

CHAPTER 109—H.F.No. 1275

An act relating to environment; modifying sewage treatment systems provisions; changing terminology; amending Minnesota Statutes 2008, sections 115.55, subdivisions 1, 2, 3, 4, 5, 5a, 5b, 6, 9; 115.56, subdivisions 1, 2, 3; 326B.46, subdivision 2; repealing Minnesota Statutes 2008, sections 115.55, subdivision 10; 115.56, subdivision 2a.

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

Section 1. Minnesota Statutes 2008, section 115.55, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to sections 115.55 to 115.56.

(b) "Advisory committee" means the Advisory Committee on ~~Individual~~ Subsurface Sewage Treatment Systems established under the ~~individual~~ subsurface 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~~ subsurface sewage treatment system rules, as required in subdivision 2; or

(2) in areas ~~not subject to the~~ without compliant ordinances described in clause (1), the ~~individual~~ subsurface 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~~ Subsurface sewage treatment system" or "system" means a sewage treatment system, or part thereof, that uses subsurface soil treatment and disposal, or a holding tank, serving a dwelling, other establishment, or a group thereof, and that does not require a state permit.

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

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

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

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

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

(m) "Performance-based system" means a system that is designed specifically for ~~a site and the~~ environmental conditions on ~~that~~ a site and is designed to adequately protect the public health and the environment and provide consistent, reliable, long-term performance. At a minimum, a performance based system must ensure that applicable water quality standards are met in both ground and surface water that ultimately receive the treated ~~wastewater~~ sewage.

(n) "~~Pumper~~ Maintainer" means a person who removes solids and liquids from and maintains and repairs components of ~~individual~~ subsurface sewage treatment systems including, but not limited to, ~~septic~~ sewage, aerobic, and holding tanks.

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

(p) "Septic system tank" means any covered receptacle designed, constructed, and installed as part of ~~an individual~~ a subsurface sewage treatment system.

(q) "~~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~~ subsurface sewage treatment systems.

(r) "Straight-pipe system" means a sewage disposal system that ~~includes toilet waste and~~ transports raw or partially ~~settled~~ treated sewage directly to a lake, a stream, a drainage system, or ground surface.

Sec. 2. Minnesota Statutes 2008, section 115.55, subdivision 2, is amended to read:

Subd. 2. **Local ordinances.** (a) All counties must adopt ordinances that comply with revisions to the ~~individual~~ subsurface sewage treatment system rules within two years of the final adoption by the agency. 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.

(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 2008, 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, and closure of ~~individual~~ subsurface 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 nonstandard systems and performance-based systems;

(5) provisions for handling and disposal of effluent;

(6) provisions for system abandonment; and

(7) 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.

~~(c) Notwithstanding the repeal of the agency rule under which the commissioner has established a list of warranted individual sewage treatment systems, the warranties for all systems so listed as of the effective date of the repeal shall continue to be valid for the remainder of the warranty period.~~

~~(d)~~ (c) The rules required in paragraph (a) must also address the following:

(1) a definition of redoximorphic features and other criteria that can be used by system designers and inspectors;

(2) direction on the interpretation of observed soil features that may be redoximorphic and their relation to zones of ~~seasonal~~ periodic saturation; and

(3) procedures on how to resolve professional disagreements on ~~seasonally~~ periodically saturated soils.

~~These rules must be in place by March 31, 2006.~~

Sec. 4. Minnesota Statutes 2008, section 115.55, subdivision 4, is amended to read:

Subd. 4. **Compliance with rules required; enforcement.** (a) A person who designs, installs, alters, repairs, maintains, pumps, services, ~~or~~ inspects, or abandons all or part of ~~an individual~~ a subsurface sewage treatment system shall comply with the applicable requirements.

(b) Local units of government may enforce, under section 115.071, subdivisions 3 and 4, ordinances that are applicable requirements.

Sec. 5. Minnesota Statutes 2008, 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~~ applicable requirements. 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, or other evidence of compliance provided by the installer.~~

(b) ~~Except as provided in subdivision 5b, paragraph (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~~ it ~~has been inspected to determine~~ has been inspected to determine compliance with the applicable requirements, as evidenced by a certificate of compliance or notice of noncompliance issued by a licensed ~~inspector or site evaluator or designer~~ inspection business or certified local unit of government inspector. A local unit of government may

temporarily waive the ~~certificate of compliance inspection~~ 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~~ or notice of noncompliance within 15 days of the inspection. This paragraph does not apply if the local unit of government does not have an ordinance requiring a building permit to add a bedroom.

(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~~ inspection business that inspects an existing system may subsequently design and install a new system for that property, provided the ~~inspector inspection business~~ is licensed to install individual subsurface sewage treatment systems.

(f) No ~~system certified~~ professional may use the professional's position with government, either as an employee or a contractor, to solicit business for the ~~professional's individual's~~ private system enterprise.

Sec. 6. Minnesota Statutes 2008, section 115.55, subdivision 5a, is amended to read:

Subd. 5a. **Inspection criteria for existing systems.** (a) An inspection of an existing system must evaluate the criteria in paragraphs (b) to (j).

(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; or

(4) 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~~ A system constructed before April 1, 1996, 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, cesspool, 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).

(i) ~~Local~~ Certified inspectors must use the ~~standard~~ existing system inspection form provided by the agency. The inspection information required by local ordinance may be included as an attachment to the ~~standard~~ state form. The following language must appear on the standard form: "If an existing system is not failing as defined in law, and has at least two feet of design soil separation, then the system need not be upgraded, repaired, replaced, or its use discontinued, notwithstanding any local ordinance that is more strict. This does not apply to systems in shoreland areas, wellhead protection areas, or those used in connection with food, beverage, and lodging establishments as defined in law."

~~(j) For the purposes of this subdivision, an "existing system" means a functioning system installed prior to April 1, 1996.~~

Sec. 7. Minnesota Statutes 2008, section 115.55, subdivision 5b, is amended to read:

Subd. 5b. **Compliance notice.** ~~(a)~~ If a system inspected under subdivision 5 is required to be upgraded, replaced, or its use discontinued under subdivision 5a, the ~~certified 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 unit of government 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.

~~(b) Except as provided in 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.~~

Sec. 8. Minnesota Statutes 2008, section 115.55, subdivision 6, is amended to read:

Subd. 6. **Disclosure of individual subsurface sewage treatment system to buyer.**
 (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 on how sewage generated at the property is managed. The disclosure must be made by delivering a statement to the buyer or transferee that either:

(1) the sewage goes to a facility permitted by the agency; or

(2) the sewage does not go to a permitted facility, and is therefore subject to applicable requirements,~~and describes.~~

For sewage not sent to a permitted facility, the disclosure must include a description of 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~~ subsurface sewage treatment system exists on the property, the disclosure must include a map showing its location. ~~In the disclosure statement the seller or transferor must indicate whether the individual sewage treatment system is in use and, to the seller's or transferor's knowledge, in compliance with applicable sewage treatment laws and rules.~~ The seller or transferor shall disclose to the buyer or transferee what the seller or transferor has knowledge of relative to the compliance status of the subsurface sewage treatment system, and whether, to the best of the seller's knowledge, a straight-pipe system exists. A seller or transferor who has in their possession a previous inspection report completed by a licensed inspection business or certified local government inspector in accordance with subdivision 5 or 5a shall attach a copy to the disclosure statement that is provided to the buyer.

(b) Unless the buyer or transferee and seller or transferor agree to the contrary in writing before the closing of the sale, a seller or transferor who fails to disclose the existence or known status of ~~an individual~~ a subsurface 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, is liable to the buyer or transferee for costs relating to bringing the system into compliance with the ~~individual~~ subsurface sewage treatment system rules and for reasonable attorney fees for collection of costs from the seller or transferor. An action under this subdivision must be commenced within two years after the date on which the buyer or transferee closed the purchase or transfer of the real property where the system is located.

Sec. 9. Minnesota Statutes 2008, section 115.55, subdivision 9, is amended to read:

Subd. 9. **Warranted systems.** (a) ~~An individual~~ A subsurface sewage treatment system may be installed provided that it meets all local ordinance requirements and provided the requirements of paragraphs (b) to (e) are met.

(b) The manufacturer shall provide to the commissioner:

(1) documentation that the manufacturer's system was designated by the agency as a warranted system as of June 30, 2001, or the system is a modified version of the system that was designated as a warranted system and meets the size requirements or other requirements that were the basis for the previous warranted system classification; or

(2) documentation showing that a minimum of 50 of the manufacturer's systems have been installed and operated and are under normal use across all major soil classifications for a minimum of three years.

(c) For each system that meets the requirements of paragraph (b), clause (1) or (2), the manufacturer must provide to the commissioner:

(1) documentation that the system manufacturer or designer will provide full warranty effective for at least five years from the time of installation, covering design, labor, and material costs to remedy failure to meet performance expectations for systems used and installed in accordance with the manufacturer's or designer's instructions; and

(2) a commonly accepted financial assurance document or documentation of the manufacturer's or designer's financial ability to cover potential replacement and upgrades necessitated by failure of the system to meet the performance expectations for the duration of the warranty period.

(d) The manufacturer shall reimburse the agency an amount of \$2,000 for staff services needed to review the information submitted pursuant to paragraphs (b) and (c). Reimbursements accepted by the agency shall be deposited in the environmental fund and are appropriated to the agency for the purpose of reviewing information submitted. Reimbursement by the manufacturer shall precede, not be contingent upon, and shall not affect the agency's decision on whether the submittal meets the requirements of paragraphs (b) and (c).

(e) The manufacturer shall provide to the local unit of government reasonable assurance of performance of the manufacturer's system, engineering design of the manufacturer's system, a monitoring plan that will be provided to system owners, and a mitigation plan that will be provided to system owners describing actions to be taken if the system fails.

(f) The commissioner may prohibit ~~an individual~~ a subsurface sewage treatment system from qualifying for installation under this subdivision upon a finding of fraud, system failure, failure to meet warranty conditions, or failure to meet the requirements of this subdivision or other matters that fail to meet with the intent and purpose of this subdivision. Prohibition of installation of a system by the commissioner does not alter or end warranty obligations for systems already installed.

Sec. 10. Minnesota Statutes 2008, section 115.56, subdivision 1, is amended to read:

Subdivision 1. **Rules.** (a) Pursuant to section 115.03, subdivision 1, ~~by January 1, 1996,~~ the agency shall adopt rules containing standards of certification and licensure applicable to all ~~individual~~ subsurface sewage treatment system ~~professionals~~ individuals and businesses.

The rules must include but are not limited to:

- (1) training requirements that include both classroom and fieldwork components;
- (2) examination content requirements and testing procedures;
- (3) continuing education requirements;
- (4) equivalent experience provisions;
- (5) bonding and insurance requirements;
- (6) schedules for submitting fees; and
- (7) license revocation and suspension and other enforcement requirements.

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

Sec. 11. Minnesota Statutes 2008, section 115.56, subdivision 2, is amended to read:

Subd. 2. **License required.** (a) Except as provided in paragraph (b), a person may not design, install, maintain, pump, inspect, or provide service to ~~an individual~~ a subsurface sewage treatment system without a license issued by the commissioner.

Licenses issued under this section allow work on ~~individual~~ subsurface sewage treatment systems ~~with a flow of 10,000 gallons of water per day or less~~ that do not require a state permit using prescriptive designs and design guidances provided by the agency. Licenses who design systems using these prescriptive designs and design guidances are not subject to the additional licensing requirements of section 326.03.

(b) A license is not required for a person who complies with the applicable requirements if the person is:

(1) a qualified employee of state or local government who ~~has passed the examination described in paragraph (d) or a similar examination~~ is a certified professional;

(2) an individual who constructs ~~an individual~~ a subsurface sewage treatment system on land that is owned or leased by the individual and functions solely as the individual's dwelling or seasonal dwelling, ~~unless specifically disallowed in local ordinance.~~ A person constructing a subsurface sewage treatment system under this clause must comply with all local administrative and technical requirements. In addition, the system must be inspected before being covered and a compliance report must be provided to the local unit of government after the inspection;

(3) a farmer who pumps and disposes of sewage waste from ~~individual~~ subsurface sewage treatment systems, holding tanks, and privies on land that is owned or leased by the farmer; or

(4) an individual who performs labor or services for a ~~person~~ licensed business under this section in connection with the design, installation, ~~maintenance~~ operation, pumping, or inspection of ~~an individual~~ a subsurface sewage treatment system at the direction and under the personal supervision of a person ~~licensed~~ certified under this section.

~~A person constructing an individual sewage treatment system under clause (2) must consult with a site evaluator or designer before beginning construction. In addition, the system must be inspected before being covered and a compliance report must be provided to the local unit of government after the inspection.~~

(c) The commissioner, in conjunction with the University of Minnesota Extension Service or another higher education institution, shall ensure adequate training and design guidance exists for ~~individual~~ subsurface sewage treatment system certified professionals.

(d) The commissioner shall conduct examinations to test the knowledge of applicants for ~~licensing~~ certification and shall issue documentation of ~~licensing~~ certification.

(e) Licenses may be issued only upon ~~successful completion of the required examination and submission of proof of sufficient experience, proof of general liability insurance, and a corporate surety bond in the amount of at least \$10,000, and the name of the individual who will be the designated certified individual for that business.~~ The bond may be for both plumbing work and subsurface sewage treatment work if the bond complies with the requirements of this section and section 326B.46, subdivision 2.

~~(f) Notwithstanding paragraph (c), the examination and proof of experience are not required for an individual sewage treatment system professional who, on the effective date of the rules adopted under subdivision 1, holds a certification attained by examination and experience under a voluntary certification program administered by the agency.~~

~~(g)~~ (f) Local units of government may not require additional local licenses for ~~individual~~ subsurface sewage treatment system ~~professionals~~ businesses.

~~(f) A pumper whose annual gross revenue from pumping systems is \$9,000 or less and whose gross revenue from pumping systems during the year ending May 11, 1994, was at least \$1,000 is not subject to training requirements in rules adopted under subdivision 1, except for any training required for initial licensure.~~

~~(f)~~ (g) No other professional license under section 326.03 is required to design, install, maintain, inspect, or provide service for ~~an individual~~ a subsurface sewage treatment system with a flow of 10,000 gallons of water per day or less that does not require a state permit using prescriptive designs and design guidances provided by the agency if the system designer, installer, maintainer, inspector, or service provider is licensed under this subdivision and the local unit of government has not adopted additional requirements.

Sec. 12. Minnesota Statutes 2008, section 115.56, subdivision 3, is amended to read:

Subd. 3. **Enforcement.** (a) The commissioner may deny, suspend, or revoke a license or certification, or use any lesser remedy against ~~an individual~~ a subsurface sewage treatment system ~~professional~~ business or a certified individual, for any of the following reasons:

- (1) failure to meet the requirements for a certification or license;
- (2) incompetence, negligence, fraud, illegal activity, conflict of interest, or inappropriate conduct in the performance of the duties of ~~an individual~~ a subsurface sewage treatment system professional business or certified individual;
- (3) failure to comply with applicable requirements; ~~or~~
- (4) submission of false or misleading information or credentials in order to obtain or renew certification or a license; or
- (5) failure to resolve an enforcement action with any local, state, or federal agency.

(b) Upon receiving a signed written complaint that alleges the existence of a ground for enforcement action against a person under paragraph (a), the commissioner shall initiate an investigation. Revocation, suspension, or other enforcement action may not be taken before written notice is given to the person and an opportunity is provided for a contested case hearing complying with the provisions of chapter 14.

Sec. 13. Minnesota Statutes 2008, section 326B.46, subdivision 2, is amended to read:

Subd. 2. **Bond; insurance.** Any person contracting to do plumbing work must give bond to the state in the amount of at least \$25,000 for: (i) all plumbing work entered into within the state; or (ii) all plumbing work and subsurface sewage treatment work entered into within the state. If the bond is for both plumbing work and subsurface sewage treatment work, the bond must comply with the requirements of this section and section 115.56, subdivision 2, paragraph (e). The bond shall be for the benefit of persons injured or suffering financial loss by reason of failure to comply with the requirements of the State Plumbing Code and, if the bond is for both plumbing work and subsurface sewage treatment work, financial loss by reason of failure to comply with the requirements of sections 115.55 and 115.56. The bond shall be filed with the commissioner and shall be written by a corporate surety licensed to do business in the state.

In addition, each applicant for a master plumber license or restricted master plumber license, or renewal thereof, shall provide evidence of public liability insurance, including products liability insurance with limits of at least \$50,000 per person and \$100,000 per

occurrence and property damage insurance with limits of at least \$10,000. The insurance shall be written by an insurer licensed to do business in the state of Minnesota and each licensed master plumber shall maintain on file with the commissioner a certificate evidencing the insurance providing that the insurance shall not be canceled without the insurer first giving 15 days written notice to the commissioner. The term of the insurance shall be concurrent with the term of the license.

Sec. 14. **REVISOR'S INSTRUCTION.**

In Minnesota Statutes, the revisor of statutes shall change the terms "individual sewage treatment system" and "individual sewage treatment systems" to "subsurface sewage treatment system" and "subsurface sewage treatment systems," respectively. The revisor shall make any necessary grammatical corrections consistent with this instruction.

Sec. 15. **REPEALER.**

Minnesota Statutes 2008, sections 115.55, subdivision 10; and 115.56, subdivision 2a, are repealed.

Presented to the governor May 15, 2009

Signed by the governor May 19, 2009, 1:55 p.m.