the records for each SSDS, which records are to be provided by all licensed septage collectors, and shall include, but not be limited to, the following information, where applicable:

- (1) Residence address;
- (2) Date of evacuation, removal or collection of septage for transport;
- (3) Name of licensed septage collector;

- (4) Total volume of septage evacuated, collected or removed for transport;
- (5) Name of septage receiving facility following transport;
- (6) Number of septic tanks evacuated;
- (7) Approximate volume of each septic tank evacuated;
- (8) Number of cesspools, seepage pits, and/or other system components evacuated; and
- (9) Approximate volume of each cesspool, seepage pit, and/or other system component evacuated.

F. The information contained in such database shall be made available for inspection by members of the public at reasonable times during the regular business hours of the department.

G. The department shall prepare and provide a report semi-annually to the Board of Legislators on the data collected pursuant to this section with appropriate comment.

Section 11. Section 873.725 of the Laws of Westchester County is hereby amended to read as follows:

Except as expressly stated in this Article VIII, any person who is deemed to have violated section 873.723 hereof, shall be subject to enforcement proceedings in accordance with the provisions of sections 209-215; 217-221; and 304-309 of this chapter. Each day of a continuing violation shall constitute a separate and distinct violation hereunder. This provision is not, however, intended to impose any liability or affirmative obligation upon the owner of any real property which is served by an SSDS regarding any such services which may be provided on such property by any unlicensed individual where that individual represented to such owner that he or she was a licensed septic system contractor or licensed septage collector.

Section 12. Section 873.735 is hereby amended to read as follows:

No person, except a municipality and those required to obtain a permit under section 873.723(E), shall engage in the business of removing, collecting or transporting offensive material without first having obtained a permit therefor from the commissioner.

Section 13. This Local Law shall take effect one hundred twenty (120) days after its enactment, provided that any license previously issued pursuant to Section 824.241 of the Laws of Westchester County, which section is repealed by Section 3 of this Local Law, that has not expired or been suspended or revoked, shall expire on the effective date of this Local Law, and provided further that any permit previously issued pursuant to Section 873.735 of the Laws of Westchester County, which section is amended by Section 12 of this Local Law, that has not expired or been suspended or revoked, shall expire on the date fixed in the permit, by which date permittees will be required to renew said permit under either Section 873.735 of the Laws of Westchester County or subsection (E) of Section 873.723 of the Laws of Westchester County, as added by Section 9 of this Local Law, as appropriate.