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NEWSDAY | NEWS 12 SPECIAL REPORT

POLLUTION LOOPHOLE

How Suffolk developers legally
use outmoded sewage treatment
rules, potentially endangering water

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A view of
Shinnecock Bay
in Hampton Bays

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GILGO DNA LINKS EARLIER CASE TO BEACH VICTIM **A4**



LAX RULES ON SEWAGE

Suffolk lets thousands of buildings use antiquated treatment codes, adding to pollution in groundwater, bays

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Suffolk County is permitting outdated sewage treatment at dozens of commercial sites every year, allowing businesses to continue to release untreated wastewater into the ground at levels that far exceed current standards, a Newsday/News 12 Long Island investigation has found.

Developers have been able to construct new buildings, add restaurant space and build condominium complexes using decades-old sewage flows.

Officials at the county Department of Health say they are forced by old laws and policies to grant wastewater permits based on old discharge patterns if properties contain structures that can be occupied.

Owners can then tear down the buildings and construct new ones without upgrading the sewage treatment, typically septic systems that don't filter out nitrogen pollution. Nitrogen from commercial and residential septic systems, and from fertilizers used on farms, lawns and golf courses, leaches into underground drinking water supplies and into local waterways.

The county also honors town, village or county approvals from decades ago, before the county set sewer standards, to allow expansions and construction without an upgrade to the wastewater treatment system.

The county estimates that more than 20,000 unsewered commercial properties likely qualify under the county

"grandfathering" policy. The properties account for 20 to 30 percent of all nitrogen pollution from septic systems countywide.

The sites typically have double or triple the discharge normally allowed under existing law, according to a letter from Health Commissioner Dr. James L. Tomarken to Assemb. Steven Englebright (D-SeTauket), chairman of the Environmental Conservation Committee.

The county still is trying to grasp the scope of the problem as it seeks to overhaul its sewage policies. The health department doesn't know how many projects it has approved based on pre-1981 usage, officials said. The department originally estimated that 300 of the 400 commercial applications it

receives a year seek to use old sewage flows, but later lowered the estimate to 70 to 80 projects a year. About 75 percent of such applications are approved for construction.

A loophole over treatment

Environmental advocates say the policy constitutes a major loophole in wastewater requirements intended to protect Long Island's ground and surface water.

The policy exists despite County Executive Steve Bellone's campaign to reduce nitrogen pollution.

Nitrogen pollution has caused massive algae blooms in harbors and bays in summer. Nitrogen in drinking water can be harmful to infants, restricting oxygen flow in the bloodstream, and is expensive for water agencies to treat.

"If we continue on the premise that whoever has a system in the ground can continue to use it in perpetuity, our bays will never get better, our groundwater will never get cleaner," said Kevin McDonald, policy adviser with The Nature Conservancy of Long Island, a

Due to loophole, Ponquogue Point in Hampton Bays can build 21 units instead of four.

nonprofit environmental group. "We are permanently doomed to the circumstance we're in right now."

The county is moving to overhaul the widely used exemption as it rewrites county rules that govern wastewater treatment.

"We have already concluded that, like many other existing provisions of the Sanitary Code, which date back to the 1970s, it is woefully outdated, and needs to be overhauled," said Deputy County Executive Peter Scully. "This administration did not create these codes and processes but is the first administration to take on the challenge of changing them."

The county hosted two meetings this fall on overall wastewater policies with environmentalists, builders, local officials and county legislators. New rules on "grandfathering" are expected to be released this winter as part of a wide-rang-

RENDERING



A rendering of the Ponquogue Point project in Hampton Bays, seen posted on a sign last week.

ing effort to remake the county's wastewater laws.

Requirements that new projects — including some sites now subject to pre-1981 statutes — use advanced wastewater treatment systems that remove nitrogen are possible, Scully said.

"The unfortunate reality is that updating these complex provisions of the code is time-consuming and must be done carefully so as to withstand scrutiny and any legal challenge that might result," he said.

A brake on development

The county requirement for wastewater permits has served as a brake on development.

Effective Jan. 1, 1981, Suffolk adopted a code to protect water in areas without sewers by limiting sewage flow from commercial and industrial land to the equivalent of one or two houses per acre. If landowners want more density, they must build a sewage treatment plant or another advanced system, or connect to sewers. The Southwest Sewer District is the county's largest, serving about 340,000 residents, mostly in Babylon and Islip towns.

But the commercial properties with pre-1981 permits were significant exemptions.

Under county code, density restrictions don't apply to "de-

COUNTY LAW

- On Jan. 1, 1981, Suffolk County began limiting on-site sewage discharge without treatment to the equivalent of effluent from one or two houses per acre.
- However, county code exempted pre-1981 "developments or other construction projects." Consequently, the county Department of Health allows redevelopment of parcels using sewage systems that in many cases have been in use for decades.

PROPOSED CHANGES

- Limit exemptions to buildings used continuously for the same purpose.
- No change in building footprint or sewage flow. "Demolition/nonidentical reconstruction" or expansion based on old permits would not qualify.
- Require the use of advanced treatment systems in certain circumstances.

SOURCE: SUFFOLK COUNTY DEPARTMENT OF HEALTH

velopments or other construction projects which have previously been approved by the department," or by towns or villages. A 2005 memo from the county's Office of Wastewater Management said projects already approved by the county could get wastewater permits based on old usage, as long as the original structures "can be occupied at the time of submission of the proposed application." Even demolished buildings can be counted, but they must be approved by a special three-member county panel, according to the memo.

Scully said the exemptions

originally were seen as temporary — "a kind of bridge" until sewers could be installed countywide, Scully said.

Sewer coverage, though, stalled in the 1980s when the Southwest Sewer District was plagued by cost overruns and scandals.

Nassau County, where the sewer system covers most of the county, has no provision for exempting projects from current standards, said Mary Ellen J. Laurain, a director at Nassau County's Department of Health.

Developers say they're wary of ending the exemptions in

Suffolk because in many places it's often too costly to connect to sewers or build sewage treatment plants.

They say policy or legislative changes that could force businesses to upgrade their wastewater systems — by connecting to sewers, wastewater treatment plants or newly approved advanced wastewater treatment systems for smaller businesses — should come with government subsidies.

Desmond Ryan, executive director of the Association for a Better Long Island, which lobbies for commercial developers, said, "eliminating grandfathering could have a profound economic impact on comprehensive redevelopment of commercial and industrial properties."

Mitchell Pally, executive director of the Long Island Builders Institute, said the commercial treatment exemption represents "a very reasonable policy" that has aided economic development on Long Island.

Protecting owners' rights

The exemptions from wastewater standards also protect existing owners' rights to develop their land, Pally said.

"You can't just abrogate people's rights. That's a taking," he said. Pally said Suffolk would open itself to lawsuits if it took away property owners' rights to develop land.

However, Pally said he understood the need for regulations given the county's push for cleaner water.

"We have to understand we have to do more to protect the quality of our groundwater," said Pally. "We want to be in a situation where you can continue to have that kind of economic development go on without the degradation."

But Kevin McAllister, president of the nonprofit environmental group Defend H2O, said the policy helps developers at the expense of water quality.

As an example, McAllister cited the former Allen's Acres Motel in Hampton Bays, where a 21-unit waterfront condominium development, Ponquogue Point, is being built.

Allen's Acres, a 64-unit motel and party destination, opened in the 1960s and closed in 2008. The property developer, Michael Ullian, at the time cited the cost of policing the night life and proposed a condominium development.

Without grandfathering at the 2.77-acre site, Ullian could

have built four condo units, according to the wastewater permits obtained by Newsday.

But the county Department of Health used the pre-1981 sewer flow of the motel rooms, a cottage, apartment and snack bar — 7,562 gallons per day to a septic system — to allow for 24 units. Ullian eventually proposed a 21-unit development.

In 2009, two years after getting county permits, Ullian tore down the motel structures. Condominium construction began in 2014, and the project is scheduled to open in the spring.

Ullian said in a statement that the new condominiums will use new concrete septic systems with 11 feet of sand. Under the old motel usage, "the potential for problems would be many times more likely," Ullian said.

McAllister said the new septic system does virtually nothing to reduce nitrogen, calling the condominiums an "egregious" example of projects that are built without advanced systems to treat sewage and reduce nitrogen.

McAllister noted that the site abuts a canal, Foster's Creek, that empties into Shinnecock Bay, which has experienced harmful algal blooms caused by nitrogen overload.

Asked about the property, Walter Dawydiak, director of the county's division of environmental quality, said it was county policy to allow owners to demolish structures but retain the rights to the old sewage flow for new structures.

"Believe me, we realize this is an odd result," he said. "This is a legacy thing we inherited here."

Scully agreed.

"I think this is an example of some of the practices we've identified that seem to be permissive and are of concern," he said. "We're being frank about the shortcomings and the regulations in themselves."

The county's working group is looking at limiting exemptions to properties that haven't changed their use or significantly altered their footprint.

McAllister said the reforms the county has proposed appear inadequate. County estimates in an October presentation are that the changes in policy would force only about 25 percent of applications a year to use advanced wastewater treatment systems that remove nitrogen.

"This is not a new day coming. They're just tweaking a few things," McAllister said.