

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.

Subd. 4. Compliance with rules required; enforcement. (a) A person who designs, installs, alters, repairs, maintains, pumps, or inspects all or part of an individual 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.

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, 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 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.

(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.

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

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 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, 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 inspectors must use the standard inspection form provided by the agency. The inspection information required by local ordinance may be included as an attachment to the standard 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.

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 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.

Subd. 6. Disclosure of individual 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, 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 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.

(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 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 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.

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.

Subd. 8. [Repealed, 1Sp2001 c 2 s 162]

Subd. 9. **Warrantied systems.** (a) An individual 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 warrantied system as of June 30, 2001, or the system is a modified version of the system that was designated as a warrantied system and meets the size requirements or other requirements that were the basis for the previous warrantied 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 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.

Subd. 10. **System classification.** The agency is not required to add, remove, or reclassify individual sewage treatment system technologies, designs, or system components through rulemaking or pursuant to existing rules until July 1, 2003. The agency is not required to review, assess, advise, or make regulatory determinations on an individual sewage treatment system technology, design, or system component during this period. Chambered systems, as defined in Minnesota Rules, part 7080.0020, that are installed before July 1, 2003, with smaller than standard soil sizing, but which otherwise conform with Minnesota Rules, part 7080.0178, are not required to have flow measuring devices installed and monitored unless required by local ordinance.

Subd. 11. **Straight-pipe systems; noncompliance.** An inspector who discovers the existence of a straight-pipe system shall issue a noncompliance notice to the owner of the straight-pipe system and forward a copy of the notice to the agency. The notice must state that the owner must replace or discontinue the use of the straight-pipe system within ten months of receiving the notice. If the owner does not replace or discontinue the use of the straight-pipe system within ten months after the notice was received, the owner of the straight-pipe system shall be subject to an administrative penalty of \$500 per month of noncompliance beyond the ten-month period. Administrative penalty orders may be issued for violations under this subdivision, as provided in section 116.072. One-half of the proceeds collected from an administrative penalty order issued for violating this subdivision shall be remitted to the local unit of government with jurisdiction over the noncompliant straight-pipe system.

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: 1994 c 617 s 1; 1995 c 233 art 1 s 5; 1996 c 427 s 1; 1997 c 235 s 1-7; 1997 c 251 s 17; 3Sp1997 c 3 s 12; 1998 c 401 s 40; 1999 c 231 s 130; 2000 c 320 s 1; 1Sp2001 c 2 s 121; 2002 c 293 s 1; 2002 c 382 art 1 s 1; 2003 c 128 art 1 s 123; 2004 c 248 s 1; 2004 c 249 s 1; 1Sp2005 c 1 art 2 s 126; 2006 c 224 s 1,2; 2007 c 13 art 1 s 6; 2007 c 57 art 1 s 136-139