

March 21, 2017

To: Article Six Subcommittee
From: Long Island Builders Institute

Re: Comments on March 15 Draft Regulations

The Long Island Builders Institute, the largest residential home building trade association in New York State, strongly supports the initiative of Suffolk County to reduce nitrogen flow from a variety of sources into our groundwater. It has been clear from our participation that LIBI fully understands the need to provide new advanced systems for installation and replacement in order to eliminate or significantly reduce the amount of nitrogen which flows from underperforming or non-performing septic systems.

Having agreed to the concept, LIBI remains deeply concerned over the recommendation to first mandate a new requirement for the installation of new I/A systems to any new construction starting in Suffolk County after 1/1/18. It is our firm belief that in view of a number of outstanding issues which have not been completed and remain unfulfilled, such a mandatory requirement for the installation of each new systems in new construction should be phased in over a period of time starting with the most environmentally sensitive areas in the county which will be identified in the new watershed management study.

LIBI makes this recommendation for a number of reasons:

1. Of the approximately 360,000 onsite sewage disposal systems on Long Island, 209,000 systems are in priority areas in Suffolk County. Approximately 252,530 pre-date the requirement for septic tanks. (Defined as cesspools, which do not work as well as the current septic systems.) This legislation, which mandates I/A OWTS on all newly constructed homes on Long Island, does not address the real cause of water pollution from wastewater. The focus should be on existing homes with cesspools and failed systems in priority areas. Based on the 208 study, newly constructed homes with septic systems that comply with the zoning and density requirements of our current Article 6 will not adversely affect nitrogen loading to ground water and our drinking water. (For example, a one acre lot in the middle of the Island with good soil conditions has a average total nitrogen impact to groundwater of 4, the drinking water standard is 10) Nitrogen loading to surface water and harmful algal bloom hot spots are a concern. The additional cost and expense required to further reduce nitrogen loading can only be justified in these sensitive surface water areas and priority areas that deserve further protection at the beginning of this process.
2. Phase in new construction mandate to include other areas that are identified by the generic environmental impact statement that the county is currently developing for a county wide wastewater management strategy. Suffolk County is currently conducting a SEQRA public scoping on the development of a DGEIS for a countywide wastewater management program to reduce nitrogen loading from wastewater sources. The approach will be completed in phases to focus resources at the county's highest priority areas first, as defined in the sub watersheds wastewater plan ("swp"). we agree with this approach. The Plan will consider triggers for wastewater treatment upgrades under various scenarios including: Cesspool failure; new construction; property transfer; Grandfather residential sites with legacy cesspools; Grandfathered residential sites with lot sizes below current sanitary Code requirements, grandfathered Other Than Single Family residential sites; phased upgrades within tiered priority area boundaries defined in the SWP. These are the same issues being considered under the proposed legislation. In fact the SWP proposed action clearly states, "Implementation of the scenarios identified above will require modification to Article V and VI of the Suffolk County Sanitary Code." We agree with the SWP approach for 'phased upgrades within the tiered priority area boundaries defined in the swp.'
3. Phase in of new construction mandate is needed to allow time to incrementally increase the health department staff. The increase in staff and the funding for same is needed to review applications and to register, monitor and enforce the operation and maintenance of all these new systems. Additional health department staff will be required to comply with the requirements, powers and responsibilities as per Section 760-1904 of Article 19. The

Department responsibilities include but are not limited to approval and registration of each system, overseeing the installation, maintenance and operation of all I/A OWTS, receive and maintain information and reports, may inspect I/A OWTS and sample discharges as often as deemed necessary by the Department to determine compliance upon reasonable notice to property owner, maintain a list of approved I/A OWTS technologies and to promulgate procedures, protocols and standards as necessary for implementation and enforcement in order to ensure the long term operation, maintenance and management of all I/A OWTS. Necessary and proper staffing should be in place prior to implementation to avoid delays in the approval and in the closing of title for new homeowners. This is especially true when the homeowner needs to close on time in a rising interest rate environment.

4. Phase in new construction mandate is needed to avoid a lack of qualified licensed installers and a shortage in the availability and supply of these systems on long island. this will allow for increased competition among manufacturers and licensed installers for each system. Avoiding a possible shortage and allowing more time to have additional Installers licensed will increase competition and mitigate the significant economic impact that this legislation will have on the new home construction industry on Long Island. (\$10,000 to \$15,000 added cost of new system plus an additional \$5,000 for design and permit costs). This is in addition to the \$12,000 - \$15,000 increase to the cost of new homes due to the recent IRC code changes. At a time when single-family home market is starting to show signs of a recovery, this legislation will adversely impact the single-family home industry on Long Island.
5. phase in is needed in order to further evaluate the effectiveness of these new systems and allow additional time to further study, modify and improve the operation and efficiency of these new systems. it is important to consider that there is less than one full year of data on these systems on long island (including winter months) and that the homeowner must actively manage these new systems. This legislation is imposing financial and legal requirements on the Home Owner and residents of Suffolk County to actively maintain and operate these systems. the proposed legislation lacks the required notice and disclosure that outlines the owners responsibility for the operation and maintenance for the proposed systems and the fact that the owner may be subject to civil action and additional civil penalties for their failure to do so. The enforcement provision states that for each “day or part of a day the required maintenance, sampling or analysis is not performed shall constitute a separate violation and may further subject the owner and/or operator of the facility to additional civil penalties under any applicable law, code, statute, or regulation.” These new systems will increase the cost of homeownership on Long Island because they require the active maintenance and upkeep by the Owner. (Estimated to be \$200 to \$500 per year) Unless the I/A OWTS is phased in there will be a lack of qualified maintenance providers across Long Island. This will only increase the cost because each Home Owner is required to have a maintenance provider contract. No notice of such fact is provided in this legislation? Is the burden and responsibility left up to the Builder? What parts need to be replaced under the system? What is the expected budget for repairs and replacement? What warranty does the Manufacturer provide? Which parts and how long is the warranty good for? Under what conditions is the warranty null and void? What warranty does the Installer provide? How long? Is the burden and responsibility to provide this information left up to the Builder?
6. Warranty and legal liability of new systems is being placed on the builder. While the county has expressed interest in facing the warranty issue under Article 19 amendments, simply stating that the Installer will hold the builder harmless does not alleviate the Builders legal obligation under the Warranty Law in New York State. In fact, if the installer has no money, the hold harmless provision is worthless. Under the NYS Housing Merchant Implied Warranty Law plumbing systems needs to be free from defects for two (2) years from the date of purchase. Plumbing systems are defined to include waste and vent pipes and their fittings; septic tanks and their drain fields; sewer service piping, and sewage disposal systems, all to the extent that they are installed in the home. It is the Builder who winds up being sued and forced to defend the action in court. We want to be indemnified and held harmless by Suffolk County in the event these new systems are not properly designed and installed. In addition, the legislation should expressly state that the Builder is not responsible for the failure of the system to meet Suffolk County monitoring standards due to the lack of maintenance and upkeep of the system by the Home Owner or the private maintenance system provider hired by the home owner. It is also necessary to ensure that the builder has all of the information regarding the maintenance of the systems being conducted by the manufacturer or the installer. What actions may have been taken to the system over any period of time?
7. Implementation of this legislation should not be done until funding options for the installation of I/A OWTS are considered and fully explored for both new and existing homes. Affordability is an issue for both new and existing homes on Long Island. Both affordable and moderate price homes are adversely impacted by this



- legislation. The cost of the home will increase \$15,000 to \$20,000 and the maintenance costs will range from \$200 to \$500 per year. This additional financial burden makes it more difficult to qualify for a mortgage. Even on an average cost of a single-family home on Long Island of \$400,000, this one piece of legislation represents a 5% increase in the cost of housing. Funding or incentives must be provided for affordable and middle income Home Buyers in Suffolk County with the price threshold being 120% of the average price of a house on Long Island.
8. Definition of failed system Section 760-601, #7 needs to be changed. Delete “or deterioration” or add “deterioration that has caused structural damage” to the system. A Licensed Liquid waste person should not be allowed to make a determination as to whether or not a system is considered failed or not. This person has a financial interest in the installation of more I/A OWTS systems. A measured and objective standard as defined in this legislation is the preferred method.
 9. The actual requirements necessary for the installation of new I/A systems have not been fully analyzed by the various local governments which have jurisdiction over the systems. At the present time, the following entities must be included in the installation of a current system:
 - Design Professionals (LS, PE or RA) can use existing surveys to draw Site Plan with setback conformance
 - Septic System Installer/excavator
 - Board of Health Inspector

Under the installation requirements for a new I/A system, the following entities will be required:

- Surveyor-The new Site Plan Requirements require all surrounding property info to be documented, right now an engineer can work from an old survey for setback conformance and design the system without and updated survey
- PE or RA only, surveyors cannot submit site plans to BOH under new Article 6 regs.
- Septic System Installer/Excavator
- Board of Health Inspector
- Electrician
- Electrical Inspector
- Plumber- new systems cannot use house traps, so interior plumbing lines will have to be redone, hence the Town Plumbing Permit
- Town Plumbing Inspector
- System Maintenance Contractor

As you can see, the installation of a new system is a much more complicated and expanded operation, one which will take a significantly longer amount of time for both the homeowner and the installation professionals. Until all of these professionals, including our Town Permit Officials and Inspectors, fully understand the intricacies of these new systems, a phased in approach for mandatory installation will benefit all concerned.

In closing, while LIBI will continue to comment upon other aspects of the regulatory process on Article Six, we strongly believe that the current discussion of the mandatory installation of such I/A systems for all new construction needs a much more thorough analysis of all of the issues involved. It is for this reason why LIBI believes it is in the best interests of all of the residents of Suffolk County that such a requirement be phased in starting with the most environmentally sensitive areas first. Under this reasonable approach, such a new set of rules and regulations will have the best chance of success and start to provide benefits where they are most warranted.

Thank you for your consideration for our views.