Onsite Wastewater Treatment System Model Law
Public Information Session Notes
8-15-16 6 to 8 pm
South Bristol Town Hall
Approximately 35 participants

Comment 1: What is a cheater pipe? How can you tell whether a pipe going into the lake is a cheater pipe or roof drain?

A cheater pipe is a pipe that goes from the onsite wastewater treatment system directly into the stream or lake. These are not allowed. An investigation can determine whether a pipe is a cheater pipe or if it is legally carrying stormwater. For example, if they put dye into the storm pipe and it comes out in the lake, then they know that this is not a cheater pipe.

Comment 2: What does 690.0 feet refer to?

This is the 10-year flood elevation and is measured as feet above sea level. Studies have determined that 690.00 feet is the 10 year flood elevation. During the summer, lake level are typically around 688.50 feet above sea level. The U.S. Department of Housing and Urban Development Federal Insurance Administration establishes flood elevations. They set the following for Canandaigua Lake:

10-year flood elevation……690.0
50-year " " ……..691.1
100-year " " ……691.7
500-year " " ……693.3

Comment 3: Is any septic system within 100 feet of the lake automatically failing? How many systems fall into the category of automatically failing?

No, the system needs to be within 100 feet of the lake AND below the 10 year flood elevation to be failing. When a system meets both conditions, the system is basically in lake water and would not function properly. It is difficult to know how many systems fall into this category, because we have 173 residences on the lake where we have no record of where their systems is located. We need to do an inspection to determine this. It should be noted that if the absorption area is greater than 200 feet from the lake, then they are exempt from future inspections. Also, inspection requirements at real property transfer do not include transfer to immediate family.

Comment 4: Isn't there a flaw relying on the number of bedrooms because over-occupied dwellings will still be a problem?

To address over-occupation, the Towns may need to consider a rental law, which is not the intention of this law. The draft onsite law looks at both square footage of the home and the stated number of bedrooms to determine the design load and account for additional potential water usage. The law utilizes a similar process as the one that already exists. NYS DOH sets sizing based on estimated occupancy, which they determine by the number of bedrooms with 1.5 persons / bedroom. This law also incorporates a safety factor in the design load with extra gallons/bedroom/day required. The law attempts to balance many different aspects and to utilize processes already in place.

Comment 5: A substandard system can be maintained, but does it still need a 5-year inspection once it is identified as substandard?

Yes, inspections will still be required every 5 years, even if a system has already been identified as substandard. In the original version of the law, substandard systems had to be upgraded within 12 months of being identified as substandard. After public input and attorney reviews, this was stepped back to requiring substandard system upgrades at real property transfer.

Comment 6: What would justify an inspector going into a home? How is an inspection done if the inspector doesn't come inside the home?

No one, including the inspector, has the right to go into the home without permission. The only time inspectors will ask permission to go into the home is to look at plumbing in the basement to determine where the black water and grey water go. No inspector will ever go into the home to count the number of bedrooms. The rest of the inspection occurs outside by digging up the distribution box and tank lid. From there, the inspector can look at the distribution box and number of leach lines and can determine the leach line length using a sewer snake. If the property owner tells the inspector they cannot go into the home at all, the inspector will omit the basement plumbing inspection. If a property owner denies access into the home, the only way an inspector could get access to the home is by going to a court and getting a search warrant. This law was designed so each property owner can hire who they want to complete the inspection. Other laws require it to be a government agency. This law allows either a government official or someone from the private sector to complete inspections.

Comment 7: Who regrades and reseeds the property after an inspection?

The amount of land dug up to do an inspection is the same as required to pump the tank. It is a very small area, usually completed using hand shovels.

Comment 8: How does the phosphorus level in Canandaigua Lake compare to some of the cleanest lakes in the Finger Lakes?

Canandaigua Lake and Skaneateles Lake are considered the two cleanest lakes in the Finger Lakes. Both are oligotrophic, meaning they have low productivity. DEC believes that our lake is very sensitive to small changes in phosphorus. Honeoye Lake, on the other hand, has very high internal phosphorus loads and functions completely differently than Canandaigua Lake.

Comment 9: Are streams being studies and how do stream inputs to the lake today compare to inputs 10 years ago?

It is difficult to compare recent stream analysis with past data. We have had two FEMA level events and one very near FEMA event over the past few years. Storm intensity has been getting stronger. The timing of these stronger events can coincide with higher risk seasons, such as when a field has been ploughed and planted, but nothing is growing yet. What is happening today versus 10 years ago is actually like comparing apples to oranges. Streams are easier to sample than shorelines and septic systems, because we can grab a sample out of a defined channel. Shorelines and septic systems are often diffuse sources of pollutants, so it is difficult to collect a sample. We rely on surrogate data to look at the impacts of these areas on the lake. Effluent out of a septic tank has about 10 mg/L of phosphorus, so this is equivalent to the concentration leaving a system whose leach field doesn't work. Given that the average 4 bedroom house produces 580 gallons per day, a seasonal home could contribute 4 to 5 pounds of phosphorus to the lake during the three month lake use season. While this may not seem like a large amount, 4 to 5 pounds of phosphorus can translate into almost 1 ton of aquatic vegetation. Onsite systems are not the only answer. If we fixed every onsite system, we could still have a problem. It is the combination of addressing each source of pollution that will really make a difference. Addressing onsite systems is just one of many actions we are taking.

Comment 10: There is poor erosion and sediment control on new development, especially at the north end of the lake, and people still apply fertilizers despite the ban.

The fertilizer laws are extremely difficult to enforce. However, many stores do not sell phosphorus fertilizer, which helps. New development erosion and sediment control is being enforced at the northern end of the watershed. Code Enforcement Officers are completing inspections and are issuing stop work orders. There was an instance where a $20,000 fine was applied. There is always room for improvements though.

Comment 11: Congratulations on working through this law. It is not easy to work with many different municipalities. The economic impact of a clean lake goes well beyond the shoreline. Many people live in the area or come as tourists throughout the year because it is a clean lake.

Comment 12: Is a multiflow system included in this law?

There are many types of alternative treatment systems, including a multiflow, aerobic units, peat moss systems, etc. These are all defined as enhanced treatment units in the law. These systems all undergo rigorous testing [National Sanitation Foundation (NSF) Class 1 classification] and get approval by NYS DOH. For the law, these systems require that the owner have a maintenance contract with a manufacturer's representative. If an enhanced treatment unit was installed in the 1990's, it would still meet the design standards of this law.

Comment 13: What happens if the only option is to install a holding tank?

Holding tanks can be used for failed or substandard system replacements but are not allowed for NEW construction per NYS DOH regulations. However, if there is a small lot that has a failed system, it may be used if it is the only option. The property owner must first demonstrate that no other type of alternative system will work on the property. If it is determined that there are no other options, then a holding tank can be used on an existing residence. In this law, the system will require a float switch which will alarm the property owner that the tank needs to be pumped. The law also requires property owners to send their pump out receipts to the authority having jurisdiction, so they know that holding tanks are being properly maintained.

Comment 14: For substandard systems, why don't they need to upgrade if the property is being transferred between family members?

The law follows the precedent set in Gorham, which excludes non-arms length sales in their deed transfer law. If a system is failing, they will have to get the system upgraded. We expanded the definition of failure to capture the most egregious systems that exist. This law is a balancing act of protecting the lake but not over-reaching.

Comment 15: Is there financial help available?

The Bishop Sheen Foundation provides assistance for emergency home repairs. A failing septic system would fall under an emergency repair. This is available in both Ontario and Yates Counties. The Keuka Housing Foundation is available for Yates County. Both programs are need based and the property owners must apply for funding.

Comment 16: Can inspection system results for substandard systems be impacted by the weather?

NYS DOH requires leach lines to be installed 2 feet above the seasonal high groundwater mark. This can be determined by a percolation test and a soil pit. If the groundwater level is high on the property, the property owner may need to install a raised bed system.

Comment 17: How is Sunnyside going to be affected, which has steep embankments and small lots?

Many traditional systems were historically installed in this area. However, if these systems are identified as failing during an inspection or as substandard at a property deed transfer, they will need to be upgraded. They may not be able to install another traditional system due to the steep slopes and small lots. Therefore, the law requires these systems to be upgraded to meet the design standards to the greatest extent possible. If there is an existing residence with existing plumbing on the lot, then they can put in a holding tank if it is the best available option.

Comment 18: Will a contractor list be made available?

There will be a list of OTN registered inspectors that will be available to the public. If this law is passed, an OTN refresher course will be held for local contractors on the specifics of this law. The private inspectors complete the inspection and an inspection report. All decisions on whether a systems is adequate, substandard or failing is made by the authority having jurisdiction, who then also identifies which components of the system need to be upgraded. Then, a design professional will work with the property owner and the authority having jurisdiction to bring the system into compliance. A system of checks and balances was built into the law to ensure there was no conflict of interest for private inspectors.

Comment 19: What is the typical timeframe required to go from an inspection to getting a design and installed system?

When a system is in failure, the Watershed Inspector makes it the top priority and tries to help expedite the process as much as possible. He always recommends property owners get 2 to 3 estimates for the construction/installation of the system. While this process is going on, the septic tank can be plugged and utilized like a holding tank, so people can continue to occupy the residence.

Comment 20: Can the OTN inspector also be the pumper?

Yes, many private pumping companies are also registered inspectors, so property owners can get their septic tank pumped and inspected at the same time. When

working with a private inspector, it is always recommended to get a few price estimates, as each private inspector sets their own prices. It is recommended that tanks are pumped every 3 to 5 years, so this law was designed to be convenient for property owners.

Comment 21: Why are holding tanks a bad idea, when many of these properties are seasonal and only used for 2 to 3 months out of the year?

Holding tanks are an adequate replacement of a failed system if other systems are not viable options. The pumping frequency means that they cost more to maintain than other types of systems. The big issue with holding tanks is that there were too many instances where a holding tank had holes popped in the sides or cheater pipes installed. Therefore, NYS DOH has not allowed their use on new construction and only allow them if it is the only option on existing residences.

Comment 22: Isn't there potential for a conflict of interest with private inspectors to actual report problems with an onsite system? They are working for their clients.

The law was designed so that the inspectors complete the inspection and send the report to the authority having jurisdiction. All decisions are made by the authority having jurisdiction and not the inspector. This law requires private inspectors to be registered with the OTN, which requires inspectors to sign a code of ethics as part of their registration. Also, if the Watershed Inspector does not have inspection records since 1990, then the authority having jurisdiction must complete the first inspection.

Comment 23: Will systems designed for over 1000 gallons per day that require NYS DEC SPDES permit still need regular inspections?

Yes, these systems will still be required to adhere to the components of this law.

Comment 24: How does this law handle enhanced treatment unit inspections?

The Enhanced Treatment Units (ETUs) will be required to the same inspection system requirements as traditional systems. Many of the manufacturer's representatives are also registered OTN inspectors. The manufacturer's representative will continue to do the annual or biannual inspections required for the ETU components. Then, during the 5 year inspection cycle, the manufacturer's representative will complete a full inspection of the entire system, which is not done during the annual or biannual inspections. This inspection frequency was chosen to be successful without being overly burdensome. Owasco Lake requires inspections every 2 years. In Huron, they have started with every 5 years. Then, the program has been so successful in getting system upgrades, they are considering moving to every 10 years. Also, if the absorption area is

greater than 200 feet from the lake, they are exempt from future inspections to encourage more systems to be moved out of that zone.

Comment 25: Are all of the towns, including Naples, considering this law?

Yes, all of the towns are considering the law. This law was developed with town planning board members and code enforcement officers from all of the towns. All of Naples is beyond 200 feet from the lake, so the law would function as a deed transfer law. It also ensures inspections are done following a consistent and thorough inspection procedures throughout the watershed. Each town will ultimately decide if they want to pass, revise or not adopt the draft law.

Comment 26: The property owner supports everything in the law. It is short-sighted to not protect the lake. Lost swimming time last year made that apparent. The law should be made stronger and require upgrades between generations. The property owner has benefited from a house that she has inherited, but feels that she should be held to the same standards during deed transfers as everyone else.

Comment 27: If a leach field stops working, is there any way to repair it?

It depends on the soil conditions. It will require some investigating on the site, which will involve a percolation test and soil pit. In some cases, the soil surrounding the existing leach lines is in good condition, so new leach lines can be installed between the existing leach lines. In other cases, this will not work.

Comment 28: If someone is interested in upgrading their system, where do they start?

They should call the Watershed Inspector or their code enforcement officer. They will be able to help them through the process of hiring a design professional and upgrading the system.

Comment 29: How does the law deal with innovative technology?

Each site is considered individually. Engineers are encouraged to find creative solutions to onsite wastewater treatment, especially on sites with lot limitations. The engineer will come up with the design, then the authority having jurisdiction, Watershed Inspector, and NYS DOH engineer will review/approve the designs. DOH states that the average life of a traditional system is 25 to 30 years due to a biological failure. Biomats over time seal the soil pores around the leach lines. Sometimes leach lines can be installed between the existing leach lines, but this is based on a percolation test. Every design and approval depends on the site conditions. Innovative technology installed

over 30 years has been known to extend the life of a system, because the water is cleaner entering the leach lines so the biological failure does not happen as quickly.

Comment 30: How long will it take for the law to be enacted?

This is a home rule state, so each town will make its own decision on when to start the process, if they decide they want to pursue the law. The Town of Canandaigua and Town of Middlesex have said they are ready to begin the process.

Comment 31: There have now been two public information meetings. Are there any expected changes to this version of the law?

The law will follow standard procedures for local law review and adoption. This is not like the Uniform Docks and Moorings Law. Each town can tweak the model law to fit their needs. The Watershed Council meets regularly and discusses the model law. This allows each town to learn from each other.

Comment 32: Is this the case where what NYS says is what is passed?

This law is going to be a local law and not a state law. Years ago, when a previous version of an addition to the state health code was being explored, NYS determined that the law should be at the local level and go through the local law review process.

Comment 33: We draw our water from the lake. If poorly functioning septic systems continue, this could create a public health threat?

It is never recommended to drink untreated lake water. At a minimum, the water should be filtered and disinfected. There are people who have gotten sick from drinking untreated lake water. Untreated water should never be used, even in pristine, forested watershed, because beavers, ducks, geese, etc, can all carry water-borne diseases, such as giardia and cryptosporidium.

Comment 34: Is ultraviolet lights an acceptable way to disinfect water?

If the water is very clear, it is effective. However, if the water is at all turbid, then chlorine is more effective.

Comment 35: We own a residence that most likely has a substandard system. We try to mitigate the impact by minimizing our water usage. How will we know if our efforts are successful?

There is no way to know if your efforts are successful. In a dye test, the only reliable result is when the dye is observed and shows a positive result. If no dye is observed during a dye test, no conclusions can be made. One comment that has been mentioned at both meetings is how to deal with seasonal residents with low water usage. The law is already very complicated, so we hesitate to add another element to it. However, it is being considered.

Comment 36: It is especially important to protect our investments. We have had beach closures two years in a row.

Two years ago, Kershaw Beach was closed due to oil, which was buried in fill material decades ago. Some development actually helps improve conditions. For example, the Pinnacle North project has actually cleaned and/or capped a brownfield site, so it will no longer contaminate groundwater or involved human exposure.

Comment 37: A portable bathroom should be included in this law, as it is essentially a small holding tank. There are a few located on properties nearby.

This law is not intended to deal with Porta-potties. However, if waste is being discharged from a porta-potty onto the ground or waterway there are several local code and state statutes that could be utilized to stop this from happening.

Comment 38: All deed transfers should function the same, even if it is between family members. All deed transfers should require upgrades of substandard systems.

The concern about including the deed transfer within the family is that it may be property that is inherited without having to take out loans or have liquid assets available to upgrade the system. However, this comment will be brought to the municipalities attention.