

CHAPTER 235—H.F.No. 244

An act relating to the environment; modifying requirements relating to individual sewage treatment systems; amending Minnesota Statutes 1996, sections 115.55, subdivisions 1, 2, 3, 5, 6, 7, and by adding a subdivision; and 115.57, subdivision 7.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 115.55, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** (a) The definitions in this subdivision apply to this section and section 115.56.

(b) "Advisory committee" means the advisory committee on individual sewage treatment systems established under the individual sewage treatment system rules. The advisory committee must be appointed to ensure geographic representation of the state and include elected public officials.

(c) "Applicable requirements" means:

(1) local ordinances that comply with the individual sewage treatment system rules, as required in subdivision 2; or

(2) in areas not subject to the ordinances described in clause (1), the individual sewage treatment system rules.

(d) "City" means a statutory or home rule charter city.

(e) "Commissioner" means the commissioner of the pollution control agency.

(f) "Dwelling" means a building or place used or intended to be used by human occupants as a single-family or two-family unit.

(g) "Individual sewage treatment system" or "system" means a sewage treatment system, or part thereof, serving a dwelling, other establishment, or group thereof, that uses subsurface soil treatment and disposal.

(h) "Individual sewage treatment system professional" means an inspector, installer, site evaluator or designer, or pumper.

(i) "Individual sewage treatment system rules" means rules adopted by the agency that establish minimum standards and criteria for the design, location, installation, use, and maintenance of individual sewage treatment systems.

(j) "Inspector" means a person who inspects individual sewage treatment systems for compliance with the applicable requirements.

(k) "Installer" means a person who constructs or repairs individual sewage treatment systems.

(l) "Local unit of government" means a township, city, or county.

(m) "Pumper" means a person who maintains components of individual sewage treatment systems including, but not limited to, septic, aerobic, and holding tanks.

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(n) "Seasonal dwelling" means a dwelling that is occupied or used for less than 180 days per year and less than 120 consecutive days.

(o) "Site evaluator or designer" means a person who:

(1) investigates soils and site characteristics to determine suitability, limitations, and sizing requirements; and

(2) designs individual sewage treatment systems.

Sec. 2. Minnesota Statutes 1996, section 115.55, subdivision 2, is amended to read:

Subd. 2. **LOCAL ORDINANCES.** (a) All counties that did not adopt ordinances by May 7, 1994, or that do not have ordinances, must adopt ordinances that comply with individual sewage treatment system rules by January 1, 1999, unless all towns and cities in the county have adopted such ordinances. County ordinances must apply to all areas of the county other than cities or towns that have adopted ordinances that comply with this section and are as strict as the applicable county ordinances. Any ordinance adopted by a local unit of government before May 7, 1994, to regulate individual sewage treatment systems must be in compliance with the individual sewage treatment system rules by January 1, 1998.

(b) A copy of each ordinance adopted under this subdivision must be submitted to the commissioner upon adoption.

(c) A local unit of government must make available to the public upon request a written list of any differences between its ordinances and rules adopted under this section.

Sec. 3. Minnesota Statutes 1996, section 115.55, subdivision 3, is amended to read:

Subd. 3. **RULES.** (a) The agency shall adopt rules containing minimum standards and criteria for the design, location, installation, use, and maintenance of individual sewage treatment systems. The rules must include:

(1) how the agency will ensure compliance under subdivision 2;

(2) how local units of government shall enforce ordinances under subdivision 2, including requirements for permits and inspection programs;

(3) how the advisory committee will participate in review and implementation of the rules;

(4) provisions for alternative systems;

(5) provisions for handling and disposal of effluent;

(6) provisions for system abandonment;

(7) provisions allowing local units of government to adopt alternative standards and criteria, provided that:

(i) the alternative standards and criteria may not apply to new construction or replacement of systems, as defined by the agency; and

(ii) the commissioner must certify that the alternative standards and criteria adequately protect public health and the environment; and procedures for the commissioner to approve new individual sewage treatment system technologies; and

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(8) procedures for variances, including the consideration of variances based on cost and variances that take into account proximity of a system to other systems.

(b) The agency shall consult with the advisory committee before adopting rules under this subdivision.

Sec. 4. Minnesota Statutes 1996, section 115.55, subdivision 5, is amended to read:

Subd. 5. INSPECTION. (a) An inspection shall be required for all new construction or replacement of a system to determine compliance with agency rule or local standards. The manner and timing of inspection may be determined by the applicable local ordinance. The inspection requirement may be satisfied by a review by the designated local official of video, electronic, photographic, and other evidence of compliance provided by the installer.

(b) Except as provided in subdivision 5b, paragraph (e) (b), a local unit of government may not issue a building permit or variance for the addition of a bedroom on property served by a system unless the system is in compliance with the applicable requirements, as evidenced by a certificate of compliance issued by a licensed inspector or site evaluator or designer. A local unit of government may temporarily waive the certificate of compliance requirement for a building permit or variance for which application is made during the period from November 1 to April 30, provided that an inspection of the system is performed by the following June 1 and the applicant submits a certificate of compliance by the following September 30. This paragraph does not apply if the local unit of government does not have an ordinance requiring a building permit to add a bedroom.

(b) A compliance inspection under this subdivision is required for all new construction or replacement of a system, as defined by agency rule.

(c) A certificate of compliance for an existing system is valid for three years from the date of issuance unless the local unit of government finds evidence of an imminent threat to public health or safety requiring removal and abatement under section 145A.04, subdivision 8.

(d) A certificate of compliance for a new system is valid for five years from the date of issuance unless the local unit of government finds evidence of an imminent threat to public health or safety requiring removal and abatement under section 145A.04, subdivision 8.

(e) A licensed inspector who inspects an existing system may subsequently design and install a new system for that property, provided the inspector is licensed to install individual sewage treatment systems.

Subd. 5a. INSPECTION CRITERIA FOR EXISTING SYSTEMS. (a) An inspection of an existing system must evaluate the criteria in paragraphs (b) to (h).

(b) If the inspector finds one or more of the following conditions:

- (1) sewage discharge to surface water;
- (2) sewage discharge to ground surface;
- (3) sewage backup;

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(4) a cesspool; or

(5) any other situation with the potential to immediately and adversely affect or threaten public health or safety,

then the system constitutes an imminent threat to public health or safety and, if not repaired, must be upgraded, replaced, or its use discontinued within ten months of receipt of the notice described in subdivision 5b, or within a shorter period of time if required by local ordinance.

(c) An existing system that has none of the conditions in paragraph (b), and has at least two feet of soil separation need not be upgraded, repaired, replaced, or its use discontinued, notwithstanding any local ordinance that is more restrictive.

(d) Paragraph (c) does not apply to systems in shoreland areas regulated under sections 103F.201 to 103F.221, wellhead protection areas as defined in section 103I.005, or those used in connection with food, beverage, and lodging establishments regulated under chapter 157.

(e) If the local unit of government with jurisdiction over the system has adopted an ordinance containing local standards pursuant to subdivision 7, the existing system must comply with the ordinance. If the system does not comply with the ordinance, it must be upgraded, replaced, or its use discontinued according to the ordinance.

(f) If a seepage pit, drywell, or leaching pit exists and the local unit of government with jurisdiction over the system has not adopted local standards to the contrary, the system is failing and must be upgraded, replaced, or its use discontinued within the time required by subdivision 3 or local ordinance.

(g) If the system fails to provide sufficient groundwater protection, then the local unit of government or its agent shall order that the system be upgraded, replaced, or its use discontinued within the time required by rule or the local ordinance.

(h) The authority to find a threat to public health under section 145A.04, subdivision 8, is in addition to the authority to make a finding under paragraphs (b) to (d).

(e) Subd. 5b. COMPLIANCE NOTICE. (a) If a system inspected under this subdivision 5 is not in compliance with the applicable requirements required to be upgraded, replaced, or its use discontinued under subdivision 5a, the inspector or site evaluator or designer must issue a notice of noncompliance to the property owner and must provide a copy of the notice to the local unit of government to which application for the building permit or variance was made with jurisdiction. The notice of noncompliance must specify why the system must be upgraded, replaced, or its use discontinued. A local unit of government must specify the upgrade time period in its ordinance.

(d) If the inspector or site evaluator or designer finds that the system presents an imminent threat to public health or safety, the inspector or site evaluator or designer must include a statement to this effect in the notice and the property owner must upgrade, replace, or discontinue use of the system within ten months of receipt of the notice.

(e) (b) Except as provided in paragraph (d) subdivision 5a, paragraphs (b) to (d), if a system installed between May 27, 1989, and January 23, 1996, does not comply with applicable requirements, the property owner has five years from the date of the bedroom building permit to bring the system into compliance.

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Sec. 5. Minnesota Statutes 1996, section 115.55, subdivision 6, is amended to read:

Subd. 6. **DISCLOSURE OF INDIVIDUAL SEWAGE TREATMENT SYSTEM TO BUYER.** After August 31, 1994, (a) Before signing an agreement to sell or transfer real property, the seller or transferor must disclose in writing to the buyer or transferee information about the status and location of individual on how sewage treatment systems on the property or serving the property generated at the property is managed. The disclosure must be made by delivering a statement to the buyer or transferee that either:

(1) a statement by the seller that there is no individual sewage treatment system on or serving the property or a disclosure statement describing the system and indicating the sewage goes to a facility permitted by the agency; or

(2) the sewage does not go to a permitted facility, is therefore subject to applicable requirements, and describes the system in use, including the legal description of the property, the county in which the property is located, and a map drawn from available information showing the location of the system on the property to the extent practicable. If the seller or transferor has knowledge that an abandoned individual sewage treatment system exists on the property, the disclosure must include a map showing its location. In the disclosure statement the seller must indicate whether the individual sewage treatment system is in use and, to the seller's knowledge, in compliance with applicable sewage treatment laws and rules. Unless the buyer and seller agree to the contrary in writing before the closing of the sale, a seller who fails to disclose the existence or known status of an individual sewage treatment system at the time of sale, and who knew or had reason to know of the existence or known status of the system.

(b) A seller or transferor who fails to meet the requirements of this section is liable to the buyer for costs relating to bringing the system into compliance with the individual sewage treatment system rules and for reasonable attorney fees for collection of costs from the seller. An action under this subdivision must be commenced within two years after the date on which the buyer closed the purchase or transfer of the real property where the system is located.

Sec. 6. Minnesota Statutes 1996, section 115.55, subdivision 7, is amended to read:

Subd. 7. **LOCAL ORDINANCE MAY BE MORE RESTRICTIVE STANDARDS.** (a) **EXISTING SYSTEMS.** Counties may adopt by ordinance local standards that are less restrictive than the agency's rules in order to define an acceptable existing system. The local standards may include soil separation, soil classification, vegetation, system use, localized well placement and construction, localized density of systems and wells, extent of area to be covered by local standards, groundwater flow patterns, and existing natural or artificial drainage systems. The local standards and criteria shall be submitted to the commissioner for comment prior to adoption to demonstrate that, based on local circumstances in that jurisdiction, they adequately protect public health and the environment.

(b) **NEW OR REPLACEMENT SYSTEMS.** Counties, after providing documentation of conditions listed in this paragraph to the commissioner, may adopt by ordinance local standards that are less restrictive than the agency's rules for new system construction or replacement in areas of sustained and projected low population density where conditions render conformance to applicable requirements difficult or otherwise inap-

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propriate. Documentation may include a map delineating the area of the county to be served by the local standards, a description of the hardship that would result from strict adherence to the agency's rules, and evidence of sustained and projected low population density. The local standards must protect human health and the environment and be based on considerations that may include, but need not be limited to, soil separation, soil classification, vegetation, system use, localized well placement and construction, localized density of systems and wells, extent of area to be covered by local standards, groundwater flow patterns, and existing natural or artificial drainage systems. The local standards must provide cost-effective and long-term treatment alternatives. The draft ordinance incorporating the local standards must be submitted to the local water planning advisory committee, created under section 103B.321, subdivision 3, and then submitted with justification to the commissioner 30 days before adoption for review and comment.

(c) NEW OR REPLACEMENT SYSTEMS; LOCAL ORDINANCES. A local unit of government may adopt and enforce ordinances or rules affecting new or replacement individual sewage treatment systems that are more restrictive than the agency's rules.

(b) If standards are adopted that are more restrictive than the agency's rules, the local unit of government must submit the more restrictive standards to the commissioner along with an explanation of the more restrictive provisions.

(d) LOCAL STANDARDS; CONFLICT WITH STATE LAW. Local standards adopted under paragraph (a) or (b) must not conflict with any requirements under other state laws or rules or local ordinances, including, but not limited to, requirements for:

- (1) systems in shoreland areas, regulated under sections 103F.201 to 103F.221;
- (2) well construction and location, regulated under chapter 103I; and
- (3) systems used in connection with food, beverage, and lodging establishments, regulated under chapter 157.

The local standards must include references to applicable requirements under other state laws or rules or local ordinances.

Sec. 7. Minnesota Statutes 1996, section 115.55, is amended by adding a subdivision to read:

Subd. 8. NEW TECHNOLOGIES. New individual sewage treatment system technologies may be installed as warrantied systems if not specifically prohibited in local ordinance, provided however that the manufacturer or designer provides to the commissioner documentation of the following:

- (1) how the technology must be used and installed, how it is expected to perform under those conditions, the anticipated design life, and the period to be warrantied under clause (4);
- (2) pertinent existing data, including in-field testing data, that the system will perform as expected;
- (3) financial assurance or documentation of the manufacturer's or designer's financial ability to cover potential replacement and upgrades necessitated by the system fail-

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ing to meet the performance expectations of clause (1) for the duration of the warranty period; and

(4) a full warranty effective for the designated warranty period in clause (1), which must be at least five years from the time of installation, covering design, labor, and material costs to remedy failure to meet performance expectations in clause (1) for systems used and installed in accordance with the manufacturer's or designer's instructions.

The commissioner must make available a list of warrantied systems for which documentation has been provided to the commissioner under this subdivision.

Sec. 8. Minnesota Statutes 1996, section 115.57, subdivision 7, is amended to read:

Subd. 7. **ORDINANCES; CONSTRUCTION STANDARDS.** A municipality may not establish an individual sewage treatment system loan program unless ordinances pursuant to rules adopted under in compliance with section 115.55, subdivision 3, are in full force and effect. All repairs and improvements made to individual sewage treatment systems under this section shall be performed by a licensed individual sewage treatment system professional and shall comply with agency rules adopted pursuant to section 115.55, subdivision 3, and other applicable requirements. All improvements to wells under this section must be made by a well contractor or a limited well contractor, as appropriate, licensed under chapter 103I.

Sec. 9. **LOCAL STANDARDS STUDY.**

The commissioner of the pollution control agency shall conduct a study on the local standards established under Minnesota Statutes, section 115.55, subdivision 7, in protecting public health and the environment. By February 15, 1999, the commissioner must report on the study to the house and senate committees with jurisdiction over environmental policy.

Sec. 10. **EFFECTIVE DATE.**

This act is effective the day following final enactment.

Presented to the governor May 29, 1997

Signed by the governor June 2, 1997, 2:10 p.m.

CHAPTER 236—H.F.No. 299

An act relating to state parks; adding to state parks; renaming O.L. Kipp state park; permitting liquor sales in certain parks; authorizing the commissioner to contract out certain restaurant services; permitting a land sale in St. Louis county; providing for entry to Tettegouche state park; amending Minnesota Statutes 1996, sections 85.012, by adding a subdivision; and 85.0505; repealing Minnesota Statutes 1996, section 85.012, subdivision 46.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 85.012, is amended by adding a subdivision to read:

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