

Westchester County Board Of Legislators
Committee on Environment & Energy
Septic Subcommittee
Meeting Minutes, May 28, 2009

In attendance:

Committee Members:

Subcommittee Chair: Hon. Peter B. Harckham

Gina D'Agrosa, Water Master, Westchester County

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

Michael Meyer, Bureau of Water Supply NYCDEP

Leonard Meyerson, Westchester County Department of Health

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

Hon. Dan Welsh, Board Member, Town of Lewisboro

Guests & Visitors:

Natalia Baage, Bedford Record Review

Guy Gagne, Town of Somers, Engineer

Jerry Faiella, Administrator, Town of New Castle

Bruce Thompson, Building Inspector, Town of North Salem

BOL Staff: Chris Crane, Wendy Wild

Chair Peter Harckham called the meeting to order at 3:38 P.M., and minutes for the April 30th meeting were approved.

Chair Harckham discussed attending the recent Septic Inspection Training sessions held on May 12th in Carmel, conducted by the State University of New York College of Technology /Delhi (http://www.delhi.edu/bcs/otn_wastewater/reference_materials.php).

The course was an 8 hour program and was incredibly thorough. Peter Harckham thanked Ed Barnett (Putnam County Watershed Information Coordinator; Administrator, Putnam County Septic Repair Program) for arranging the opportunity to participate in the program as a guest. A useful training manual was provided to participants, but is not available for duplication as it is a proprietary document.

The group discussed draft # 4 of the proposed model ordinance under development, and this version includes Ken Kosinski's input from DEC. as requested at the last meeting. In addition, the committee received comments from the County Attorney's office and the NWWC, through Jerry Faiella,

Ken said DEC does not want to codify waivers, but is sensitive to circumstances that may result in requests for them. On behalf of the State, Bill Harding (DOS) explained that DEC is trying to balance regulatory language which usually does not have provisions for waivers with local laws which govern situations related to waivers. Ken Kosinski reports that DEC believes that the MS-4 Regulations should apply evenly to all with out exception, so the local law has to be able to address exceptional situations.. It was suggested that perhaps municipalities could provide relief other than wholesale exemption- for example, extended time for compliance.

Because the next permit period will cover 5 years, Peter Harckham indicated that the language in the draft has been modified to delete mention of "3 Years" and instead states "as required by the permit and successive permits."

In response to discussion about the desire to have more frequent inspections, Bill Harding said that nothing prevents any town from requiring shorter intervals.

With regard to discussion about the frequency and thoroughness of the proposed inspection protocol, Gina reminded the subcommittee that seepage on the ground (a condition the hauler is to record as part of the current protocol) may be evidence of impact on stormwater quality and this law is part of this process. Bill Harding addressed concern raised about the pump out reporting not really being an inspection acceptable to engineers, by recapping that DEC is accepting the pump out/ reporting protocol as an inspection because in this first step it is practicable, and doable on a periodic basis and adds no costs to local municipalities

Through discussion it became clear that the subcommittee needed input from town attorneys as to the enforceability of the proposed ordinance, especially if no waiver provision was included. The State needs local feedback, since the municipalities in this process are part of State effort to enforce State regulations. The six towns in Legislator Harckham's district will be queried to get a cross section of opinion including any helpful examples of concern that might be shared with DEC and the responses discussed at the next meeting. Chairman Harckham reminded the group that the State DEC's hesitation to offer waivers in this process is because for this first applicable permit period, it wants to get a baseline of data, including the experience of possible request for waivers and the related circumstances, for a clearer picture of the initial process.

The Committee also asked for an opinion from DEC's attorney regarding "Delegation Agreements" since this type of a State provision spells out terms and conditions which might be relevant to the issue of waivers. The subcommittee is concerned that any proposed model ordinance will withstand court challenges relating to the issue of waivers.

Concerns were raised about circumstances that might be compelling, such as the planned sewers for Peach Lake, how to address the pump out interval requirements and statutory provision for special districts which might include residential septic systems such as the Agricultural Districts in the county.

The group discussed administrative aspects of the law including plans to implement the program in phases initially, to establish a regular inspection cycle which is cost effective and reasonable. Discussion included the education piece of this, and the necessity for homeowners to keep a copy of a pump out form, in the event that questions arose in the future.

With reference to the reporting procedure it was suggested that language be changed to "reporting as required" and it was noted that reference to the form itself is not included in the Sanitary Code so that the form can be modified as needed without having to amend the law. The requirements of what needs to be considered however, are part of the code.

The memo prepared by the Westchester County Attorney, commenting on the proposed model ordinance, was discussed, and Peter Harckham will ask the town attorneys to comment on the memo as part of their input about the proposed ordinance. There was discussion about the impact of the proposal on County parks, and State parks within the County, and parks such as Ward Pound Ridge Reservation which covers two municipalities, each responsible for their own MS4. The possibility of needing an IMA or other instrument to address these agreements between towns as well as special districts was raised,

Peter Harckham suggested that, based on discussions at this and earlier meetings, the group think about the MS-4 preparation process and the required narrative. Perhaps the subcommittee could develop a model narrative for municipalities to use in this process.

Chairman Harckham asked the minutes to reflect the subcommittee's thanks to Gina D'Agrosa for her assistance handling the changes made during the session so all could see them on the computer screen attached to a projector.

The next meeting will be on Wednesday, June 24th, at 3:30 P.M.

The meeting adjourned at 5:02pm.

Respectfully submitted by Wendy Wild