

NEW YORK
state department of
HEALTH

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sue Kelly
Executive Deputy Commissioner

August 22, 2014

David S. Warne
Assistant Commissioner
NYC Department of Environmental Protection
Bureau of Water Supply
465 Columbus Avenue
Valhalla, NY 10595

Dear Mr. Warne:

NYSDOH/USEPA and NYSDEC, in consultation with the Catskill Watershed Corporation, have reviewed the West Branch and Boyd Corners Septic System Rehabilitation Reimbursement Program Plan, which was submitted by NYCDEP in accordance with section 4.9 of the Revised 2007 FAD. We offer the following comments:

1. Section 1.1 Definitions

- a. "Design Flow" – reference to Table 1 in the 1996 NYS Department of Health Design Handbook should be revised to Table 1 of the 2012 NYSDOH manual entitled "Residential Onsite Wastewater Treatment Systems Design Handbook".
- b. "Eligible Systems" – the term "reasonably likely to fail in the near future", which is used in several locations in the document, should be defined in the Definitions section. We recommend using the same definition as provided in the Catskill Watershed Corporation's Septic System Rehabilitation and Replacement Program Rules.
- c. "Eligible Systems" – definition states that "septic systems that have an open NOV that was issued prior to May 7, 2014 are not eligible for reimbursement funds under the Septic Program." It is not clear why such systems are prohibited from participation in the program. A benefit of allowing such systems to participate might be to encourage and accelerate repair of the system.
- d. "Failure" – we suggest including "contamination of groundwater" in this definition.
- e. "Period of Eligibility" – program rules limit reimbursement to a period of one year from the date of an NOV or date the property owner enters the program. The WOH Septic Repair Program has found that one year can be insufficient to allow for both design by a professional engineer, design approval by a regulatory agency, bidding by interested contractor(s), and then construction to completion. Under the NYC Watershed Rules and Regulations, DEP design approvals expire after two years. Allowing at least a two year

period of eligibility for reimbursement would perhaps be more consistent with limitations set by the Watershed Rules and Regulations.

- f. “Remediation” – definition should include the concept of “reasonably likely to fail”, e.g., replace the first sentence with: “shall mean installation, replacement, or non-routine repair of an existing on-site wastewater treatment system that is failing or reasonably likely to fail in the near future as determined by a Qualified Inspector.”
 - g. “Watershed Regulations” – definition for the term “West Branch Watershed” has been included under this definition. These two definitions need to be separated.
 - h. “Qualified Inspector” – does EFC employ septic system inspectors? In addition, we suggest that criteria used to determine whether or not an inspector is “qualified” be included in this definition, e.g., training obtained.
2. Section 1.2 Septic Program Description
 - a. Towns in the EOH that are regulated under NYSDEC’s Municipal Separate Storm Sewer Systems (MS4s) permit are required to implement a septic system inspection and maintenance program and report on their activities periodically to NYSDEC. Through the Towns’ programs, it is likely that septic systems in need of rehabilitation will be identified, and owners of these septic systems may participate in DEP’s septic system program. We suggest that the DEP’s septic system program rules acknowledge this possible nexus, and need for coordination, with the MS4 program, e.g., by noting that MS4’s will be notified of systems participating in DEP’s program that have been identified by the MS4 program or otherwise identified by a qualified inspector. As such, the MS4’s can satisfy their requirement under the MS4 permit to report subsequent repairs to NYSDEC.
 3. Section 1.2.1 Priority Areas
 - a. We recommend that the first phase of Program implementation include septic systems within 100 feet, rather than 50 feet, of a watercourse since this is the State minimum regulatory setback distance from a watercourse for an absorption field/seepage pit/raised mound.
 - b. If more than two phases are a possibility, “i.e.” should be changed to “e.g.” in the fourth sentence of the first paragraph of this section.
 - c. The list of factors identified for prioritizing systems should also include type of system and system size (if known).
 - d. It is unclear whether the factors used to prioritize systems are listed in order of priority. If they are not, the rules should indicate such by stating, for example, “not in any priority order.”
 4. Section 2.1 Schedule of Values
 - a. The schedule of values should allow for deviations if warranted (e.g., tree removal next to a house on a steep bank will probably cost more than tree removal for an access road). For example, the WOH program rules provide that: “The CWC Executive Director may approve a payment of an additional 100% over the schedule of values upon submission of appropriate demonstration/documentation that the cost is reasonable and justified.”
 - b. DEP may wish to consider the WOH septic program’s approach to limiting engineering costs, i.e., to define a schedule of costs rather than specify a maximum of 20% of the total cost of construction. Capping the engineering costs at 20% of the total cost of construction may lead to engineering costs

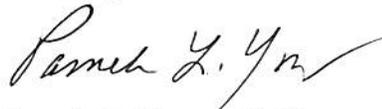
always being 20% or to engineers designing a system that is more expensive than necessary.

5. Section 2.2 Property Owner Portion of Cost
 - a. In the first paragraph, “Primary Residents” should be “Primary Residences”.
 - b. In the second paragraph of this section, it should be stated clearly that, in order to qualify for financial hardship funding, the assessed value of the residence must be below the median value of residential homes in the municipality, not below the median value of just “properties” in the municipality.
 - c. DEP may want to consider the criteria used by the WOH program to define eligibility for financial hardship, i.e., HUD 80% income limit of the resident’s county. In addition, assets held by a property owner should be considered in defining financial hardship.
 - d. The third paragraph provides that all property owners must pay 100% of costs and then be reimbursed later by the Program. The WOH septic system repair program has found that most homeowners do not have funds available to pay for a septic system in full and then wait for reimbursement. Property owners may be more likely to use the program if DEP (or its agent) does two-party checks payable to the homeowner and contractor. This would be especially advantageous to a homeowner who falls under the hardship category.
 - e. It is not clear why the Septic Program will not reimburse property owners for any Rehabilitation activities where the reimbursable amount is less than \$1,000.
6. Section 2.3 Eligible Costs
 - a. The third paragraph states that “The determination as to whether a system is in need of a Repair versus a Remediation will be made by the respective County Health Department and/or DEP...” This statement creates the potential for disputes in making a determination. Other aspects of the program may also lead to disputes. If disputes occur, how will they be mediated? Alternatively, DEP may want to consider leaving this determination up to the professional engineer that has been hired by the homeowner.
 - b. DEP may want to consider adopting the WOH septic system program’s allowance for reimbursement for the cost and installation of low flow fixtures. Use of low flow fixtures can reduce the size of the septic system required, reducing costs and space requirements.
7. Section 2.4 Disallowed Costs
 - a. Again, a one-year limit on the Period of Eligibility may be too stringent.
 - b. As discussed above, DEP should consider basing the cap on engineering costs on a schedule of values rather than a percentage of total construction costs.
 - c. DEP may want to consider not allowing building permit costs as an eligible cost. The WOH program found that providing reimbursement for building permits led in some cases to inflated building permit fees.
8. Section 2.5 Duplication of Payment Prohibited
 - a. Include under “unique circumstances”: “that faulty equipment was installed, or equipment was incorrectly installed, or other circumstances that led or contributed to immediate system failure.”
9. Section 2.9 Prerequisites to Reimbursement
 - a. In subsections a.iii. and b.ii., we suggest that three quotes be “required”, rather than “recommended”. This will help ensure that the quotes will be close to the schedule of costs and that program funds are used more efficiently.

- b. In subsection b.iii., the first sentence is incomplete.
10. Section 2.10 Application for Reimbursement
- a. The second paragraph states that reimbursements can only be made after an open works site inspection has been completed by DEP or the County Health Department. This statement implies that open works site inspections are required by these program rules, which may duplicate requirements that are already in place under County regulations and/or NYC Watershed Rules. Rather than requiring an open works site inspection as part of the septic system program, DEP may want to reference the requirement for such inspection under County regulations and/or NYC Watershed Rules and Regulations, then require documentation of construction approval under the septic system program rules.
- b. This section does not provide any time limit after submission of an application for deeming that an application is complete, or for making a determination on an application once the application is deemed complete. This could leave a homeowner without any options to appeal because the application has not been denied at this point. The rules should provide a time limit for deeming that an application is complete and making a determination on an application.
11. Section 2.11 Review of Applications
- a. The second paragraph states that: "Approval of request for reimbursement shall be conditioned upon the Property Owner's agreement to have the septic system pumped out and/or inspected if DEP determines that such pump-outs are necessary to protect water quality. Any such pump-outs will be paid for by the Property Owner." Is this requirement above and beyond what is already required by the MS4 permit as it is being implemented EOH? If routine pump-outs are already required by the MS4 towns, it may be better to reference these regulations, rather than give the appearance of DEP imposing new regulations. In addition, if this requirement is already a law at the Town level, it may be easier to enforce as a local law than as a program agreement.

We would appreciate if you could provide a reply to these comments by September 30, 2014. Please feel free to contact me if you have any questions.

Sincerely,



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