



Board of Directors

Charles Clusen
Chair

James McMartin Long
Michael Wilson
Vice-Chairs

Barbara Rottier
Secretary

David Quinn
Treasurer

Nancy Bernstein
John Caffry
Andy Coney
Dean Cook
James C. Dawson
Lorraine Duvall
Robert Glennon
Roger Gray
Evelyn Greene
Sidney Haring
Dale Jeffers
Mark Lawton
John Nemjo
Peter O'Shea
Philip Terrie
Chris Walsh

Peter Bauer
Executive Director

Christopher Amato
**Conservation Director
and Counsel**

October 4, 2022

Ken Parker
Chairman
Lake George Park Commission
P.O. Box 749
Lake George, NY 12845

**Re: Comments on Proposed Septic System Regulations
Proposed Subpart 646-3**

Dear Chairman Parker:

Protect the Adirondacks! is pleased to submit the following comments concerning the new septic system regulations proposed by the Lake George Park Commission (“Commission”). At the outset, PROTECT applauds the effort by the Commission to protect the water quality of Lake George by asserting greater regulatory oversight of septic systems in the Lake George basin. The Commission has engaged in extended public outreach during the process of developing the proposed regulations

The Definition of the Wastewater Inspection Program Area Should be Broadened

The proposed regulations state that they apply to the discharge of sewage and the design, construction, operation, and maintenance of wastewater treatment systems “located in the Lake George basin.” § 646-3.2(a). However, the regulations later limit the “Wastewater Inspection Program Area” (“Program Area”) to include a much smaller subset of treatment systems in the Lake George basin. Specifically, the regulations define the Program Area to include only those wastewater treatment systems located (i) within 500 feet of the mean high water mark of Lake George and (ii) within 100 feet of the high water mark of streams classified by the Department of Environmental Conservation (“DEC”) as Class AA-S. § 646-3.3(j). The definition of the Program Area is problematic in several respects:

1. It is unclear why the Program Area does not include the entire Lake George basin. As the Commission has acknowledged, slightly more than half of the treatment systems in the basin are located within 500 feet of Lake George or within 100 feet of a stream. Lake George

Park Commission, Septic Systems and Lake George: Inspections and New Standards? (Oct. 26, 2021). Of these, it is unclear how many systems near streams are located within 100 feet of a stream classified by DEC as Class AA-S. Thus, the definition of Program Area likely encompasses, at best, only approximately half of the wastewater treatment systems in the Lake George basin.

2. The definition of the Program Area fails to address treatment systems located near streams that are not classified as Class AA-S, as well as systems located near wetlands that have a hydrologic connection to Lake George. It is unclear why only systems located near Class AA-S streams are included in the Program Area, since streams that are not classified as Class AA-S are also tributary to Lake George.

3. The proposed regulations don't consider topography (such as steep slopes) or other potentially limiting factors such as depth to bedrock in defining the Program Area. This is a significant omission because, as acknowledged by the Commission, 80 percent of septic systems in the Lake George basin are located on parcels having one or more limiting factors. *Id.*

Recommendation: PROTECT recommends that the regulations be modified to define the Program Area as including the entire Lake George basin in order to capture all potential sources of septic-related water quality impacts to the lake.

The Scope and Applicability of the Inspection Program is Unclear

The proposed regulations are somewhat confusing regarding the scope and applicability of the inspection program. For example, the regulations state that the inspection requirements apply within the Program Area, but in the next section state that “any” system in the Lake George basin “may be subject to a Wastewater Inspection.” §§ 646-3.6(a), (b). The regulations don’t specify the circumstances under which the inspection requirement will apply outside the Program Area, or what circumstances will trigger application of the inspection requirement outside of the Program Area.

In addition, the regulations prohibit failing and substandard septic systems anywhere in the Lake George basin and require such systems to be repaired or replaced, but since the inspection program is limited to the Program Area, it is unclear how failing and substandard systems outside the Program Area will be detected. §§ 646-3.4(a), (b); 646-3.6(h), (i). Again, assuming that failing and substandard systems outside the Program Area will be detected as a result of an inspection, it is unclear from the regulations the circumstances under which those non-Program Area inspections will be required.

Recommendation: As suggested above, the inspection program should apply basin-wide, which will afford better protection to Lake George and eliminate potential confusion about the scope and applicability of the inspection program.

The Fee Structure Should Be Modified

As proposed, the regulations impose a fee only on septic system owners within the Program Area. § 646-3.7. Because, as noted above, the regulations authorize application of inspection

and repair/replacement requirements outside of the Program Area, this appears to unfairly place the financial burden for a basin-wide program solely on system owners in the Program Area, which accounts for only about half of the septic systems in the Lake George basin.

In addition, the fee structure as proposed differentiates only between residential and commercial establishments and is not based on the size of the establishment or the amount of wastewater generated. § 646-3-7.

Recommendation: The regulations should be modified to establish a basin-wide fee structure that is based on either the size of the residential or commercial structure or the amount of wastewater generated on an annual basis.

The Time Frames for Repair/Replacement Should be Adjusted

The proposed regulations require that failing septic systems be replaced within six months of a documented failure. § 646-3.6(h). This time frame may be insufficient, depending on the season and the need to obtain permits for the work.

The regulations also require that substandard systems be replaced within five years. § 646-3.6(i). This time frame seems unnecessarily long.

Recommendation: The regulations should be modified to provide that the time frame for replacement of a failing system will be no longer than nine months, and that replacement of a substandard system must occur within three years.

The Maintenance and Recordkeeping Requirements Should be Modified

The proposed regulations include require septic systems in the Program Area to be pumped out every five years and septic systems elsewhere in the Lake George basin to be pumped out every ten years. § 646-3.9(a). This distinction doesn't make much sense, for the reasons stated above.

The proposed regulations require all records to be kept by the landowner. § 646-3.9(b). The Commission should require that all such records be kept in electronic format and submitted to the Commission so that they are publicly available.

Recommendation: The regulations should be modified to require all septic systems in the Lake George basin to be pumped out every five years. Landowners should be required to submit copies of records to the Commission in electronic format, and the regulations should require that all records be publicly available and searchable.

The Enforcement Provisions Need to be Strengthened

Although the proposed regulations state that the Commission may enforce the regulations, there are no enforcement procedures and no specified penalties for noncompliance. § 646-3.10(a).

Recommendation: The proposed regulations should clearly set forth enforcement procedures and the penalties for noncompliance.

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Christopher Amato
Conservation Director and Counsel
Protect the Adirondacks! Inc.
P.O. Box 48
North Creek, NY 12853
Office: (518) 251-2700
Cell: (518) 860-3696

Cc: David Wick, Executive Director