**Amendments to N.J.A.C. 7:9A regarding cesspools - an update**

With word getting out about some of the changes to N.J.A.C. 7:9A (aka Chapter 199), the Department has started getting phone calls from panicked home buyers, sellers and their agents about inspections and requirements to upgrade cesspools/septic systems.  Please help us to get the facts out on this particular issue:

1) We were notified this morning that the rule will be adopted on April 2, 2012, The package presently contains a provision that would delay the requirement to upgrade functioning cesspools by 60 days, this is intended to deal with transactions already in process.

2)  The rule has a requirement to upgrade cesspools at the time of real property transfer. It does not apply to any wastewater disposal system (the definition specifically excludes cesspools). Seepage pit systems or older traditional septic systems that don't meet current Standards are not required by the rule to be upgraded.    The rule does not address who is responsible for doing upgrades (seller or buyer), which should be negotiated during the real property transfer process.  It just has to get done as part of the property transfer.

3) If a conforming system can be installed on the property, then a conforming system will be required.  If a conforming system can not be installed on the property, the local authority still has discretion in allowing a nonconforming system to be installed, provided the system design is reasonably is protective of human health and the environment, as is currently allowed.  Also, as is currently provided for in the Standards, if no reasonable system can be installed on the property, the last preferred option the property owner will have is to apply for a Treatment Works Approval for a holding tank.

4) The rule establishes a protocol for inspecting onsite systems during real property transfer.  The rule does not mandate its use nor does it require an upgrade to the system as a result of that inspection.  Its purpose is to provide buyers and sellers with the information necessary to properly negotiate the transaction based on a comprehensive evaluation of the system.  Unsatisfactory results, unless they indicate the system is malfunctioning, do not require that anything be done immediately (although any work done on the system must be properly permitted locally).

5) If something is observed during the inspection that is indicative of a malfunctioning condition, it must be reported to the locals and addressed like any other report of a malfunctioning system.  Property owners with a malfunctioning system had to report that fact to the health department immediately (dating back to 1990) so this is not new.  It's just a new way of observing and reporting the same information.  A copy of the report must be sent to the local administrative authority in order to meet the requirements of the inspection protocol.

6) Until the new rule gets promulgated, someone with an existing cesspool can (with a permit from the local health department) add a septic tank in front of the cesspool.  This effectively converts the cesspool to a seepage pit system and that seepage pit system would not be subject to the requirement to immediately upgrade.  Once the new rule goes into effect, all cesspools will be required to upgrade whenever there is any correction needed, there is **no** 60 day delay for this provision.  No longer will they be allowed to add the septic tank in front of the cesspool.

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