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Regulatory Flexibility Analysis

6 NYCRR Subpart 646-3: Wastewater Management

1. Effect of Rule

This program affects properties within 500 feet of the Lake George shoreline and 100 feet of DEC regulated streams. This encompasses approximately 2,700 properties, 95% of which are residential in nature. There are approximately 111 small businesses in the Lake George Park that would be impacted, including 33 Motels/Inns/Hotels, 22 Resorts/Cottages/Country Clubs, 20 Marinas, 18 Parks/Beaches, 3 Restaurants, 1 Gym, and 14 Miscellaneous (including Storage, Office Space, and Multi-Use Commercial).

There are five Towns (Lake George, Queensbury, Bolton, Hague, and Ticonderoga) and one County's Consolidated Board of Health (Washington) that would be affected by this initiative, but only tangentially through any required approvals for septic system replacements. These municipalities would not be conducting the inspections or program administration, just reviews and approvals of new and upgraded systems as a result of the program. The program would only cover portions of these municipalities within the Lake George Park.

2. Compliance Requirements

Small businesses would need to coordinate with Commission staff and haulers once every five years to schedule inspection. They would also need maintain all inspection, pumping, and design records of the system. A mandatory annual fee of \$100 would be charged for each commercial property with a septic system that is in the program area. In cases where an ETU (Enhanced Treatment Unit) is required, the small business would need to uphold their maintenance agreement with the supplier. However, those properties would not be required to pay the annual fee or have Commission inspections as long as their ETU was inspected and maintained on a regular basis and proof of such inspections was provided to the Commission.

Local governments would be responsible for reviewing new systems and redesigns of failed wastewater systems identified by the program and issuing variances from the standards at proposed section 646-3.8. As described in the proposed regulations, existing review authorities would continue to be primarily responsible for issuing permits, maintaining public records, and ensuring that the construction meets State, local, and Commission regulations.

3. Professional Services

Small businesses would be required to have a working relationship with DEC certified septic haulers, and, in the case of a failed system needing re-design, hire professional wastewater system designers or engineers.

Local governments may require engineer or design professionals to assist in reviews of proposed new wastewater systems' construction or replacements required following a failed inspection. The Commission intends to not overburden any one municipality with system design reviews by spreading inspections across the entire inspection area; however, additional technical expertise and support may be required in complicated design cases or when staff resources are short.

4. Compliance Costs

A functioning wastewater system is required by state regulations; therefore, compliance in regular maintenance and necessary replacements is already assumed by the small business owner. The primary recurring cost of compliance for small businesses is the annual program fee of \$100, regardless of the size or complexity of the wastewater system. Also, construction of a new system would need to meet new regulation design standards (such as minimum required soil or distance setback); these could limit possible sites for construction or expansion and pose a cost to the business.

Local governments are not anticipated to need additional staff help to meet demands of added review of proposed wastewater systems and variances, based upon discussions with the affected municipal compliance professionals. As noted, the Commission will work to geographically distribute the annual inspections so as not to overburden any particular town with requisite upgrade reviews.

5. Economic and Technological Feasibility:

The program is expected to have a negligible economic impact on small businesses, and there are no significant technological challenges to the implementation of this initiative. Based on review of property records discussed in the Regulatory Impact Statement, the Commission determined that local real estate taxes for small businesses that will be impacted by this program average approximately \$21,000 per year, meaning the proposed \$100 annual fee represents less than 0.5% of their existing tax burden. State regulations already require proper maintenance of a septic system; therefore, any costs incurred by the owner to repair or replace a substandard or failed system are already assumed. Businesses will not require any additional technical knowledge about wastewater treatment in general but will need to maintain familiarity with their system and maintain relationship with their hauler and Commission inspectors should a system or its component need replacement.

The primary economic and technical cost to local governments would be the additional workload of reviewing new and replacement septic systems that need to meet Commission design standards. The Commission plans to inspect approximately 500 systems every year. Other programs in New York have found that approximately 10-20% of inspected septic systems require replacement, meaning that approximately 50-100 systems will need redesign and review each year in the Lake George Park. This is an average of 8-17 per review agency when split between the six (i.e. towns and Washington County Consolidated Board of health). The municipal governments contacted by the Commission have expressed that they currently have the capacity for this extra work or would only require a small increase in staff resources.

6. Minimizing Adverse Impact

The program is expected to have little or no adverse impact on small businesses. The Commission is proposing to inspect septic systems to verify that they are operating correctly in compliance with state standards which are intended to maintain a level of public health and environmental quality. Therefore, the inspection program will not cause any additional hardship that is not already assumed by owning and operating a septic system in New York State. If a replacement system is required, the program has allowed for an appropriate amount of time to meet regulations (6 months for replacement of failed system and up to five years for repairs to substandard systems with a provision for extensions granted under appropriate circumstances as described in Regulatory Impact Statement). Existing processes for variances, waivers, or deviations exist and will be utilized so that site challenges posed by a small business's new septic system construction can be considered by a Review Authority.

The program requirements of local government are also expected to have little or no adverse impact. Municipal governments are already experienced in construction and variance review; the Commission plans to educate reviewers on new regulations and variance request procedures prior to implementation of the program.

7. Small Business and Local Government Participation

Through the creation of these regulations, the Commission has held monthly public ad-hoc meetings where local business leaders and local government officials were invited to share their ideas. Business and municipal government leaders expressed overall support for the program and have been working to educate their peers and constituencies on the potential upcoming changes. Also, the Commission has taken time to meet personally with business/citizen groups to discuss concerns or questions.

A public comment period is planned following SAPA requirements to be held in-person and online during the summer season to ensure maximum participation.

8. For Rules that Either Establish or Modify a Violation or Penalties Associated with a Violation:

Small businesses that do not pay the annual program fee or refuse a scheduled septic system inspection will not be issued a Permit for the Commission's other programs until they are compliant. Following three years of non-compliance, a Law Enforcement Case will be opened by the Commission where, at the discretion of the Commission's Enforcement Officer, a penalty of up to \$500 per day of non-compliance will be assessed per ECL § 71-3303(1). If, following administrative enforcement by the Commission there is continued non-compliance with the regulations, the case may be referred to the NY State Attorney General's Office per ECL § 71-3303(2).

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