

CHAPTER 115

WATER POLLUTION CONTROL; SANITARY DISTRICTS

115.072 RECOVERY OF LITIGATION COSTS AND EXPENSES.

115.55 INDIVIDUAL SEWAGE TREATMENT SYSTEMS.
115.56 MANDATORY LICENSING PROGRAM.**115.072 RECOVERY OF LITIGATION COSTS AND EXPENSES.**

In any action brought by the attorney general, in the name of the state, pursuant to the provisions of this chapter and chapters 114C, 114E, and 116, for civil penalties, injunctive relief, or in an action to compel compliance, if the state shall finally prevail, and if the proven violation was willful, the state, in addition to other penalties provided in this chapter, may be allowed an amount determined by the court to be the reasonable value of all or a part of the litigation expenses incurred by the state. In determining the amount of such litigation expenses to be allowed, the court shall give consideration to the economic circumstances of the defendant.

Amounts recovered under the provisions of this section and section 115.071, subdivisions 3 to 5, shall be paid into the environmental fund in the state treasury to the extent provided in section 115.073.

History: 2007 c 131 art 1 s 72

115.54 [Repealed, 2007 c 133 art 2 s 13]

115.55 INDIVIDUAL SEWAGE TREATMENT SYSTEMS.

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 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, that uses subsurface soil treatment and disposal, or a holding tank, serving a dwelling, other establishment, or a group thereof.

(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) "Performance-based system" means a system that is designed specifically for a site and the environmental conditions on that site and designed to adequately protect the public health and the environment and provide 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.

(n) "Pumper" means a person who maintains components of individual sewage treatment systems including, but not limited to, septic, 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 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 sewage treatment systems.

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

Subd. 2. Local ordinances. (a) All counties must adopt ordinances that comply with revisions to the individual 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.

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 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 warrantied 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) 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 saturation; and

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

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

[For text of subs 4 to 6, see M.S.2006]

Subd. 7. Local 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 inappropriate. 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 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. A local unit of government may not adopt or enforce an ordinance or rule if its effect is to prevent or delay recording with the county recorder or registrar of titles of a deed or other instrument that is otherwise entitled to be recorded.

(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.

[For text of subs 9 to 11, see M.S.2006]

Subd. 12. Advisory committee; county individual sewage treatment system management plan. (a) A county may adopt an individual sewage treatment system management plan that describes how the county plans on carrying out individual sewage treatment system needs. The commissioner of the Pollution Control Agency shall form an advisory committee to determine what the plans should address. The advisory committee shall be made up of representatives of the Association of Minnesota Counties, Pollution Control Agency, Board of

Water and Soil Resources, Department of Health, and other public agencies or local units of government that have an interest in individual sewage treatment systems.

(b) The advisory committee shall advise the agency on the standards, management, monitoring, and reporting requirements for performance-based systems.

History: 2007 c 13 art 1 s 6; 2007 c 57 art 1 s 136-139

115.56 MANDATORY LICENSING PROGRAM.

[For text of subd 1, see M.S.2006]

Subd. 2. License required. (a) Except as provided in paragraph (b), after March 31, 1996, a person may not design, install, maintain, pump, or inspect an individual sewage treatment system without a license issued by the commissioner.

(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;

(2) an individual who constructs an individual sewage treatment system on land that is owned or leased by the individual and functions solely as the individual's dwelling or seasonal dwelling;

(3) a farmer who pumps and disposes of sewage waste from individual 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 under this section in connection with the design, installation, maintenance, pumping, or inspection of an individual sewage treatment system at the direction and under the personal supervision of a person licensed 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 exists for individual sewage treatment system professionals.

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

(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.

(f) Notwithstanding paragraph (e), 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) Local units of government may not require additional local licenses for individual sewage treatment system professionals.

(h) 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.

(i) Until December 31, 2010, no other professional license is required to:

(1) design, install, maintain, or inspect an individual sewage treatment system with a flow of 10,000 gallons of water per day or less if the system designer, installer, maintainer, or inspector is licensed under this subdivision and the local unit of government has not adopted additional requirements; and

(2) operate an individual sewage treatment system with a flow of 10,000 gallons of water per day or less if the system operator is licensed as a system designer, installer, maintainer, or inspector under this subdivision and the local unit of government has not adopted additional requirements.

[For text of subs 2a to 4, see M.S.2006]

History: 2007 c 131 art 1 s 73