



**MODEL ORDINANCES  
FOR  
LOCAL SUBSURFACE SEWAGE  
TREATMENT SYSTEM  
REGULATORY PROGRAMS**

**2008**

**Association of Minnesota Counties  
125 Charles Avenue St. Paul, MN 55103-2108**

## ACKNOWLEDGEMENTS

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This manual “*Model Ordinances for Local Subsurface Sewage Treatment System Regulatory Programs*” was prepared for the Association of Minnesota Counties under the sponsorship of the Minnesota Pollution Control Agency.

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Sewage treatment ordinances from the following Minnesota counties were reviewed to assist the drafting of the model ordinances in this manual:

Aitkin County

Beltrami County

Cass County

Hennepin County

Otter Tail County

Stearns County

Also, the “*Model Code Framework for Performance Management of Onsite/Cluster Wastewater Systems*” prepared for the Iron Range Resources and Rehabilitation Agency in 2000 by the Northern Minnesota Wastewater Technical Committee was used to help draft several of the provisions in the model ordinances.

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## **SECTION 1:**

# **LOCAL SSTS ORDINANCE REQUIREMENTS**

### **Local SSTS Ordinance Programs**

On February 4, 2008, in accordance with the authority granted in Minnesota Statutes, Chapters 103F, 103G, 115, and 116, the Minnesota Pollution Control Agency (MPCA) promulgated revised rules for the regulation of subsurface sewage treatment systems (SSTS). These rules provide minimum environmental protection standards for subsurface sewage treatment systems (SSTS) to protect the public health, safety, and general welfare by regulating the discharge of adequately treated sewage to groundwater. The standards relate to the proper location, design, installation, use, and maintenance of SSTS and the adoption of county ordinances that reasonably ensure proper permitting, inspection, and operation of SSTS.

The original Chapter 7080, “Individual Sewage Treatment Systems”, was replaced with four chapters:

- ♦ Chapter 7080, “Design Standards for Individual Subsurface Sewage Treatment Systems”,
- ♦ Chapter 7081, “Midsized Subsurface Sewage Treatment Systems”,
- ♦ Chapter 7082, “Requirements for Local SSTS Programs, and
- ♦ Chapter 7083, “Subsurface Sewage Treatment Systems Licensing and Certification Program, Product Registration Program, and Advisory Committee.

All Minnesota counties are required by MPCA to adopt, administer, and enforce these environmental protection standards through county ordinances as directed in chapter 7082, as published in the State Register, volume 31, page 1079, and as subsequently adopted, and Minnesota Statutes, section 115.55. In accordance with Minnesota Rules (MR), Chapter 7082, the ordinances adopted by counties shall govern both individual subsurface sewage treatment systems (ISSTS) and mid-size subsurface sewage treatment systems (MSSTS) as defined in MR Chapters 7080 and 7081. These ordinances must be updated to the minimum standards of Chapters 7080 and 7081 in accordance with 7082 within 24 months of the effective date of those chapters or by February 4, 2010.

### **Model SSTS Ordinances and Applications**

To assist Minnesota counties in drafting SSTS ordinances that will meet the minimum environmental protection standards promulgated by MPCA, the Association of Minnesota Counties (AMC), in cooperation with MPCA, has developed a manual that provides three model ordinances for local regulation of SSTS. The intended purpose of these models is to provide counties with templates to assist them in promulgating effective SSTS program ordinances that meet the specific needs of individual counties while meeting MPCA’s required minimum standards.

Chapter 7082 allows counties to select one of three options for regulating SSTS under local ordinances. This manual presents model ordinances representing each of the three different programs. They are written to be flexible so that a county may select and customize a model to compliment the county's specific needs and available administrative resources. These three programs and their objectives are:

1. Conventional Program

A comprehensive SSTS program that meets MPCA's minimum technical standards and criteria for ISSTS and MSSTS, which reasonably ensures proper ordinance administration, inventory, enforcement, and permitting, and SSTS inspection, operation, and maintenance in accordance with MR Chapters 7080 and 7081. (See MR Chapter 7082.0050, Subp. 3).

2. Performance Program

A SSTS program that meets MPCA's minimum standards by regulating treatment outcomes, which are related to the sensitivity of the receiving environment and the risks created by SSTS discharges that could threaten the public health, safety, and general welfare and environment. (See MR Chapter 7082.0050, Subp. 4)

3. Alternative Local Standards Program

A SSTS program that allows less restrictive provisions than MPCA's minimum standards provided the provisions protect the public health, safety, and welfare in accordance with Minnesota Statutes, Section 115.55, Subdivision 7, paragraphs (a) and (b). (See MR Chapter 7082.005, Subp. 5)

Selection of the most appropriate type of SSTS ordinance will depend on local conditions and needs. Table 1 below presents some of the considerations that should go into selecting a SSTS program and ordinance. No one program type will necessarily be the best. Considering each of the local conditions listed Table 1, a single most appropriate SSTS program is not likely to be indicated. Where this is case, the choice of one over the others will depend on weighing real and perceived risks to water quality against real and perceived benefits and costs of each program. Benefits and costs might include system affordability, impacts on water quality, ability to make more land area available to development, impacts on planning and zoning, and other benefit and cost issues.

An illustration of how the decision process might be helpful to show how the selection of a program would proceed given that listed considerations do not indicate that a single program is not the most suitable for local conditions. Many counties are experiencing rapid growth particularly in the lakes country. If a county wanted to accommodate that growth without creating adverse impacts on their lake water quality, a performance program would be the most appropriate program because it could allow the county to open new lands for development which do not support conventional SSTS and also to require some degree of nutrient removal. However, in assessing local conditions, the county realized that while the strength of the SSTS program was strong in most measures, monitoring and enforcement procedures were weak, SSTS staff needed additional training in the application of more complex treatment practices and technologies, and the planning and zoning department was not prepared for the possibility of new development in areas which had been considered unbuildable because of current SSTS regulations and therefore lacked zoning. Based on these realizations, the conventional program

**TABLE 1: SSTS PROGRAM SELECTION CONSIDERATIONS**

<b>Existing Local Conditions</b>	<b>Program Suitability</b>		
	<b>Conventional</b>	<b>Performance</b>	<b>Alternative Local Standards</b>
<b>Local Government Resources</b> (Considerations are financial, staffing, IT resources, etc.)	Requires moderate resources	Requires certified staff, IT resources	Requires moderate resources
<b>Strength of SSTS Program*</b> (Qualified staff, financial and political support, effective enforcement)	At least an average SSTS program	Must have a strong SSTS program	At least an average SSTS program
<b>Strength of Planning and Zoning Program*</b> (Current land use and water plans exist and good plan enforcement)	Weak to average planning and zoning program	Must have a strong planning and zoning program	Weak to average planning and zoning program
<b>Threats to Water Resources</b> (Considerations include shallow water tables, very permeable soils, karst geology, lake shore developments, high density developments, etc)	Good for most areas of the state	Extra protection for sensitive resources such as karst areas or surface waters susceptible to nutrient loading	Only in areas with low threat to quality of water resources
<b>Developmental Pressure on Soils where SSTS are not Appropriate</b> (Strong residential growth pressure in unsewered areas)	Low	Medium to High	Not applicable in growth areas

\* May be the same or independent programs

would be the most appropriate, but, given the desire to accommodate new growth and protect the lakes, a stronger program was desired. The decision was to incorporate the performance provisions into the conventional program where its application would be limited only to heavily developed lakeshores where zoning already existed and the performance rules would only apply to replacements. This approach would allow both the SSTS and planning and zoning programs to prepare for an expansion of the performance program to all new and replacement systems countywide.

## **MPCA Review of Local Ordinances**

A copy of all local ordinances relating to SSTS must be submitted to the MPCA for review by the commissioner at least 30 days prior to their adoption (7082.0050, Subpart 2). The purpose of the commissioner's review is to confirm that the ordinances comply with Chapter 7082. Also, the review is to ensure that the adopted ordinances adequately protect public health and the environment considering the local circumstances. The submittals of ordinances must be accompanied by completed copies of the "Ordinance Checklist" form, which is available from the commissioner and provided within this manual. Local ordinances that are determined not to meet the requirements of Chapters 7080 through 7082 may be subject to administrative actions.

The commissioner must complete the ordinance review within six months of receipt of the proposed ordinance. The commissioner must provide comments on the ordinance to the local unit of government when the review is complete. During the review process, the local unit of government is authorized to implement SSTS ordinances (7082.0050, Subp. 2B).

## **How to Use this Manual**

The following three sections present model ordinances for each of the three SSTS regulatory program options. These model ordinances are not suitable for adoption directly. They are intended to provide appropriate templates for each program that must be customized according to the particular needs and circumstances of individual counties.

To begin development of an ordinance, counties must first select one of the three program options that best suits their goals for SSTS application and use. The introductory page to each of the model ordinances provides a brief description of the objectives of the particular program option and criteria for its appropriate application.

Throughout the body of each model template, *shaded italics* appear which provide narrative guidance in the form of "Notes", "Options", and "Comments" to assist counties in drafting ordinance provisions which will best serve their selected program. These are provided to help explain a particular section, listing possible options, considerations important to their use, or cross referencing pertinent laws or sections as appropriate. Ordinance provisions strictly required by MPCA for inclusion in the ordinance are highlighted by underlining where they apply. These requirements are also listed separately ahead of each ordinance template citing each requirement's location in the selected ordinance template.

The "Ordinance Review Checklist" edited for each of the three program options is provided following the respective model ordinance in this guidance document. This checklist must be filled out by the county and submitted to the MPCA commissioner with the draft ordinance. The checklist also includes a form necessary to describe the fiscal and physical capacity of the county to administer the local SSTS program as required by 7082.0040, Subp.4.



**SECTION 2:  
CONVENTIONAL PROGRAM  
ORDINANCE MODEL**

## SECTION 2: CONVENTIONAL PROGRAM ORDINANCE MODEL

### MPCA Requirements

7082.0050 General Requirements for Local Ordinances, Subp. 3. Conventional programs.  
Conventional programs are comprehensive programs that employ ISTS and MSTs technical standards and criteria as specified in chapters 7080 and 7081, as published in the State Register, volume 31, pages 1025 and 1064, and as subsequently adopted, and program administrative functions in parts 7082.0100, Subparts 1, 2, 3, and 5, and 7082.0300 to 7082.0700.

### Program Ordinance Requirements

Local ordinances for a Conventional SSTS Program must include the following provisions as required by 7082.0100, Subp.1 through Subp.3. Counties must confirm the inclusion of these items by completing the *Ordinance Checklist* provided by the commissioner of MPCA. This checklist must be included with the submittal of the proposed ordinance to the commissioner at least 30 days prior to the county's adoption of the ordinance. The location of each required provision in the proposed ordinance must be cited by the county in the *Ordinance Checklist*. This checklist is available from the commissioner and is provided in Attachment A of this manual.

Listed below are the required provisions extracted from the *Ordinance Checklist*, which includes the citations of each within this model ordinance.

#### **7082.0100 Subp. 1: Provisions required by law for all local SSTS programs:**

- A. A provision requiring upgrade, replacement, repair, or discontinued use of systems failing to protect groundwater within a specified period from the date of issue of the notice of noncompliance (7080.1500 Subp. 4).

Model ordinance citation: Article IV, Sec. 2.03

- B. A provision requiring upgrade, replacement, repair, or discontinued use of systems posing an imminent threat within 10 months from the date of issue of the notice of noncompliance (7080.1500 Subp. 4).

Model ordinance citation: See Article IV, Sec. 2.04

- C. A provision requiring that a system owner has five years from the date of receipt of a permit to add a bedroom to upgrade, replace, repair or discontinue use of the system.

*Note: This requirement applies only if the local unit of government issues a permit for a bedroom addition.*

Model ordinance citation: See Article IV, Sec. 2.02

- D. A provision regulating vertical separation for systems built in non-SWF before April 1, 1996 must meet the requirements in 7080.1500, Subp. 4E.

Model ordinance citation: See Article V, Sec. 2.03

**7082.0100 Subp. 2: List of differences:**

List any technical and program administrative differences between the local ordinance and Chapters 7080 and 7081. (This list is a helpful tool for SSTS contractors to use in designing, installing and maintaining systems according to the local code.)

Model ordinance citation: See Article V, Sec. 2.01

**7082.0100 Subp. 3A: Provisions required in rule for all local SSTS programs:**

- A. A provision requiring all work performed on SSTS be done by appropriately licensed businesses, qualified employees or persons exempt from licensing in 7083.0700, Subp. 1.

*Note: Local SSTS ordinances cannot require additional local licenses, certificates, or registrations of practitioners or service providers doing business in its jurisdictional area..)*

Model ordinance citation: See Article IV, Sec. 5.0

- B. A provision requiring abandonment of systems no longer in use according to 7080.2500.

Model ordinance citation: See Article IV, Section 2.05 and Article V, Sec. 4.0

- C. A provision specifying technical standards and criteria for new and existing SSTS that adequately protect the public health and environment. Conventional programs should specifically adopt technical standards in 7080.1710 to 7080.0290.

Model ordinance citation: See Article V, Sec. 1.0

- D. A provision specifying whether local variances may be allowed and if so, how an application must be made.

Model ordinance citation: See Article V, Sec. 4.0

- E. Provisions for design review, permit issuance, construction inspection, and system operation.

Model ordinance citation: See Article VI

- F. A provision which requires that all lots created after January 23, 1996, have a minimum of two soil treatment and dispersal areas (in accordance with 7082.0100, Subp. 3F) that support Type I systems as described in parts 7080.2200 to 7080.2730 or site conditions as described in 7080.0270, Subp. 3 to Subp. 7 (see).

Model ordinance citation: See Article IV, Sec 1.03

- G. A provision specifying the conditions necessary to allow the use of holding tanks, holding tank operation and maintenance requirements, and the requirement for an executed contract between the owner and a licensed maintenance business.

Model ordinance citation: See Article V, Sec. 2.04

- H. A provision prohibiting surface discharge of sewage without a NPDES permit issued by MPCA.  
Model ordinance citation: See Article IV, Sec. 6.02
- I. A provision specifying the necessary conditions for allowable use and location of SSTS in floodplains in compliance with applicable state and local requirements.  
Model ordinance citation: See Article IV, Sec. 3.0
- J. A provision requiring an approved management plan before issuance of a construction permit for all new and replacement SSTS as described in 7080.1100, Subp. 52.  
Model ordinance citation: See Article VII, Sec. 2.0
- K. A provision requiring operating permits for Type IV and V systems, systems which are built under Alternative Local Standards, and all MSTs.  
Model ordinance citation: See Article V, Sec. 3.02
- L. A provision for systems not operated under a management plan or operating permit which requires SSTS maintenance evaluation no less than every three years and maintenance when needed, with residuals removed as specified in 7080.2450.  
Model ordinance citation: See Article V, Sec. 3.02
- M. A provision requiring that owners of Class V wells (see 40 CFR 144.50 of the Federal Register) submit inventory information to USEPA and that property transfer disclosures identify such Class V wells.  
Model ordinance citation: See Article IV, Sec. 4.0
- N. A provision outlining how conflicting inspections and other technical disputes between SSTS certified professionals will be resolved when they occur as described in 7082.0700, Subp. 5.  
Model ordinance citation: See Article VIII, Sec. 2.03 B
- O. A provision specifying what level of local approval is needed for repair, rejuvenation or remediation of SSTS as defined in local ordinance.  
Model ordinance citation: See Article VI, Sec. 2.01 & 2.02
- P. A provision which specifies the allowed methods for determining the soil treatment and dispersal system design loading rate from 7080.2150, Subp. 3E Tables IX or IXa.  
Model ordinance citation: See Article V, Sec. 2.02
- Q. A provision that requires all sewage generated in the jurisdiction to be treated either in an agency-permitted facility or a system designed under 7080 and 7081 standards.  
Model ordinance citation: See Article III, Sec. 1.0 and Article VI, Sec. 1.0
- R. An optional provision that allows a no more than a 15% reduction in the minimum three foot separation distance to groundwater below an individual SSTS soil treatment and dispersal

system installed after March 31, 1996, or in Shoreland or Wellhead protection areas, or systems serving food, beverage, or lodging establishments as described in 7080.1500, Subp. 4D.

Model ordinance citation: Article V, Sec. 2.03

SUBSURFACE SEWAGE TREATMENT  
SYSTEM ORDINANCE  
(COUNTY NAME)

COUNTY ORDINANCE NUMBER \_\_\_\_\_

(Effective Date)

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**(COUNTY NAME)**

**ORDINANCE NO. \_\_\_\_**

**SUBSURFACE SEWAGE TREATMENT SYSTEMS**

This is an ordinance authorizing and providing for sewage treatment and soil dispersal in unsewered areas of the county. It establishes:

- 1) Minimum standards for and regulation of individual sewage treatment systems (ISTS) and mid-sized Subsurface Sewage Treatment Systems (MSTS) (collectively referred to as SSTS) in unsewered incorporated and unincorporated areas of (COUNTY NAME) incorporating by reference minimum standards established by Minnesota statutes and administrative rules of the Minnesota Pollution Control Agency,
- 2) Requirements for issuing permits for installation, alteration, repair or expansion of SSTS,
- 3) Requirements for all SSTS permitted under the revised Minnesota Rules, Chapters 7080 and 7081 to be operated under an approved management plan,
- 4) Standards for upgrade, repair, replacement, or abandonment of SSTS,
- 5) Penalties for failure to comply with these provisions,
- 6) Provisions for enforcement of these requirements, and
- 7) Standards which promote the health, safety and welfare of the public as reflected in Minnesota Statutes sections 115.55, 145A.05, 375.51, 394.21-394.37, and 471.82, the County Comprehensive Plan and the County Zoning and Shoreland Ordinance.

**ARTICLE I      PURPOSE AND AUTHORITY**

**ARTICLE I, SECTION 1.0      PURPOSE AND INTENT**

**1.01      Purpose**

The purpose of this ordinance is to establish minimum requirements for regulation of ISTS and MSTS for the treatment and dispersal of sewage within the applicable jurisdiction of the County to protect public health and safety, groundwater quality, and prevent or eliminate the development of public nuisances. It is intended to serve the best interests of the County's citizens by protecting its health, safety, general welfare, and natural resources.

***Option:***

*Include minimum requirements for septage treatment and disposal.*

**1.02      Intent**

It is intended by the County that this Ordinance will promote the following:

- A. The protection of lakes, rivers and streams, wetlands, and groundwater in (COUNTY NAME) essential to the promotion of public health, safety, welfare, socioeconomic growth and development of the County .

- B. The regulation of proper SSTS construction, reconstruction, repair and maintenance to prevent the entry and migration of contaminants, thereby protecting the degradation of surface water and groundwater quality.
- C. The establishment of minimum standards for SSTS placement, design, construction, reconstruction, repair and maintenance to prevent contamination and, if contamination is discovered, the identification and control of its consequences and the abatement of its source and migration.
- D. The appropriate utilization of privy vaults and other non-water carried sewage collection and storage facilities.
- E. The provision of technical assistance and education, plan review, inspections, SSTS surveys and complaint investigations to prevent and control water-borne diseases, lake degradation, groundwater related hazards, and public nuisance conditions.

### **ARTICLE I, SECTION 2.0      AUTHORITY**

This Ordinance is adopted pursuant to Minnesota Statutes, Section 115.55; Minnesota Statutes, Sections 145A.01 through 145A.08; Minnesota Statutes, Section 375.51; or successor statutes, and Minnesota Rules, Chapter 7080, Chapter 7081, Chapter 7082;, or successor rules.

### **ARTICLE I, SECTION 3.0      EFFECTIVE DATE**

The provisions set forth in this Ordinance shall become effective on (DATE).

## **ARTICLE II      DEFINITIONS**

The following words and phrases shall have the meanings ascribed to them in this Article. If not specifically defined in this Article, terms used in this Ordinance shall have the same meaning as provided in the standards adopted by reference. Words or phrases that are not defined here or in the standards adopted by reference shall have common usage meaning. For purposes of this Ordinance, the words “must” and “shall” are mandatory and the words “may” and “should” are permissive.

#### ***Comment:***

*The purpose of this section is to define key words in a clear and simple manner to enable the reader to understand their meaning within the context of this Ordinance. Care should be taken to avoid potential conflicts between definitions of words used in standards adopted by reference and this Ordinance. Where local definitions conflict, but are to prevail, the differences must be highlighted.*

*Recommended definitions for inclusion in a local Ordinance are provided below.*

**Authorized Representative:** An employee or agent of the County (DEPARTMENT NAME).

**Advisory Committee (optional):** A committee of SSTS stakeholders appointed by the County Board to advise the (COUNTY AND DEPARTMENT NAME) on issues related to the regulation and practices of SSTS in (COUNTY NAME).

**Board of Adjustment:** A board established by county ordinance with the authority to order the issuance of variances, hear and decide appeals from a member of the affected public and review

any order, requirement, decision, or determination made by any administrative official charged with enforcing any ordinance adopted pursuant to the provision of Minnesota Statutes, sections 394.21 to 394.37, order the issuance of permits for buildings in areas designated for future public use on an official map and perform such other duties as required by the official controls.

**Class V Injection Well:** A shallow well used to place a variety of fluids directly below the land surface, which includes a domestic SSTS serving more than 20 people. The US Environmental Protection Agency and delegated state groundwater programs permit these wells to inject wastes below the ground surface provided they meet certain requirements and do not endanger underground sources of drinking water. Class V motor vehicle waste disposal wells and large-capacity cesspools are specifically prohibited (see 40 CFR Parts 144 & 146).

**Cluster System:** A SSTS under some form of common ownership that collects wastewater from two or more dwellings or buildings and conveys it to a treatment and dispersal system located on an acceptable site near the dwellings or buildings.

**County:** (COUNTY NAME) County, Minnesota.

**County Board:** The (COUNTY NAME) County Board of Commissioners.

**Department:** The (COUNTY NAME) (DEPARTMENT NAME) Department.

**Design Flow:** The daily volume of wastewater for which an SSTS is designed to treat and discharge.

**Failure to Protect Groundwater:** At a minimum, a SSTS that does not protect groundwater is considered to be a seepage pit, cesspool, drywell, leaching pit, or other pit; a SSTS with less than the required vertical separation distance, described in MR Chapter 7080.1500 Subp. 4 D and E; and a system not abandoned in accordance with part 7080.2500. The determination of the threat to groundwater for other conditions must be made by a Qualified Employee or an individual licensed pursuant to Section 5 hereof.

**Imminent Threat to Public Health and Safety:** At a minimum a SSTS with a discharge of sewage or sewage effluent to the ground surface, drainage systems, ditches, or storm water drains or directly to surface water; SSTS that cause a reoccurring sewage backup into a dwelling or other establishment; SSTS with electrical hazards; or sewage tanks with unsecured, damaged, or weak maintenance access covers. The determination of protectiveness for other conditions must be made by a Qualified Employee or a SSTS inspection business licensed pursuant to Section 5 hereof.

**ISTS:** An individual sewage treatment system having a design flow of no more than 5,000 gallons per day.

***Optional definition:***

**Industrial Waste:** Sewage containing waste from activities other than sanitary waste from industrial activities including, but not limited to, the following uses defined under the Standard Industrial Classification (SIC) Codes established by the U.S. Office of Management and Budget.

SIC CODE(S)	INDUSTRY CATEGORY
753-7549	Automotive Repairs and Services
7231,7241	Beauty Shops, Barber Shops
7211-7219	Laundry Cleaning and Garment Services
4011-4581	Transportation (Maintenance only)
8062-8069	Hospitals
2000-3999	Manufacturing
2000-2099	Food Products
2100-2199	Tobacco Products
2400-2499	Lumber and Wood Products, except Furniture
2500-2599	Furniture and Fixtures
2600-2699	Paper and Allied Products
2700-2799	Printing, Publishing, and Allied Industries
2800-2899	Chemicals and Allied Products
2900-2999	Petroleum Refining and Related Industries
3000-3099	Rubber and Miscellaneous Plastics
3100-3199	Leather Tanning and Finishing
3000-3099	Rubber and Miscellaneous Plastics
3100-3199	Leather Tanning and Finishing
3200-3299	Stone, Clay, Glass, and Concrete Products
3300-3399	Primary Metal Industries
3400-3499	Fabricated Metal Products (except Machinery, and Transportation Equipment
3500-3599	Industrial and Commercial Machinery and Computer Equipment
3700-3799	Transportation Equipment
3800-3899	Measuring, Analyzing, and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks
3900-3999	Miscellaneous Manufacturing Industries

**Malfunction:** The partial or complete loss of function of a SSTS component, which requires a corrective action to restore its intended function.

**Management Plan:** A plan that describes necessary and recommended routine operational and maintenance requirements, periodic examination, adjustment, and testing, and the frequency of each to ensure system performance meets the treatment expectations, including a planned course of action to prevent an illegal discharge.

**Minor Repair:** The repair or replacement of an existing damaged or faulty component/part of an SSTS that will return the SSTS to its operable condition. The repair shall not alter the original area, dimensions, design, specifications or concept of the SSTS.

**MSTS:** A “mid-sized subsurface sewage treatment system” under single ownership that receives sewage from dwellings or other establishments having a design flow of more than 5,000 gallons per day to a maximum of 10,000 gallons per day.

**Notice of Noncompliance:** A written document issued by the Department notifying a system owner that the owner’s onsite/cluster treatment system has been observed to be noncompliant with the requirements of this Ordinance.

**MPCA:** Minnesota Pollution Control Agency.

**Qualified Employee:** An employee of the state or a local unit of government, who performs site evaluations or designs, installs, maintains, pumps, or inspects SSTS as part of the individual’s employment duties and is registered on the SSTS professional register verifying specialty area endorsements applicable to the work being conducted.

**Record Drawings:** A set of drawings which to the fullest extent possible document the final in-place location, size, and type of all SSTS components including the results of any materials testing performed and a description of conditions during construction of the system.

**Sewage:** Waste from toilets, bathing, laundry, or culinary activities or operations or floor drains associated with these sources, including household cleaners and other constituents in amounts normally used for domestic purposes.

**SSTS:** Subsurface sewage treatment system Including an ISTS, MSTs or LSTS.

**State:** The State of Minnesota.

**Treatment Level:** Treatment system performance levels defined in Minnesota Rules, Chapter 7083.4030, Table III for testing of proprietary treatment products, which include the following:

Level A: cBOD<sub>5</sub> ≤ 15 mg/L; TSS ≤ 15 mg/L; fecal coliforms ≤ 1,000/100 mL.

Level B: cBOD<sub>5</sub> ≤ 25 mg/L; TSS ≤ 30 mg/L; fecal coliforms ≤ 10,000/100 mL.

Level C: cBOD<sub>5</sub> ≤ 125 mg/L; TSS ≤ 80 mg/L; fecal coliforms N/A.

**Comment:**

*This definition is necessary to understand Table IX (Minnesota Rules, Chapter 7080.2150, Subp. 3(E)).*

**Type I System:** An ISTS that follows a standard trench, bed, at-grade, mound, or graywater system design in accordance with MPCA rules, Minnesota Rules, Chapter 7080.2200 through 7080.2240.

**Type II System:** An ISTS with acceptable modifications or sewage containment system that may be permitted for use on a site not meeting the conditions acceptable for a standard Type I system. These include systems on lots with rapidly permeable soils or lots in floodplains and privies or holding tanks.

**Type III System:** A custom designed ISTS having acceptable flow restriction devices to allow its use on a lot that cannot accommodate a standard Type I soil treatment and dispersal system.

**Type IV System:** An ISTS, having an approved pretreatment device and incorporating pressure distribution and dosing, that is capable of providing suitable treatment for use where the separation distance to a shallow saturated zone is less than the minimum allowed.

**Type V System:** An ISTS, which is a custom engineered design to accommodate the site taking into account pretreatment effluent quality, loading rates, loading methods, groundwater mounding, and other soil and other relevant soil, site, and wastewater characteristics such that groundwater contamination by viable fecal coliforms is prevented.

## ARTICLE III GENERAL PROVISIONS

### ARTICLE III, SECTION 1.0 SCOPE

This Ordinance regulates the siting, design, installation, alterations, operation, maintenance, monitoring, and management of all SSTS within the County's applicable jurisdiction including, but not necessarily limited to individual SSTS and cluster or community SSTS, privy vaults, and other non-water carried SSTS. All sewage generated in unsewered areas of the County shall be

treated and dispersed by an approved SSTS that is sited, designed, installed, operated, and maintained in accordance with the provisions of this Ordinance or by a system that has been permitted by the MMPCA.

***Option:***

*Large SSTS, which require State Disposal System (SDS) permits, also may be regulated under local ordinance if desired.*

**ARTICLE III, SECTION 2.0 JURISDICTION**

The jurisdiction of this Ordinance shall include all lands of the County except for incorporated areas that administer a Subsurface Sewage Treatment System (SSTS) program by Ordinance within their incorporated jurisdiction, which is at least as strict as this Ordinance and has been approved by the County. The County (DEPARTMENT NAME) shall keep a current list of local jurisdictions within the County administering a SSTS program.

***Note:***

*Cities and townships may enact their own SSTS ordinances to administer and enforce. If so, these ordinances must conform to the county's regulatory strategy and be administratively and technically as strict as the county ordinance. Before the cities or townships can adopt SSTS ordinances, the county is required to review and confirm that the ordinances meet the strictness requirement. The county must permit and inspect SSTS within cities and townships that do not administer an effective SSTS ordinance. See Minnesota Rules, Chapter 7082.0040, Subp. 2&3.*

**ARTICLE III, SECTION 3.0 ADMINISTRATION**

**3.01 COUNTY ADMINISTRATION**

The County (DEPARTMENT NAME) Department shall administer the SSTS program and all provisions of this Ordinance. At appropriate times, the County shall review this and revise and update this Ordinance as necessary. The County shall employ or retain under contract qualified and appropriately licensed professionals to administer and operate the SSTS program.

**3.02 STATE OF MINNESOTA**

Where a single SSTS or group of SSTS under single ownership within one-half mile of each other, have a design flow greater than 10,000 gallons per day, the owner or owners shall make application for and obtain a State Disposal System permit from MPCA. For any SSTS that has a measured daily flow for a consecutive seven-day period which equals or exceeds 10,000 gallons per day, a State Disposal System permit is required.

SSTS serving establishments or facilities licensed or otherwise regulated by the State shall conform to the requirements of this Ordinance.

**3.03 CITIES AND TOWNSHIPS**

Any jurisdiction within the County that regulates SSTS must comply with the standards and requirements of this Ordinance. The standards and ordinance of the jurisdiction may be administratively and technically more restrictive than this Ordinance.



**ARTICLE III, SECTION 4.0 VALIDITY**

The validity of any part of this Ordinance shall not be affected by the invalidity of any other parts of this Ordinance where the part can be given effect irrespective of any invalid part or parts.

**ARTICLE III, SECTION 5.0 LIABILITY**

Any liability or responsibility shall not be imposed upon the department or agency or any of its officials, employees, or other contract agent, its employees, agents or servants thereof for damage resulting from the defective construction, operation, or abandonment of any onsite or cluster treatment system regulated under this rule by reason of standards, requirements, or inspections authorized hereunder.

**Comment:**

*Liability of the County must be limited to effectively administer this rule. This protection should be provided only against claims where the county employees or its agents act under the authorities expressly given to the county by statutes or adopted ordinances. If county employees or its agents assume authorities not expressly assigned to the county, the courts might not extend the limits of liability to include such actions.*

**ARTICLE III, SECTION (6.0) ADVISORY COMMITTEE (OPTIONAL)**

**Option:**

*Ordinance language is provided here for the option of establishing an advisory committee to advise the County board, department or staff by offering technical advice, evaluating the regulatory program effectiveness periodically to assess whether it is achieving its purpose and goals, and recommending needed program improvements. Numbers or language in parentheses indicates where optional methods might be considered.*

**6.01 Functions**

*The advisory group shall consult with the County with respect to implementation and administration of this Ordinance and to make recommendations regarding program improvements. The advisory group may provide technical assistance regarding evaluation of treatment technology design and performance, conduct periodic program audits to report on the effectiveness of the rules and their administration with respect to their intent and application, and provide other support where needed in the development and performance of the regulatory program. The focus of the advisory group is to be only on the regulatory program. It is not to advise on specific regulatory actions except as they relate to overall program procedures.*

**6.02 Membership**

*Membership shall consist of representatives from stakeholder groups and citizens as appropriate. The number of committee members shall be at least (5) but no more than (15). County staff shall not be committee members but shall attend all meetings and provide administrative support to the committee.*

**6.03 Appointments and Terms**

*Members shall be appointed by the County Board for (3 year) staggered terms. (Their terms may be renewed.) The members shall serve (with/without) compensation in accordance with County policy. Expenses to attend committee meetings shall be reimbursed by the County according to County's reimbursement procedures and policies.*

**6.04 Administration**

*The committee shall be chaired by a committee member appointed by the committee members for a term not to exceed (3) years. The chair shall be responsible for establishing meeting agenda, meeting dates, and meeting locations. Agenda items shall be determined by the committee and may include any aspect of the program. The County staff shall provide administrative support as needed and requested by the committee chair. The County staff may suggest meeting agenda items.*

**6.05 Meeting Frequency**

*The committee shall meet as often as deemed necessary by the committee chair. At a minimum, the committee shall meet (twice) annually.)*

**ARTICLE IV GENERAL REQUIREMENTS**

**Note:**

*Local SSTS programs must retain the specific provisions in Minnesota Rules, Chapters 7080 and 7081 that are listed in 7082.0100, Subp. 1 and Subp. 3. However, counties may make these provisions stricter. Many of the necessary provisions are included in this article below. Others appear in other articles of this Ordinance. Each required provision and their respective locations in this Ordinance are cited in the Ordinance Checklist provided by the MPCA commissioner, which appears in Appendix A.*

**ARTICLE IV, SECTION 1.0 RETROACTIVITY**

**1.01 All SSTS**

Except as explicitly set forth in Article IV, Section 1.02, all provisions of this Ordinance shall apply to any SSTS regardless of the date it was originally permitted.

**1.02 Existing Permits**

Unexpired permits which were issued prior to the effective date shall remain valid under the terms and conditions of the original permit until the original expiration date or until a change in system ownership whichever is earlier.

**1.03 SSTS on Lots Created Before January 23, 1996**

All lots created after January 23, 1996 must have a minimum of two soil treatment and dispersal areas that can support trenches, seepage beds, mounds, and at-grade systems as described in Minnesota Rules, Chapters 7080. 2200 through 7080.2230 or site conditions described in 7081.0270, Subp. 3 through 7.

**1.04 Existing SSTS without Permits**

Existing SSTS with no permits of record shall require a permit and be brought into compliance with the requirements of this Ordinance regardless of the date they were originally constructed.

**ARTICLE IV, SECTION 2.0 UPGRADE, REPAIR, REPLACEMENT, AND ABANDONMENT**

**2.01 SSTS Capacity Expansions**

Expansion of an existing SSTS must include any system upgrades that are necessary to bring the entire system into compliance with the prevailing provisions of this Ordinance at the time of the expansion.

**2.02 Bedroom Additions**

The owner is allowed 5 years from the date of issuance of a bedroom addition permit to upgrade, repair, replace or abandon an existing system if the following conditions apply:

- A. The (DEPARTMENT) issues a permit to add a bedroom;
- B. A SSTS inspection is triggered by a bedroom addition permit request;
- C. The existing system was installed between May 27, 1989 and January 3, 1996;
- D. The SSTS does not comply with Minnesota Rules, Chapter 7080.1500, Subp. 4.B.;
- E. The SSTS is not determined to be an imminent threat to public health or safety in accordance with Minnesota Rules, Chapter 7080.1500, Subp. 4.A.

**2.03 Failure to Protect Groundwater**

An SSTS that is determined not to be protective of groundwater in accordance with Minnesota Rules, Chapter 7080.1500, Subp. 4.B shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this Ordinance within (18 months) of receipt of a Notice of Noncompliance.

**2.04 Imminent Threat to Public Health or Safety**

An SSTS that is determined to be an imminent threat to public health or safety in accordance with Minnesota Rules, Chapter 7080.1500, Subp. 4A shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this Ordinance within 10 months of receipt of a Notice of Noncompliance.

**2.05 Abandonment**

Any SSTS, or any component thereof, which is no longer intended to be used, must be abandoned in accordance with Minnesota Rules, Chapter 7080.2500.

**ARTICLE IV, SECTION 3.0 SSTS IN FLOODPLAINS**

SSTS shall not be located in a floodway and wherever possible, location within any part of a floodplain should/shall be avoided. If no option exists to locate a SSTS outside of a floodplain, location within the flood fringe is allowed if the requirements in Minnesota Rules, Chapter 7080.2270 and all relevant local requirements are met.

#### **ARTICLE IV, SECTION 4.0 CLASS V INJECTION WELLS**

All owners of new or replacement SSTS that are considered to be Class V injection wells, as defined in the Code of Federal Regulations, title 40, part 144, are required by the Federal Government to submit SSTS inventory information to the Environmental Protection Agency as described in CFR40 part 144. Further, owners are required to identify all Class V injection wells in property transfer disclosures.

#### **ARTICLE IV, SECTION 5.0 SSTS PRACTITIONER LICENSING**

No person shall engage in site evaluation, inspection, design, installation, construction, alternation, extension, repair, maintenance, or pumping of SSTS without an appropriate and valid license issued by MPCA in accordance with Minnesota Rules, Chapter 7083 except as exempted in 7083.0700.

***Option:***

*Chapter 7083 exempt a property owner who wishes to construct a SSTS, which is to treat wastewater solely from their own dwelling or seasonal dwelling, from the licensing requirement if a site evaluation and a system design are obtained from appropriately licensed practitioners. While counties are not allowed to require additional local licenses or other professional credentials, counties might consider requiring owners who wish to install or construct their own systems to a) attend SSTS construction training and/or b) sign an agreement indemnifying the county against claims due to the failure of the owner to comply with the provisions of this ordinance.*

#### **ARTICLE IV, SECTION 6.0 PROHIBITIONS**

##### **6.01 Occupancy or Use of a Building without a Compliant SSTS**

It is unlawful for any person to maintain, occupy, or use any building intended for habitation that is not provided with a wastewater treatment system that disposes of wastewater in a manner that does not comply with the provisions of this Ordinance.

##### **6.02 Sewage Discharge to Ground Surface or Surface Water**

It is unlawful for any person to construct, maintain, or use any SSTS system regulated under this Ordinance that results in raw or partially treated wastewater seeping to the ground surface or flowing into any surface water. Any surface discharging system must be permitted under the National Pollutant Discharge Elimination System program by the MPCA.

##### **6.03 Sewage Discharge to a Well or Boring**

It is unlawful for any person to discharge raw or treated wastewater into any well or boring as described in Minnesota Rules, Chapter 4725.2050, or any other excavation in the ground that is not in compliance with this ordinance.

##### **6.04 Discharge of Hazardous or Deleterious Materials**

It is unlawful for any person to discharge into any treatment system regulated under this Ordinance any hazardous or deleterious material that adversely affects the treatment or dispersal performance of the system or groundwater quality.

## ARTICLE V SSTS STANDARDS

### ARTICLE V, SECTION 1.0 STANDARDS ADOPTED BY REFERENCE

The County hereby adopts by reference Minnesota Rules, Chapters 7080 and 7081 in their entirety as now constituted and from time to time amended. This adoption does not supersede the County's right or ability to adopt local standards that are in compliance with Minnesota Statute 115.55.

#### **Options:**

- a) Other applicable local ordinances would be referenced here as appropriate.
- b) Other applicable sections of federal and state regulations such as federal septage management rules, and recreational vehicle waste tank disposal rules would be referenced here as appropriate.
- c) Other applicable federal regulations such as U.S. EPA Underground Injection Control Program Class V rules, Clean Water Act rules, and Drinking Water Act rules would be referenced here as appropriate.

### ARTICLE V, SECTION 2.0 AMENDMENTS TO THE ADOPTED STANDARDS

#### 2.01 List of Adopted Standards

##### **Note**

Counties may adopt stricter provisions than the minimum requirements in Minnesota Rules, Chapters 7080 and 7081. For example, counties may choose to allow only Type I and Type II systems. If stricter provisions are adopted, a list of all technical and administrative differences between the ordinance and the adopted standards of 7080 and 7081 must be provided to the MPCA commissioner and public upon request (7082.0100, Subp. 2). (Counties should consider going beyond this requirement and list the differences in the ordinance within this section to assist designers, installers, and other service providers.)

#### 2.02 Determination of Hydraulic Loading Rate and SSTS Sizing

##### **Options:**

Chapter 7082.0100, Subp. 3(P) requires that the Ordinance specify Table IX or IXa in Chapter 7080.2150, Subp.3(E) as the allowed method for determining the hydraulic loading rate for sizing of the infiltration area. Three different options for this required provision are provided below:

- ◆ *Table IX from Minnesota Rules, Chapter 7080.2150, Subp. 3(E) entitled "Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Detail Soil Descriptions" and herein adopted by reference shall be used to determine the hydraulic loading rate and infiltration area for all SSTS permitted under this ordinance.*
- ◆ *Table IXa from Minnesota Rules, Chapter 7080.2150, Subp. 3(E) entitled "Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Percolation Tests" and herein adopted by reference shall be*

*used to determine the hydraulic loading rate and infiltration area for all SSTS permitted under this ordinance.*

- ♦ *Table IX entitled “Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Detail Soil Descriptions” and Table IXa entitled “Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Percolation Tests” from Minnesota Rules, Chapter 7080.2150, Subp. 3(E) and herein adopted by reference shall both be used to size SSTS infiltration areas using the larger sizing factor of the two for SSTS design.*

### 2.03 Compliance Criteria for Existing SSTS

SSTS built before April 1, 1996 outside of areas designated as shoreland areas, wellhead protection areas, or SSTS providing sewage treatment for food, beverage, or lodging establishments must have at least two feet of vertical separation between the bottom of the dispersal system and seasonal saturation or bedrock.

*Optional Provision:*

*SSTS built after March 31, 1996 or SSTS located in a Shoreland area, wellhead Protection area, or serving a food, beverage, or lodging establishment as defined under 7080.1100, Subp. 84 shall have a three-foot vertical separation between the bottom soil infiltrative surface and the periodically saturated soil and/or bedrock. Existing systems that have no more than a 15 percent reduction in this separation distance (a separation distance no less than 30.6 inches) to account for settling of sand or soil, normal variation of separation distance measurements and interpretation of limiting layer characteristics may be considered compliant under this Ordinance. The vertical separation measurement shall be made outside the area of system influence but in an area of similar soil. 7080.1500, Subp.4*

### 2.04 Holding Tanks

*Option:*

*If counties wish to allow **holding tanks**, the specific conditions under which their use will be allowed must be specified (7082.0100, Subp.3G). These conditions should be listed as an amendment to the adopted standards in this section. Note that to qualify as a holding tank, tanks must comply with 7080.2290, items A through F. Further, all owners of holding tanks shall be issued an operating permit (7082.0600, Subp.2A), which must include the minimum provisions listed in 7082.0600, Subp.2B, (1) through (8). See Article V. Section 2.0 of this Ordinance.*

*Many jurisdictions prohibit or severely limit the use of holding tanks because of the concern that owners will allow illicit discharges to occur. Yet, holding tanks are a practical method of handling wastewater for a variety of applications where water use is low such as in seasonal homes, buildings located on sensitive sites, parks, playgrounds service station drains ,etc. However, reliable management, which ensures that the tanks are pumped and the contents are hauled to permitted treatment facilities is a critical and*

necessary element of holding tank use. With rigorous management assured, holding tanks offer safe, effective and affordable options for low water use applications.

Example holding tank provisions are provided:

**Restrictive Provision:** Holding tanks may be allowed for the following applications; as replacements for existing failing SSTS, SSTS that pose an imminent threat to public health or safety, or for new construction on lots existing as of the date of the enactment of this Ordinance and only where it can be shown conclusively that a SSTS permitted under this Ordinance cannot be feasibly installed. Holding tanks shall not be allowed for all other wastewater applications except for the exempted uses listed here. (List of exemptions to be allowed.)

**Conditional Provision:** Holding tanks may be used for single family homes and other buildings with limited water use under the following conditions:

- 1) The owner shall install a holding tank in accordance with Minnesota Rules Section 7080.2290.
- 2) The owner shall install a remote reading water meter to continuously record indoor water use.
- 3) The owner shall maintain a valid contract with a licensed liquid waste hauler to pump and haul the holding tank to a licensed treatment facility.
- 4) The holding tank shall be regularly pumped, no less frequently than bi-weekly or other regular schedule agreed upon with the Department.
- 5) The pumper shall certify each date the tank is pumped, the volume of the liquid waste removed, the treatment facility to which the waste was discharged, and the water meter reading at the time of pumping and report to the Department that the holding tank is pumped less frequently than bi-weekly or other schedule agreed upon with the Department.

Failure to meet these requirements will result in (insert penalties to be applied).

## **ARTICLE V, SECTION 3.0 VARIANCES**

### **3.01 Variance Requests**

A property owner may request a variance from the standards as specified in this ordinance pursuant to county policies and procedures.

### **3.02 Affected Agency**

Variations that pertain to the standards and requirements of the State of Minnesota must be approved by the affected State Agency pursuant to the requirements of the State Agency.

**Note:**

Counties may request a variance from MR Chapter 7082 or public health or environmental protection standards in Chapter 7080.2150, Subp. 2 and 7081.0080, Subp. 2 through Subp. 5 from MPCA. Counties may approve variances from standards and criteria not listed above on a case-by-case basis if local variance procedures are

followed. The language below, which uses the Board of Adjustment for variance approvals is offered as an optional provision.

**Optional provision:**

**3.03 Board of Adjustment**

*The Board of Adjustment shall have the authority only to consider variances to horizontal setbacks from property lines, rights of way, structures, or buildings. Variances shall only be permitted when they are in harmony with the general purposes and intent of this Ordinance where there are practical difficulties or particular hardship in meeting the strict letter of this Ordinance. Variance requests to deviate from the design flow determination procedures in Minnesota Rules, Chapter 7081.0110 if the deviation reduces the average daily estimated flow from greater than 10,000 gallons per day to less than 10,000 gallons per day, or to provisions in 7080.2150, Subp. 2 and 7081.0080, Subp. 2 through 5 regarding the vertical separation required beneath the treatment and dispersal soil system and saturated soil or bedrock from the required three feet of unsaturated soil material (except as provided in 7082.1700, Subp. 4D) must be approved by MPCA. Variances to wells and water supply lines must be approved by the Minnesota Department of Health.*

**Comment:**

*If variances from more technical requirements are to be considered by the Board of Adjustment, establishment of an Advisory Committee as described in the optional provision under Article III, Section 6.0 should be considered. The committee would advise the Board of Adjustment on the merits of requested variances from technical requirements in this Ordinance.*

A. *Any property owner requesting relief from the strict application of the provisions in this Ordinance must complete and submit an Application for Variance to the Department on a form provided by the Department. The variance request must include, as applicable:*

- 1. A statement identifying the specific provision or provisions in the ordinance from which the variance is requested;*
- 2. A description of the hardship that prevents compliance with the rule;*
- 3. The alternative measures that will be taken to achieve a comparable degree of compliance with the purposes and intent of the applicable provisions;*
- 4. The length of time for which the variance is requested;*
- 5. Cost considerations only if a reasonable use of the property does not exist under the term of the Ordinance; and*
- 6. Other relevant information requested by the Department as necessary to properly evaluate the variance request.*

B. *The appropriate fee shall be paid at the time of submittal of the application to receive consideration by the Board of Adjustment*



- C. *Upon receipt of the variance application, the Department shall decide if a site investigation conducted by the Department will be necessary. After the necessary information has been gathered, the Department shall make a written recommendation to approve or deny the variance to the Board of Adjustment.*
- D. *The Board of Adjustment shall make the final decision after conducting a public hearing. The variance may be granted provided that:*
  - 1. *The condition causing the demonstrated hardship is unique to the property and was not caused by the actions of applicant;*
  - 2. *The granting of the variance will not be contrary to the public interest or damaging to the rights of other persons or to property values in the vicinity;*
  - 3. *The property owner would have no reasonable use of the land without the variance;*
  - 4. *The granting of the variance would not allow a prohibited use; and*
  - 5. *The granting of the variance would be in accordance with Minnesota Rules, Chapters 7080, 7081, and 7082.*
- E. *In granting a request for a variance, the Board of Adjustment may attach such conditions as it deems necessary to conform to the purpose and intent of this Ordinance.*
- F. *Any violation of the terms and conditions of a variance issued pursuant to this Ordinance, or any violation of any provision of this Ordinance relating to the specific issue of the variance, shall result in immediate revocation of the variance.*
- G. *Any variance granted shall automatically expire if the system is not installed within one year of the grant of the variance.*
- H. *An appeal from any order, requirement, decision, or determination of the Board of Adjustment in accordance with its policies and procedures.*

## **ARTICLE VI SSTS PERMITTING**

### **ARTICLE VI, SECTION 1.0 PERMIT REQUIRED**

It is unlawful for any person to construct, install, modify, replace, or operate a SSTS without the appropriate permit from the (DEPARTMENT NAME), (COUNTY NAME). The issuing of any permit, variance, or conditional use under the provisions of this ordinance shall not absolve the applicant of responsibility to obtain any other required permit.

### **ARTICLE VI, SECTION 2.0. CONSTRUCTION PERMIT**

A construction permit shall be obtained by the property owner or an agent of the property owner from the County prior to the installation, construction, replacement, modification, alteration, repair, or capacity expansion of a SSTS. The purpose of this permit is to ensure that the proposed construction activity is sited, designed, and constructed in accordance with the provisions of this Ordinance by appropriately certified and/or licensed practitioner(s).

### **2.01 Activities Requiring a Construction Permit**

A construction permit is required for installation of a new SSTS, for replacement of an existing SSTS, or for any repair or replacement of components that will alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout, or function.

### **2.02 Activities Not Requiring a Permit**

A construction permit is not required for minor repairs or replacements of system components that do not alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout, or function.

***Optional provision:***

*The following provision should be considered in counties that issue building and/or land use permits.*

### **2.03 Construction Permit Required to Obtain Building Permit**

*For any property on which a SSTS permit is required, approval and issuance of a valid SSTS Construction Permit must be obtained before a building or land use permit may be issued by the Department.*

***Optional provision:***

### **2.04 Conformance to Prevailing Requirements**

*Any activity involving an existing system that requires a Construction Permit shall require that the entire system be brought into compliance with this Ordinance.*

### **2.05 Permit Application Requirements**

Construction Permit applications shall be made on forms provided by the (DEPARTMENT) and signed by the applicant and an appropriately certified practitioner including the practitioner's certification number and date of expiration. The applications shall include the documents listed in items A through E below.

- A. Name, mailing address, telephone number, and email address.
- B. Property Identification Number and address or other description of property location.
- C. Site Evaluation Report as described in Minnesota Rules, Chapter 7080.1730
- D. Design Report as described in Minnesota Rules, Chapter 7080.2430.
- E. Management Plan as described in Minnesota Rules, Chapter 7082.0600.

### **2.06 Application Review and Response**

The Department shall review a permit application and supporting documents. Upon satisfaction that the proposed work will conform to the provisions of this Ordinance, the Department shall issue a written permit authorizing construction of the SSTS as designed. In the event the applicant makes a significant change to the approved application, the applicant must file an amended application detailing the changed conditions for approval prior to initiating or continuing construction, modification, or operation for approval or

denial. The Department shall complete the review of the amended application within (15) working days of receipt of the amended application. If the permit application is incomplete or does not meet the requirements of this ordinance the Department shall deny the application. A notice of denial shall be provided to the applicant, which must state the reason for the denial.

### **2.07 Appeal**

The applicant may appeal the Departments decision to deny the Construction Permit in accordance with the County's established policies and appeal procedures.

### **2.08 Permit Expiration**

The Construction Permit is valid for a period of no more than one year from its date of issue. Satisfactory completion of construction shall be determined by receipt of final record drawings and a signed certification that the construction or installation of the system was completed in reasonable conformance with the approved design documents by a qualified employee of the Department or a licensed inspection business, which is authorized by the Department and independent of the owner and the SSTS installer.

**Comment:**

*This provision is included to track the status of the Construction Permit. If construction does not proceed within the valid permit period, the permit should be voided automatically and the applicant notified. A formal closure of the permit is needed to ensure that the Department is aware and that proper construction documents are submitted and recorded so that a Certificate of Compliance may be issued.*

**Optional:**

### **2.09 Extensions and Renewals**

*The Department may grant an extension of the Construction Permit if the construction has commenced prior to the original expiration date of the permit. (The permit may be extended for a period of no more than (6) months.*

**Comment:**

*This provision provides the opportunity for the Department to require the applicant to reapply and conform to the prevailing rules if they have been revised since the original date of the permit.*

### **2.10 Transferability**

A Construction Permit shall not be transferred to a new owner. The new owner must apply for a new Construction Permit in accordance with this section.

**Comment:**

*This provision provides the opportunity for the Department to require the new owner to conform to any revised rules since the date of the original permit but also provides a "teachable moment" to ensure the new owner is aware of the SSTS and his/her responsibilities associated with it.*

### 2.11 Suspension or Revocation

The Department may suspend or revoke a Construction Permit issued under this section for any false statements, misrepresentations of facts on which the Construction Permit was issued, or unauthorized changes to the system design that alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout, or function. A notice of suspension or revocation and the reasons for the suspension or revocation shall be conveyed in writing to the permit holder. If suspended or revoked, installation or modification of a treatment system may not commence or continue until a valid Construction Permit is obtained.

### 2.12 Posting

The Construction Permit shall be posted on the property in such a location and manner so that the permit is visible and available for inspection until construction is completed and certified.

## ARTICLE VI, SECTION 3.0 OPERATING PERMIT

### 3.01 SSTS Requiring an Operating Permit

An Operating Permit shall be required of all owners of new holding tanks or MSTs or any other system deemed by the Department to require operational oversight. Sewage shall not be discharged to a holding tank or MSTs until the (DEPARTMENT) certifies that the MSTs or holding tank was installed in substantial conformance with the approved plans, receives the final record drawings of the MSTs, and a valid Operating Permit is issued to the owner.

### 3.02 Permit Application Requirements

*Comment:*

Minnesota Rules, Chapter 7082.0500, Subp. 2 requires that the local unit of government issue and enforce operating permits for all holding tanks, Type IV and Type V systems, and MSTs and any other system deemed by the local unit of government to require operational oversight. Also, Chapter 7082.0100, Subp. 3L requires that the local program require owners of systems that are not operated under a management plan (typically existing SSTS) must inspect and remove solids from septic tanks if necessary every three years. Counties should consider requiring operating permits for these systems as well to confirm that inspections are performed when required and solids removed as necessary. Operating permits are also useful in identifying systems that are no longer in use and must be properly abandoned.

- A. Application for an Operating Permit shall be made on a form provided by the (DEPARTMENT) including:
- (1) Owner name, mailing address, telephone, and email address
  - (2) Construction Permit reference number and date of issue
  - (3) Final record drawings of the treatment system

- (4) Owners of holding tanks must submit a copy of a valid executed monitoring and disposal contract with a licensed maintenance business

**B. Monitoring and Disposal Contract**

Owners of holding tanks shall provide to the (DEPARTMENT) a copy of a valid monitoring and disposal contract executed between the owner and a licensed maintenance business, which guarantees the removal of the holding tank contents in a timely manner that prevents an illegal discharge in accordance with *Minnesota Rules, Chapter 7082.0100, Subp. 3G*. This requirement is waived if the owner is a farmer who is exempt from licensing under Minnesota Statutes, section 115.56, subdivision 3, paragraph (b), clause (3).

*Comment:*

*While individual contracts may be terminated by either the owner or the licensed business, counties should consider requiring that the owner hold a valid contract with a licensed maintenance business at all times until which time the holding tank is abandoned or the property sold.*

*Optional:*

**C. SSTS existing prior to the effective date of this ordinance**

*All SSTS existing prior to the effective date of this ordinance shall require an operating permit upon transfer of ownership, replacement, any modification or expansion that requires a permit, or following any SSTS enforcement action.*

**3.03 Department Response**

The Department shall review the record drawings, operation and maintenance manual, management plan, maintenance and servicing contract, and any other pertinent documents as appropriate for accuracy and completeness. If any deficiencies are identified, the operating permit shall be denied until the deficiencies are corrected to the satisfaction of the Department. If the submitted documents fulfill the requirements, the Department shall issue an operating permit within (10) working days of receipt of the permit application.

*Comment:*

*Consideration should be given to allow a temporary permit to be issued to alleviate a hardship if the owner has need to occupy the building before the operating permit can be issued. The temporary permit should be limited to only allowing operating the treatment tank(s) as a holding tank until the operating permit is issued.*

**3.04 Operating Permit Terms and Conditions**

The Operating Permit shall include the following (*see Minnesota Rules, Chapter 7082.0600, Subp.2.B*):

- A. System performance requirements
- B. System operating requirements
- C. Monitoring locations, procedures and recording requirements

- D. Maintenance requirements and schedules
- E. Compliance limits and boundaries
- F. Reporting requirements
- G. Department notification requirements for non-compliant conditions
- H. Valid contract between the owner and a licensed maintenance business
- I. Disclosure, location and condition of acceptable soil treatment and dispersal system site.
- J. Descriptions of acceptable and prohibited discharges.

### **3.05 Permit Expiration and Renewal**

- A. Operating Permits shall be valid for the specific term stated on the permit as determined by the Department.
- B. An Operating Permit must be renewed prior to its expiration. If not renewed, the Department may require the system to be removed from service or operated as a holding tank until the permit is renewed. If not renewed within in (90) calendar days of the expiration date, the County may require that the system be abandoned in accordance with Article IV, Section 4.0.
- C. The Department shall notify the holder of an operating permit at least (90) calendar days prior to expiration of the permit. The Owner must apply for renewal at least (30) calendar days before the expiration date.
- D. Application shall be made on a form provided by the Department including:
  - (1) Applicant name, mailing address and phone number.
  - (2) Reference number of previous owner's operating permit.
  - (3) Any and all outstanding Compliance Monitoring Reports as required by the Operating Permit.
  - (4) Certified treatment system inspection signed and/or sealed by a certified designer, maintenance contractor, or operator at the discretion of the County.
  - (5) Any revisions made to the operation and maintenance manual.
  - (6) Payment of application review fee as determined by the County.

### **3.06 Amendments to Existing Permits not Allowed**

The County may not amend an existing permit to reflect changes in this Ordinance until the permit term has expired and is renewed, unless an amendment is necessary to eliminate an imminent threat to public health or safety.

### **3.07 Transfers**

The operating permit may not be transferred. A new owner shall apply for an operating permit in accordance with Article IV, Section 3.02 of this Ordinance. The Department shall not terminate the current permit until (60) calendar days after the date of sale unless

an imminent threat to public health and safety exists. To consider the new owner's application, the Department may require a performance inspection of the treatment system certified by a licensed inspector or qualified employee.

**3.08 Suspension or Revocation**

- A. The Department may suspend or revoke any operating permit issued under this section for any false statements or misrepresentations of facts on which the Operating Permit was issued.
- B. Notice of suspension revocation and the reasons for revocation shall be conveyed in writing to the owner.
- C. If suspended or revoked, the Department may require that the treatment system be removed from service, operated as a holding tank, or abandoned in accordance with Article IV, Section 4.0.
- D. At the Department's discretion, the operating permit may be reinstated or renewed upon the owner taking appropriate corrective actions.

**3.09 Compliance Monitoring**

- A. Performance monitoring of a SSTS shall be performed by a licensed inspection business or licensed service provider hired by the holder of the operating permit in accordance with the monitoring frequency and parameters stipulated in the permit.
- B. A monitoring report shall be prepared and certified by the licensed inspection business or licensed service provider. The report shall be submitted to the Department on a form provided by the Department on or before the compliance reporting date stipulated in the operating permit. The report shall contain a description of all maintenance and servicing activities performed since the last compliance monitoring report as described below:
  - (1) Owner name and address
  - (2) Operating Permit number
  - (3) Average daily flow since last compliance monitoring report
  - (4) Description of type of maintenance and date performed
  - (5) Description of samples taken (if required), analytical laboratory used, and results of analyses
  - (6) Problems noted with the system and actions proposed or taken to correct them
  - (7) Name, signature, license and license number of the licensed professional who performed the work

**ARTICLE VI, SECTION 4.0 ABANDONMENT CERTIFICATION**

**4.01 Purpose**

The purpose of the System Abandonment Certification is to ensure that a treatment system no longer in service is abandoned within a reasonable time following

decommissioning and in a manner that protects public health, safety and water quality. It also terminates all permits associated with the system.

*Comment:*

*Proper abandonment of systems must be confirmed for health and safety reasons. An owner may overlook the abandonment requirement when discontinuing use of the system. If the county has an operating permit program, these systems can be readily identified when the owner fails to renew the operating permit. If the county does not have an operating permit program, the county must rely on disclosure statements and property transfers to identify systems that have not been properly abandoned. This approach is not reliable however. Alternatively, abandonment requirements could be sent out with maintenance reminders. When a decommissioned system or component is discovered, the county should issue a Notice of Violation, which directs the owner to obtain an abandonment certificate from a licensed/certified contractor.*

#### **4.02 Abandonment Requirements**

- A. Whenever the use of a SSTS or any system component is discontinued as the result of a system repair, modification, replacement or decommissioning following connection to a municipal or private sanitary sewer, or condemnation or demolition of a building served by the system, further use of the system or any system component for any purpose under this Ordinance shall be prohibited.
- B. Continued use of a treatment tank where the tank is to become an integral part of a replacement system or a sanitary sewer system requires the prior written approval of the Department.
- C. An owner of an SSTS must retain a licensed installation business to abandon all components of the treatment system within (60) calendar days of a system. Abandonment shall be completed in accordance with Minnesota Rules, Chapter 7080.2500. No prior notification of the Department of an owner's intent to abandon a system is necessary.
- D. A report of abandonment certified by the licensed installation business shall be submitted to the Department. The report shall include:
  - (1) Owner's name and contact information
  - (2) Property address
  - (3) System construction permit and operating permit
  - (4) The reason(s) for abandonment
  - (5) A brief description of the abandonment methods used, description of the system components removed or abandoned in place, and disposition of any materials or residuals.

#### **4.03 Abandonment Certificate**

Upon receipt of an abandonment report and its determination that the SSTS has been abandoned according to the requirements of this Ordinance, the Department shall issue an abandonment certificate. If the abandonment is not completed according the



requirements of this ordinance the County shall notify the owner of the SSTS of the deficiencies, which shall be corrected within (30) calendar days of the notice.

## **ARTICLE VII MANAGEMENT PLANS**

### **ARTICLE VII, SECTION 1.0 PURPOSE**

The purpose of management plans is to describe how a particular SSTS is intended to be operated and maintained to sustain the performance required. The plan is to be provided by the certified designer to the system owner when the treatment system is commissioned.

### **ARTICLE VII, SECTION 2.0 MANAGEMENT PLAN REQUIREMENTS**

#### **2.01 SSTS Requiring Management Plans**

Management plans are required for all new or replacement SSTS. The management plan shall be submitted to the Department with the construction permit application for review and approval. The Department shall be notified of any system modifications made during construction and the management plan revised and resubmitted at the time of final construction certification

*Comment:*

*Management plans (or operating permits) should be considered for any system requiring a permit for a repair, modification, or expansion to increase owner awareness of the need for timely maintenance. Consideration should be given also to requiring plans (or operating permits) for any system without a management plan when a property is transferred.*

#### **2.02 Required Contents of a Management Plan**

Management plans shall include (*Minnesota Rules, Chapter 7082.0600, Subp.1*):

- A. Operating requirements describing tasks that the owner can perform and tasks that a licensed service provider or maintainer must perform;
- B. Monitoring requirements;
- C. Maintenance requirements including maintenance procedures and a schedule for routine maintenance;
- D. Statement that the owner is required to notify the Department when the management plan requirements are not being met;
- E. Disclosure of the location and condition of the additional soil treatment and dispersal area on the owner's property or a property serving the owner's residence.
- F. Other requirements as determined by the Department

*Options:*

*Other requirements might include a description of the system and each component, how the system functions, a plot plan of the system, equipment specifications, emergency operating procedures in the event of a malfunction, and a troubleshooting guide.*

**2.03 Requirements for Systems not Operated under a Management Plan** (*Minnesota Rules, Chapter 7082.0100, Subp. 3.(L)*)

SSTS that are not operated under a management plan or operating permit must have treatment tanks inspected and provide for the removal of solids if needed every three years. Solids must be removed when their accumulation meets the limit described in Minnesota Rules, Chapter 7080.2450.

## **ARTICLE VIII COMPLIANCE MANAGEMENT**

### **ARTICLE VIII, SECTION 1.0 PUBLIC EDUCATION OUTREACH**

Programs shall be provided by the Department and/or others to increase public awareness and knowledge of SSTS. Programs may include distribution of educational materials through various forms of media and SSTS workshops focusing on SSTS planning, construction, operation, maintenance, and management.

*Comment;*  
*Construction permits, operating permits, and monitoring plans should also be considered as educational aids by providing descriptive materials, either generic but preferably specific, about the type of the owner's system.*

### **ARTICLE VIII, SECTION 2.0 COMPLIANCE INSPECTION PROGRAM**

#### **2.01 Department Responsibility**

It is the responsibility of the Department, or its agent, to perform various SSTS compliance inspections periodically to assure that the requirements of this Ordinance are met.

*Note: The local inspection program must specify the frequency and times of inspections, specify the requirements of an inspection, establish an inspection protocol, provide for the event that an inspection cannot be completed in a timely manner, and at a minimum, include the requirements for a compliance inspection as described in 7082.0700, Subp. 2 and 3 except for Subp. 3(3).*

- A. SSTS compliance inspections must be performed:
- (1) To ensure compliance with applicable requirements;
  - (2) To ensure system compliance before issuance of a permit for addition of a bedroom unless the permit application is made during the period of November 1 to April 30, provided a compliance inspection is performed before the following June 1 and the applicant submits a certificate of compliance by the following September 30;

*Note: This provision only applies in counties that require building permits for bedroom additions.*

- (3) For all new SSTS construction or replacement;

- (4) For an evaluation, investigation, inspection, recommendation, or other process used to prepare a disclosure statement if conducted by a party who is not the SSTS owner. Such an inspection constitutes a compliance inspection and shall be conducted in accordance with Minnesota Rules, Chapter 7082.0700 using the SSTS inspection report forms provided by MPCA.
- B. All compliance inspections must be performed and signed by licensed inspection businesses or qualified employees certified as inspectors.
- C. The Department shall be given access to enter a property at any reasonable time to inspect and/or monitor the SSTS system. As used in this paragraph, “property” does not include a residence or private building. The Department shall notify the owner of the Department’s intent to inspect the SSTS least (2) days in advance of the intended inspection.
- D. No person shall hinder or otherwise interfere with the Department’s employees in the performance of their duties and responsibilities pursuant to this ordinance. Refusal to allow reasonable access to the property by the Department shall be deemed a separate and distinct offense.

## 2.02 New Construction or Replacement

- A. Compliance inspections must be performed on new or replacement SSTS to determine compliance with Minnesota Rules, Chapters 7080 or 7081. SSTS found not to be in compliance with 7080.1500, Subp. 4A or 7081.0080, Subp. 3 must be repaired or replaced within ten months or as directed under Minnesota Statutes, Chapter 145A. SSTS that are determined to have operation or monitoring deficiencies must immediately be maintained, monitored or otherwise managed according to the operating permit. SSTS found to be noncompliant with other applicable requirements must be repaired or replaced according to the Department’s requirements.

*Note:*

*Counties must develop a certificate of compliance or use a certificate of compliance developed by MPCA. See Minnesota Rules, Chapter 7082.0700, Subp. 3(C). for MPCA’s compliance inspection requirements for new development and replacements. Counties may include additional compliance requirements as appropriate.*

- B. It is the responsibility of the SSTS owner or the owner’s agent to notify the Department (2) calendar days prior to any permitted work on the SSTS.
- C. A Certificate of Compliance for new SSTS construction or replacement, which shall be valid for (five) years, shall be issued by the Department if the Department has reasonable assurance that the system was built in accordance with the applicable requirements as specified in the construction permit.
- D. The certificate of compliance must include a certified statement by the certified inspector or qualified employee who conducted the inspection that the SSTS is or is not in compliance with the ordinance requirements. If the SSTS is determined not to be in compliance with the applicable requirements, a notice of noncompliance must

be issued to the owner which includes a statement specifying those ordinance provisions with which the SSTS does not comply.

*Note:*

*Notices of noncompliance should only specify what ordinance provisions are violated. Counties should consider adding a requirement for a compliance plan that would be negotiated between the owner and the county, which would specify the methods and actions that will be taken to bring the system into compliance and a schedule for completing the compliance plan.*

- E. The certificate of compliance or notice of noncompliance must be submitted to the Department no later than (15) calendar days after the date the inspection was performed. The Department shall deliver the certificate of compliance or notice of noncompliance to the owner or the owner's agent within (15) calendar days of receipt from the certified inspector. No SSTS shall be placed into operation until a valid certificated of compliance has been issued.
- F. Certificates of compliance for new construction or replacement shall remain valid for (5) years from the date of issue unless the Department finds evidence of noncompliance.

### 2.03 Existing Systems

- A. Compliance inspections shall be required when any of the following conditions occur:
  - (1) When a construction permit is required to repair, modify, or upgrade an existing system;
  - (2) Any time there is an expansion of use of the building being served by an existing SSTS which may impact the performance of the system;
  - (3) Any time there is a change in use of the property being served by an existing SSTS which may impact the performance of the system;
  - (4) At any time as required by this Ordinance or the Department deems appropriate such as upon receipt of a complaint or other notice of a system malfunction.

*Options:*

*Compliance inspections also should be considered for the following:*

- 1) when an operating permit is to be renewed,*
- 2) at the time of property sale or transfer (see Article VIII, Section 2.04),*
- 3) during systematic lake or area-wide SSTS surveys by the Department, and/or*
- 4) anytime the Department deems appropriate such as upon receiving a complaint or other information of system malfunction or failure.*

- B. Compliance inspections of existing SSTS shall be reported on the inspection report forms provided by MPCA. The following conditions, must be assessed, or verified:
  - (1) Watertightness assessment of all treatment tanks including a leakage report;
  - (2) Vertical separation distance between the bottom of the soil treatment and dispersal system and the periodically saturated soil or bedrock including a vertical separation verification report;

***Additional provision needed:***

*Chapter 7082.0700, Subp. 3(2) requires that a vertical separation report include verifications by two independent parties, which may be licensed inspection businesses and/or a qualified employee inspector with jurisdiction. If there is a dispute between the two verifying inspectors, the disputing parties must follow the local dispute resolution procedures. If no local dispute resolution procedures exist, the dispute resolution procedure described in 7080.0700, Subp. 5 must be followed.*

- (3) Sewage backup, surface seepage, or surface discharge including a hydraulic function report.

*Note*

*The requirements for the inspection reports in this section are described in Minnesota Rules, Chapter 7082.0700, Subp. 4(B)*

- C. The certificate of compliance must include a certified statement by a Qualified Employee or licensed inspection business, indicating whether the SSTS is in compliance with the ordinance requirements. If the SSTS is determined not to be in compliance with the applicable requirements, a notice of noncompliance must include a statement specifying those ordinance provisions with which the SSTS does not comply. A construction permit application must be submitted to the Department if the required corrective action is not a minor repair.

*Note:*

*Notices of noncompliance should only specify what ordinance provisions are violated. Counties should consider adding a requirement for a compliance plan that would be negotiated between the owner and the county, which would specify the methods and actions that will be taken to bring the system into compliance and a schedule for completing the compliance plan.*

- D. The certificate of compliance or notice of noncompliance must be submitted to the Department no later than (15) calendar days after the date the inspection was performed. The Department shall deliver the certificate of compliance or notice of noncompliance to the owner or the owner's agent within (15) calendar days of receipt from the licensed inspection business.
- E. Certificates of compliance for existing SSTS shall remain valid for (three) years from the date of issue unless the Department finds evidence of noncompliance.

*Optional provision:*

*SSTS on properties sold or transferred to new owners should be repaired, replaced, or upgraded as determined by a compliance inspection, records search, or other means acceptable to the Department that are conducted prior to ownership transfers. The determination of need to repair, replace, or upgrade should proceed in a manner that does not needlessly delay or otherwise interfere with the property sale transaction. This provision should be preceded with a public and local realtors awareness campaign.*

## 2.04 Transfer of Properties

A. Whenever a conveyance of land upon which a dwelling is located, or a tract of land upon which a structure that is required to have an SSTS occurs, the following requirements shall be met:

- (1) A compliance inspection has been performed and a Certificate of Compliance has been issued by the Department within (three) years for SSTS older than five years or within (five) years if the system is less than five years old prior to the intended sale or transfer of the property. unless evidence is found identifying an Imminent Threat to Public Health and Safety.
- (2) The compliance inspection must have been performed by a qualified employee of the Department or a licensed inspection business following procedures described in Article VIII, Section 2.03 of this ordinance.
- (3) The seller of the property must disclose in writing information about the status and location of all known ISTS on the property to the buyer on a form acceptable to the Department.

*Note:*

*Attachment B of this manual provides an example of a SSTS disclosure form published by the Traverse Area Association of Realtors of Michigan.*

- (4) If the seller fails to provide a Certificate of Compliance, the seller shall provide the buyer sufficient security in the form of an escrow agreement to assure the installation of a complying ISTS. The security shall be placed in an escrow with a licensed real estate closer, licensed attorney-at-law, or federal or state chartered financial institution. The amount escrowed shall be equal to (150%) of a written estimate to install a complying ISTS provided by a licensed and certified installer, or the amount escrowed shall be equal to (110%) of the written contract price for the installation of a complying ISTS provided by a licensed and certified installer. After a complying SSTS has been installed and a certificate of compliance issued, the Department shall provide the escrow agent a copy of the Certificate of Compliance.

B. The compliance portion of the Certificate of Compliance need not be completed if the sale or transfer involves the following circumstances:

- (1) The affected tract of land is without buildings or contains no dwellings or other buildings with plumbing fixtures.
- (2) The transfer does not require the filing of a Certificate of Real Estate Value, as described in Minnesota Statutes, Section 272.115, subdivision 1.
- (3) The transfer is a foreclosure or tax forfeiture.
- (4) The sale or transfer completes a contract for deed or purchase agreement entered into prior to the effective date of this Ordinance. This subsection applies only to the original vendor and vendee on such a contract.

- (5) Any dwellings or other buildings that are connected exclusively to a municipal wastewater treatment system; any dwellings or other buildings that are located within the jurisdiction of a County approved agreement requiring exclusive connection to the wastewater treatment system of any municipality; or, any dwellings or other buildings that are connected exclusively to an approved wastewater treatment facility other than an individual sewage treatment system.
- C. All property conveyances subject to this ordinance occurring during the period between November 15th and April 15th, when SSTS compliance cannot be determined due to frozen soil conditions, shall require a winter agreement, which includes an application for an SSTS permit and an agreement to complete a compliance inspection by the following June 1st by a licensed inspection business. If upon inspection the SSTS is found to be in compliance, the permit fee will be refunded. If upon inspection the system is found to be non-compliant, an escrow agreement must be established in accordance with section 2.04 A(4), above, and the system upgraded.
- D. The responsibility for filing the completed compliance portion of the Certificate of Compliance under section 2.04 A, above, or for upgrading a system found to be non-compliant shall be determined by the buyer and seller. Buyer and seller shall provide the Department with a signed statement indicating responsibility for completing the compliance portion of the Certification and for upgrading a system found to be non-conforming.
- E. Neither the issuance of permits, certificates of compliance, or notices of noncompliance as requested or issued shall be construed to represent a guarantee or warranty of the system's operation or effectiveness. Such certificates signify that the system in question is or has been designed and installed in compliance or non-compliance with the provisions of these standards and regulations.

## **ARTICLE IX      ENFORCEMENT**

### **ARTICLE IX, SECTION 1.0    VIOLATIONS**

#### **1.01    Cause to Issue a Notice of Violation**

Any person, firm, agent, or corporation who violates any of the provisions of this Ordinance, or who fails, neglects, or refuses to comply with the provisions of this Ordinance, including violations of conditions and safeguards, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable as defined by Minnesota State Statutes. Each day that a violation exists shall constitute a separate offense.

#### **1.02    Notice of Violation**

The Department shall serve, in person or by mail, a notice of violation to any person determined to be violating provisions of this Ordinance. The notice of violation shall contain:

- A. A statement documenting the findings of fact determined through observations, inspections, or investigations;
- B. A list of specific violation(s) of this Ordinance
- C. Specific requirements for correction or removal of the specified violation(s);
- D. A mandatory time schedule for correction, removal and compliance with this ordinance.

*Option:*

*Counties should consider the use of citations to respond to violations. Example language is provided here. However, we recommend that your legal council review this provision to ensure compliance with State and local rules.*

**1.03 Issuance of Citations**

- A. *As specified herein, individuals occupying the designated County positions are authorized to issue citations in lieu of arrest or continued detention for a petty misdemeanor or misdemeanor violation of this ordinance.*

*(1) Zoning Administrator*

*(2) Building Inspector*

*(3) Sanitarian*

*(4) Code Enforcement Officer*

*(5) Qualified Employee*

**B. Additional Authority**

*Except as otherwise provided by statute, only a peace officer and a part-time peace officer may take a person into custody as permitted by Minn. Stat. §629.34.*

**C. Fines**

*Fines shall be paid within 30 day. If they are not, they may be assessed along with property taxes to the subject property.*

**1.04 Cease and Desist Orders**

Cease and desist orders may be issued when the Department has probable cause that an activity regulated by this or any other County Ordinance is being or has been conducted with out a permit or in violation of a permit. When work has been stopped by a cease and desist order, the work shall not resume until the reason for the work stoppage has been completely satisfied, any administrative fees paid, and the cease and desist order lifted.

**ARTICLE IX, SECTION 2.0 PROSECUTION**

In the event of a violation or threatened violation of this Ordinance, the County may, in addition to other remedies, initiate appropriate civil action or proceedings to prevent, prosecute, restrain, correct or abate such violations or threatened violations and the County Attorney shall have authority to commence such civil action. The Department and County Attorney may take such actions as may be necessary to enforce the provisions of this ordinance.



## **ARTICLE IX, SECTION 3.0 STATE NOTIFICATION OF VIOLATION**

In accordance with state law, the Department shall notify the MPCA of any inspection, installation, design, construction, alteration or repair of an SSTS by a licensed/certified person or any septage removal by a licensed pumper that is performed in violation of the provisions of this Ordinance.

***Option:***

*Section 4.0 below provides authorization to the Department to recover costs from the property owner where it is necessary to remove or abate an imminent threat to public health.*

### **SECTION 4.0 COSTS AND REIMBURSEMENTS**

*If the Department is required to remove or abate an imminent threat to public health or safety, the Department may recover all costs incurred in removal or abatement in a civil action, including legal fees; at the discretion of the County Board, the cost of an enforcement action under this ordinance may be assessed and charged against the real property on which the public health nuisance was located. The County Auditor shall extend the cost as assessed and charged on the tax roll against said real property.*

## **ARTICLE X RECORD KEEPING**

The County shall maintain a current record of all permitted systems. The record shall contain all permit applications, issued permits, fees assessed, variance requests, certificates of compliance, notices of noncompliance, enforcement proceedings, site evaluation reports, design reports, record drawings, management plans, maintenance reports, an annual list of all sewage tanks installed in the county sorted by licensed installation businesses, and other records relevant to each system.

***Note:***

*See Minnesota Rules, Chapter 7082.0300, Subp. 4, which describes the records that the county is required by MPCA to retain.*

## **ARTICLE XI ANNUAL REPORT**

The department shall provide an annual report of SSTS permitting activities to MPCA no later than February 1 for the previous calendar year.

***Note:***

*For the specific MPCA reporting requirements see Minnesota Rules, Chapter 7082.0040, Subp.5.*

## **ARTICLE XII FEES**

From time to time, the County Board shall establish fees for activities undertaken by the Department pursuant to this Ordinance. Fees shall be due and payable at a time and in a manner to be determined by the department.

**ARTICLE XIII INTERPRETATION**

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the County and shall not be deemed a limitation or repeal of any other powers granted by Minnesota Statutes.

**ARTICLE XIV SEVERABILITY**

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this Ordinance shall not be affected and shall remain in full force.

**ARTICLE XV ABROGATION AND GREATER RESTRICTIONS**

It is not intended by this Ordinance to repeal, abrogate, or impair any other existing County ordinance, easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other Ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

**ARTICLE XVI ORDINANCE REPEALED**

The (COUNTY NAME) previous ordinance for the regulation of Individual Sewage Treatment Systems of the County is hereby repealed.

**ARTICLE XVII ADOPTION**

The (COUNTY NAME) Subsurface Sewage Treatment Program Ordinance is hereby adopted by (COUNTY NAME) County Board of Commissioners on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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**Chairperson, (COUNTY NAME) County Board of Commissioners**

**ATTEST:**

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**EFFECTIVE DATE:** \_\_\_\_\_, 20\_\_

**SECTION 3:  
PERFORMANCE PROGRAM  
ORDINANCE MODEL**

## **SECTION 3: PERFORMANCE PROGRAM ORDINANCE MODEL**

### **MPCA Requirements**

7082.0050 General Requirements for Local Ordinances, Subp. 4. Performance programs.  
A county is authorized to choose to develop and implement a comprehensive, performance-based program using ISTS and MSTs designs tailored to adequately protect the public health and the environment based on local environmental sensitivity. Performance programs must meet the requirements of the conventional program (082.0100, Subp. 3) plus include the provisions necessary to implement part 7. (The required provisions in 7082.0100, Subp. 4 are listed in “Program Ordinance Requirements” below.)

### **Conceptual Basis for Performance Programs**

**Performance programs** for SSTS regulation seek sustained compliance of systems to stipulated and measurable outcomes. As such, SSTS design and technology is not the focus of the regulatory program, but rather the focus is management and care of the system. **Prescriptive programs** seek compliance of systems at time of installation to prescribed SSTS designs for selected sites. Management and care of the system are not routinely the programs’ focus because only simple, passive systems that are limited to use on sites with soils known to result in acceptable treatment consistently are permitted.

The objective of both approaches to SSTS regulation is to manage risk to public health and water quality, however their approach to enforcement differ. **Prescriptive programs** presume protection where the design of an installed SSTS meets the prescribed specifications in the rule. Enforcement against malfunctioning systems is complaint-based. In other words, a properly installed system is “deemed to comply” until a malfunction is reported or observed. **Performance programs**, however, confirm protection through routine monitoring of the operating system against the stipulated outcome requirements. During operation, the system is “deemed to comply” with the performance stipulations only from the last monitoring date showing compliance until the next scheduled monitoring date or report of a malfunction, whichever occurs first.

### **Comparison of Responsibilities**

The responsibilities of the County and the SSTS owners differ under performance programs from those under prescriptive programs. Table 1 compares the differences between the County and owner under the two program types.

**Table 1: Comparison of County and Owner Responsibilities under Prescription and Performance Programs**

PROGRAM TASK	COUNTY		SYSTEM OWNER	
	Prescription	Performance	Prescription	Performance
<b>Risk Assessment</b>	Select site and soil characteristics deemed to be acceptable for specific prescriptive designs	Establish performance requirements deemed to be protective of health and water quality for specific receiving environments	N/A	N/A
<b>Site Evaluation</b>	Approve site evaluation report from owner	Accept site evaluation report from owner	Perform site evaluation according to accepted procedures	Perform site evaluation according to accepted procedures
<b>Design</b>	Develop pre-engineered designs for given soil and site characteristics	N/A	Develop system layout using appropriate prescribed design for the given soil and site characteristics	Design and layout a system expected to meet established performance requirements for the particular receiving environment
<b>Plan Review</b>	Confirm that the selected prescribed design is appropriate for the soil and site characteristics and conforms its sizing and components comply with the rules	Review reasonableness of the selected treatment processes and equipment for meeting the performance requirements and if necessary, requesting additional information to establish reasonableness	N/A	N/A
<b>Permitting</b>	Issue or deny permit	Issue or deny permit	N/A	N/A
<b>Construction</b>	Perform final construction inspection	Accept final construction certification from licensed installer	Construct system according to accepted procedures	Construct system according to accepted procedures
<b>Operation</b>	Require periodic maintenance of system	Require system performance meet requirements	Operate	Operate
<b>Monitoring</b>	N/A	Require periodic system monitoring and reporting by owner to confirm compliance	N/A	Perform periodic monitoring and submit report
<b>Inspections</b>	Perform as needed to determine system compliance	Perform random inspections to confirm operating compliance	N/A	N/A

## Critical Elements of a Performance Program

Performance programs require seven elements critical to their successful application:

### 1. Risk Assessment

Performance requirements must be established for all systems installed including the conventional prescriptive systems. The requirements are based on the receiving environments' sensitivities with respect to risks to health and water quality from SSTS discharges.

Delineation of receiving environments can be based on:

- a) Political boundaries (county, township, shoreland zoning, etc.)
- b) Environmental boundaries (watersheds and sub watersheds)
- c) Known SSTS problem areas or "hot spots"
- d) Soils/Geology boundaries

The complexity of the risk assessment increases proceeding from item a) to d).

### 2. Performance Requirements

Performance requirements are based on the sensitivity of the receiving environment to the pollutants of concern in the wastewater to be discharged. Standards already may be established for such things as recreational waters, drinking water, etc. or for 'end of pipe' wastewater discharges. Most SSTS are groundwater discharging and therefore these discharges should be managed to sustain the desired groundwater quality, which is often the drinking water standard. This does not mean, however, that the SSTS discharge to the soil must meet the drinking water standard. Soil treatment and dilution after discharge to the soil should be taken into account.

Performance requirements do not need to be numerical requirements. While the intent is to protect public health and groundwater quality, the requirements can be indirect narrative requirements. For example, if prescriptive SSTS designs are not causing health or water quality problems in your area, they may still be used. However, they must be operated and maintained properly as long as they are used to prevent any unacceptable discharges. Proper operation and maintenance procedures and frequency would be appropriate performance requirements. Performance expectations must still be set for prescriptive designs to allow owners to appeal non-compliance orders, which are based on design prescriptions rather than performance requirements.

Note that the requirements set for receiving environments need not, and preferably, should not be established based on available treatment technologies. It could be that the necessary performance requirements to protect public health and water quality may be beyond the practicality of existing technologies and practices. Performance programs require suitable systems for sites rather than suitable sites for a suite of pre-approved designs.

If development is not desired in an area for any reason, prohibitions on development can be established, but such prohibitions should be established under zoning ordinances.

### **3. Monitoring**

Because performance programs are outcome based, the outcomes must be monitored to confirm compliance. Monitoring requirements, monitoring locations, sampling and analytical procedures and reporting requirements should be stipulated in the operating permit and would be the responsibility of the system owner to provide the county.

### **4. Permit Tracking**

Operating permits are required for all systems regulated under a performance program (see Table 2). To enable confirmation of performance compliance, record keeping tools and procedures must be in place to confirm that the required monitoring was performed properly and timely, to verify that the monitoring reports are received and acceptable, and to track any necessary enforcement actions.

### **5. Service Provider and Practitioner Competency**

Competency is essential to the success of a performance program. Appropriate and valid certifications/licensure must be confirmed on all work performed.

### **6. Public Education**

Performance is not a “bury and forget” program. Active involvement of the owners or the owners’ agents is necessary. Education will be a continuous activity.

### **7. Financial Assistance**

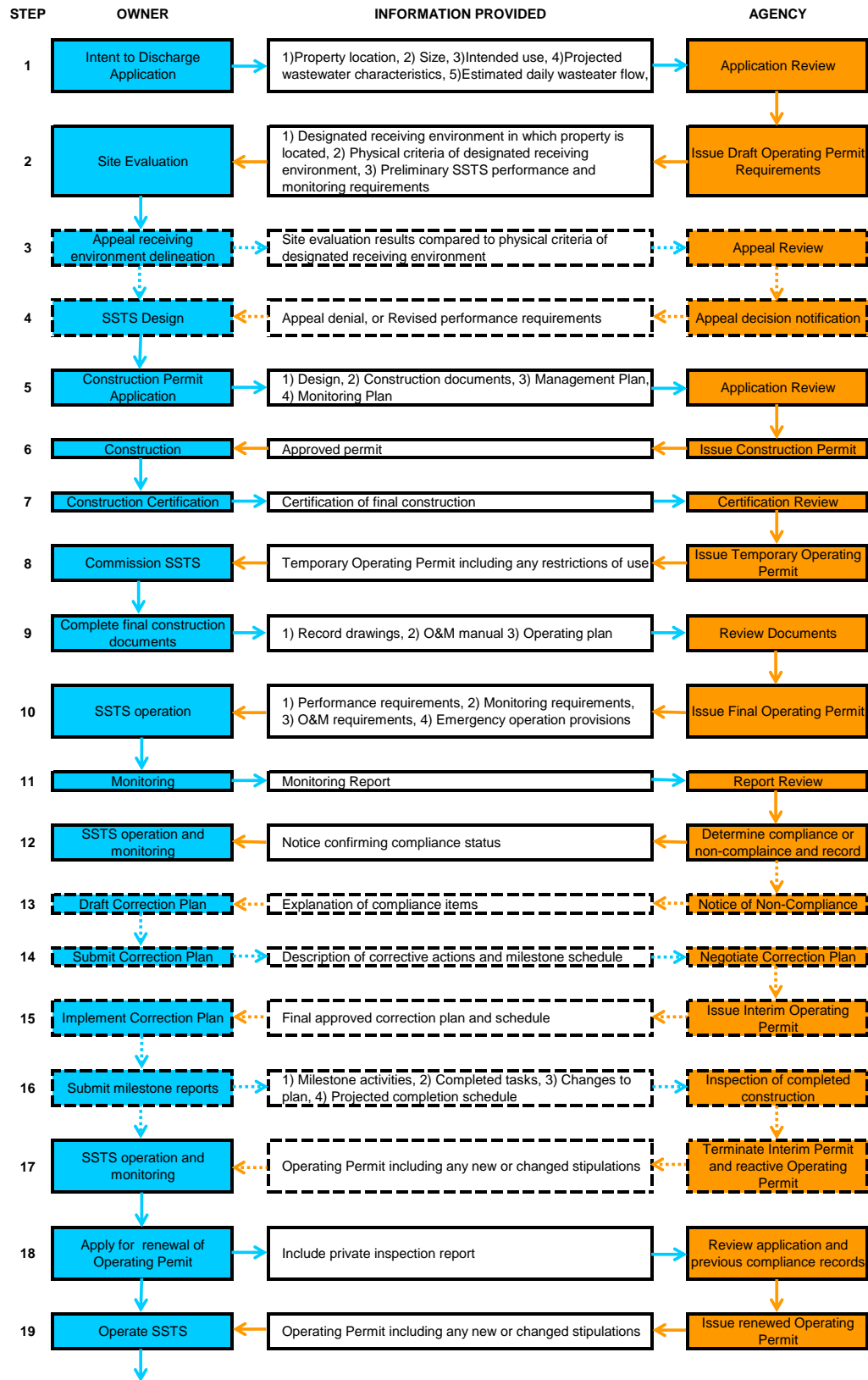
Program enforcement must be fair and equitable for everyone. We generally acknowledge this but we don’t always practice it. If a program is to be credible, bestowing special treatment on some, regardless of the situation, must be carefully considered and, if given, clearly documented. Enforcement should not be deferred to protect property owners from financial hardships. The goal of our SSTS regulatory programs must be to protect public health and the quality of our water resources from inadequate wastewater treatment. If we allow our programs to ignore malfunctions and failures because of an owner’s inability to pay for necessary upgrades, public respect for the rules will be lost and abuse can result. Therefore, financial assistance programs should be established to assist owners who are unable to afford the costs of upgrades to maintain compliance with the rules.

Many of these critical elements are already part of county prescription programs. However the rigor of these elements may need to be increased.

## **Program Ordinance Requirements**

Local ordinances for a Performance SSTS Program must include the following provisions as required by 7082.0100, Subp.1 through Subp.3. Counties must confirm the inclusion of these items by completing the *Ordinance Checklist* provided by the commissioner of MPCA. This checklist must be included with the submittal of the proposed ordinance to the commissioner at least 30 days prior to the county’s adoption of the ordinance. The location of each required provision in the proposed ordinance must be cited by the county in the Ordinance Checklist. This checklist is available from the commissioner and is provided in Attachment A of this manual.

**Table 2: Operating Permit Procedure**





Listed below are the required provisions extracted from the *Ordinance Checklist*, which includes the citations of each within this model ordinance. (Shaded citations in the requirements for all programs indicate changes to citations that are specifically required for the performance program ordinance model.)

**7082.0100 Subp. 1: Provisions required by law for all local SSTS programs:**

- A. A provision requiring upgrade, replacement, repair, or discontinued use of systems failing to protect groundwater within a specified period from the date of issue of the notice of noncompliance (7080.1500 Subp. 4).

Model ordinance citation: Article IV, Sec. 2.03

- B. A provision requiring upgrade, replacement, repair, or discontinued use of systems posing an imminent threat within 10 months from the date of issue of the notice of noncompliance (7080.1500 Subp. 4).

Model ordinance citation: See Article IV, Sec. 2.04

- C. A provision requiring that a system owner has five years from the date of receipt of a permit to add a bedroom to upgrade, replace, repair or discontinue use of the system.

*Note: This requirement applies only if the local unit of government issues a permit for a bedroom addition.*

Model ordinance citation: See Article IV, Sec. 2.02

- D. A provision regulating vertical separation for systems built in non-SWF before April 1, 1996 must meet the requirements in 7080.1500, Subp. 4E.

Model ordinance citation: See Article V, Sec. 2.03

**7082.0100 Subp. 2: List of differences:**

List any technical and program administrative differences between the local ordinance and Chapters 7080 and 7081. (This list is a helpful tool for SSTS contractors to use in designing, installing and maintaining systems according to the local code.)

Model ordinance citation: See Article V, Sec. 2.0

**7082.0100 Subp. 3A: Provisions required in rule for all local SSTS programs:**

- A. A provision requiring all work performed on SSTS be done by appropriately licensed businesses, qualified employees or persons exempt from licensing in 7083.0700, Subp. 1.

*Note: Local SSTS ordinances cannot require additional local licenses, certificates, or registrations of practitioners or service providers doing business in its jurisdictional area..)*

Model ordinance citation: See Article IV, Sec. 5.0

- B. A provision requiring abandonment of systems no longer in use according to 7080.2500.  
Model ordinance citation: See Article IV, Section 2.05 and Article V, Sec. 4.0
- C. A provision specifying technical standards and criteria for new and existing SSTS that adequately protect the public health and environment. Conventional programs should specifically adopt technical standards in 7080.1710 to 7080.0290.  
Model ordinance citation: See Article V, Sec. 1.0
- D. A provision specifying whether local variances may be allowed and if so, how an application must be made.  
Model ordinance citation: See Article V, Sec. 4.0
- E. Provisions for design review, permit issuance, construction inspection, and system operation.  
Model ordinance citation: See Article VI
- F. A provision which requires that all lots created after January 23, 1996, have a minimum of two soil treatment and dispersal areas (in accordance with 7082.0100, Subp. 3F) that support Type I systems as described in parts 7080.2200 to 7080.2730 or site conditions as described in 7080.0270, Subp. 3 to Subp. 7 (see).  
Model ordinance citation: See Article IV, Sec 1.03
- G. A provision specifying the conditions necessary to allow the use of holding tanks, holding tank operation and maintenance requirements, and the requirement for an executed contract between the owner and a licensed maintenance business.  
Model ordinance citation: See Article V, Sec. 2.04
- H. A provision prohibiting surface discharge of sewage without a NPDES permit issued by MPCA.  
Model ordinance citation: See Article IV, Sec. 6.02
- I. A provision specifying the necessary conditions for allowable use and location of SSTS in floodplains in compliance with applicable state and local requirements.  
Model ordinance citation: See Article IV, Sec. 3.0
- J. A provision requiring an approved management plan before issuance of a construction permit for all new and replacement SSTS as described in 7080.1100, Subp. 52.  
Model ordinance citation: See Article VII, Sec. 2.0
- K. A provision requiring operating permits for Type IV and V systems, systems which are built under Alternative Local Standards, and all MSTs.  
Model ordinance citation: See Article VI, Sec. 3.02
- L. A provision for systems not operated under a management plan or operating permit which requires SSTS maintenance evaluations at least every three years and maintenance when needed, with residuals removed as specified in 7080.2450.  
Model ordinance citation: See Article VII, Sec. 2.03

M. A provision requiring that owners of Class V wells (see 40 CFR 144.50 of the Federal Register) submit inventory information to USEPA and that property transfer disclosures identify such Class V wells.

Model ordinance citation: See Article IV, Sec. 4.0

N. A provision outlining how conflicting inspections and other technical disputes between SSTS certified professionals will be resolved when they occur as described in 7082.0700, Subp. 5.

Model ordinance citation: See Article VIII, Sec. 2.03 B

O. A provision specifying what level of local approval is needed for repair, rejuvenation or remediation of SSTS as defined in local ordinance.

Model ordinance citation: See Article VI, Sec. 3.01 & 3.02

P. A provision which specifies the allowed methods for determining the soil treatment and dispersal system design loading rate from 7080.2150, Subp. 3E Tables IX or IXa.

Model ordinance citation: Not included

*Comment:*

*Under a performance program, the choice of what to use for design loading rates is to be made by the permit applicant.*

Q. A provision that requires all sewage generated in the jurisdiction to be treated either in an agency-permitted facility or a system designed under 7080 and 7081 standards.

Model ordinance citation: See Article III, Sec. 1.0 and Article VI, Sec. 1.0

R. An optional provision that allows a no more than a 15% reduction in the minimum three foot separation distance to groundwater below an individual SSTS soil treatment and dispersal system installed after March 31, 1996, or in Shoreland or Wellhead protection areas, or systems serving food, beverage, or lodging establishments as described in 7080.1500, Subp. 4D.

Model ordinance citation: Article V, Sec. 2.02

*Commet:*

*This MPCA requirement may not be relevant to a performance program since it is the system's performance rather than design conformance which is regulated. A mandatory minimum separation distance between the SSTS dispersal system and the seasonally high water table is an artifact of prescription. However, for newly implemented performance systems, it would be prudent to establish a minimum separation distance for all systems until the local unit of government has established a rigorous and tested program. Whether the minimum need be three feet would be a local decision based on real or perceived risks.*

#### **7082.0100, Subp. 4: Additional Requirements for Performance Programs**

A. An education program must be established to raise awareness of SSTS owners on the purpose, use and care of SSTS.

Model ordinance citation: See Article VIII, Section 1.0

- B. (1) A program must be established to evaluate the risks to public health and water resources from SSTS discharges in receiving environments

Model ordinance citation: See Article V, Section 1.0

- C. (2) A program must be established to evaluate the potential impacts of the SSTS performance ordinance on land use policies.

Model ordinance citation: See Article V, Section 1.01.C

*Comment:*

*This is the responsibility of the planning and zoning department. If a county's SSTS program is not part of the and zoning programs, the SSTS program must alert and communicate the nature of the rule changes and the two departments work together to evaluate the potential impacts on land use. Resultant policy would be under the purview of the planning and zoning department.*

- D. A program must be established to determine performance requirements necessary for each designated receiving environment that will ensure that underground sources of drinking water are protected to the standards of MR Chapter 4717 (DOH Environmental Health) and surface waters are protected to the standards of MR Chapter 7050 (MPCA Waters of the State).

Model ordinance citation: See Article VI, Section 1.02

- E. A provision must be provided for site evaluation requirements that define the procedures for characterizing the receiving environment.

Model ordinance citation: Not included

*Comment:*

*The procedures for site evaluations are likely to necessitate more comprehensive site evaluations, but not require different procedures. What must be made available to owners, practitioners, and service providers is the specific criteria that the local unit of government used to delineate receiving environments. This is necessary so that property owners can confirm for themselves whether their property is properly assigned to the designated receiving environment. (At a minimum, the county should adopt by reference the site evaluation procedures in MR Chapter 7080 and 7081)*

- F. A program must be established to administer renewable operating permits for all system owners, including tracking and review of compliance monitoring reports.

Model ordinance citation: See Article VI, Section 4.0

- G. A program must be established to track residuals hauling, treatment, and disposal in accordance with the Code of Federal Regulations, title 40, parts 257 and 503, and applicable state, tribal, and local requirements.

Model ordinance citation: Article X, Section 2.0

- H. (1) A program must be established for notifying owners of pending scheduled submittals of compliance monitoring reports.

Model ordinance citation: Article VI, Section 4.06.A

- I. (2) A program must be established for performing SSTS inspections at the time of renewal of the operating permit and at random times over the life of SSTS.

Model ordinance citation: See Article VI, Section 4.05.D

- J. An enforcement program must be established that includes penalties for failure to comply with the compliance schedule.

Model ordinance citation: See Article VI, Section 4.11 and Article VIII

- K. A record keeping program that includes a database inventory of all systems including locations, site evaluation reports, record drawings, permits, permit tracking, inspection reports, and compliance reports.

Model ordinance citation: See Article IX

- L. (1) A financial assistance program must be established to aid SSTS owners to sustain SSTS compliance.

Model ordinance citation: Not included

- M. (2) A funding program must be established to provide the legal and financial support to sustain the management program.

Model ordinance citation: Not included

SUBSURFACE SEWAGE TREATMENT  
SYSTEM ORDINANCE  
(COUNTY NAME)

COUNTY ORDINANCE NUMBER \_\_\_\_\_

(Effective Date)

## Performance Program Ordinance Table of Contents

*Note:*

*The performance program ordinance model is identical to the conventional program ordinance model except for the performance provisions. Only the performance provisions are provided following the table of contents. These are limited to Articles V, VI, and X. A local unit of government wishing to promulgate a performance program must replace Articles V, VI, and X in the conventional program with the Articles V, VI, and X provided here.*

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## PERFORMANCE ORDINANCE PROVISIONS

### ARTICLE V SSTS STANDARDS

*Comment:*

*Under performance-based rules, SSTS treatment standards are determined by the risks a SSTS discharge might have on public health and the local groundwater and surface water resources. The degree of risk will vary with the sensitivity of the receiving environment. Since it would not be practical to perform risk assessments on every lot, we anticipate that local units of government will delineate receiving environments each of which would represent a unique set of characteristics that define the basis for a risk category, which in turn set the necessary performance requirements for any system installed in that receiving environment.*

*Newly implemented performance programs likely would not have the resources to perform rigorous risk assessments necessary to accurately delineate significantly different receiving environments, nor considering the generally limited risks from most SSTS, would this be necessary except in the most sensitive of environments. Instead, broad ranges of characteristics with substantial variations might be used at first until experience is gained with the responses of the receiving environments to the wastewater discharges. Initially, it might be most appropriate to delineate receiving environments based on political boundaries such as Shoreland zoning boundaries within which impacts to lakes from SSTS may be of concern.*

*It is important to understand that any lot of record is buildable under performance-based rules. Prohibitions against building can only be based on the lack of technology or management practices to achieve the required performance or zoning restrictions.*

### ARTICLE V, SECTION 1.0 PERFORMANCE STANDARDS

The Department shall establish performance requirements for all new systems, replacement systems, and systems requiring more than minor repairs. These requirements may vary with respect to the receiving environment in which a SSTS is to be installed.

*Comments:*

*(1) This provision allows continued use of existing systems that are functioning hydraulically. However, based on the sensitivity of a given receiving environment, this exclusion may be inappropriate in protecting ground and surface waters in accordance with MR Chapters 4717 and 7050.*

*(2) Establishing performance requirements does not preclude the permitting of the conventional prescriptive systems. In fact, prescriptive designs may still be the more prevalent systems used under a performance rule. However, to be used, each prescriptive design must be assigned "performance expectations" based on documented monitoring experience from credible sources<sup>1</sup>. This is necessary to prevent the inappropriate application of a prescriptive system in a sensitive receiving environment and provides a measure against which owners can demonstrate*

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<sup>1</sup> See Ayres Associates (1995). *Establishing performance standards for onsite wastewater treatment systems in northeastern Minnesota*. Report to the Iron Range Resources and Rehabilitation Board and Northern Lights Tourism Alliance. Onsite Wastewater Treatment System Pilot Project. Eveleth, Minnesota.

*whether their systems are achieving their performance expectations despite not being in full compliance with the design prescriptions.*

### **1.01 Receiving Environment Delineation**

- A. The Department shall develop and promulgate clear and specific procedures for identifying, characterizing, and describing receiving environments within its jurisdiction. The designated environments shall be delineated on maps accompanied with comprehensive narrative descriptions of the unique identifying characteristics of each.
- B. The Department must identify one or more receiving environments within its jurisdiction. Political and administrative boundaries, land use zoning, development density, soil characteristics, topography, geology, depth to groundwater, characteristics of the aquifer, proximity to surface waters, and proximity to water supply wells, and well design and construction are among the elements that may be considered in delineating receiving environments.
- C. The Department shall inform the local planning and zoning department of any ordinance changes that could impact land use and if requested, provide a reasonable time for the planning and zoning department to evaluate their planning and zoning policies with respect to the proposed rule changes.
- D. The Department shall develop clear and specific procedures for assessing the assimilative capacity of each delineated receiving environment based on the environment's sensitivity to wastewater discharges. The site parameters, technical literature, environmental monitoring, or other considerations used to assess the assimilative capacities of the environments shall be listed and described. The results of the assessments shall be published.
- E. The receiving environment delineations should be reviewed regularly because the characteristics of receiving environments or their interpretations can change with land use, population, availability of more accurate environmental data, or other causes.

### **1.02 Performance Requirements Determination**

The Department shall determine specific and measurable standards required for performance of any onsite/cluster systems operated in each of the designated receiving environments. The performance requirements may be narrative or numerical and must be observable or measurable. At a minimum, the performance requirements must protect underground sources of drinking water according to MR Chapter 4717 and protect surface waters according to MR Chapter 7050 (see 7082.0100, Subp. 4.A). Land use zoning, high public value lands, development type and density, soil characteristics, land forms and topography, geology, groundwater depth, aquifer characteristics, proximity to surface waters, distances to water supply wells, and well design and construction are among the elements that should be considered in determining performance requirements.

### **1.03 Public Participation**

*Optional:  
If development prohibitions (zoning) or non-mandated performance requirements such as*

*nutrient removal near lakes are to be established as part of this program, public participation and consensus is imperative for successful implementation.*

- A. The Department shall develop a public participation program that is implemented whenever receiving environment delineation and/or onsite/cluster treatment system performance requirements are established or revised.
- B. The Department shall publish a Notice of Preliminary Decision regarding the establishment of a new or revision to an existing receiving environment delineation, and/or the establishment of new or revised performance requirements for any delineated receiving environment.
- C. The Department shall accept written comments from the public before a final determination on new or revised receiving environment delineation or performance requirements are made. The written public comment period commences on the publication date of the Notice of Preliminary Decision and extends for 30 calendar days.
- D. The Department shall provide notice and conduct a public hearing to address a Notice of Preliminary Decision regarding a final determination on new or revised receiving environment delineation or performance requirements if:

- (1) Significant public interest in a public hearing exists, or
- (2) Significant issues or information have been brought to the attention of the department that have not been considered previously in establishing new or revising existing receiving environment delineations or performance requirements.
- (3) The department shall accept written public comment until the close of the public hearing record as specified by the person presiding at the public hearing. All written comments submitted during the written public comment period shall be responded to in writing

## **ARTICLE V, SECTION 2.0    STANDARDS ADOPTED BY REFERENCE**

### *Comment:*

*Prescriptive designs will likely continue to be the most used SSTs under a performance program. A county may adopt the state's conventional SSTs prescriptive designs, make them more restrictive, or develop their own. In adopting standards by reference, care must be taken to ensure conflicts between the prescriptive and performance provisions do not occur. It would be useful to list any differences or omitted provisions from the source of the adopted standards to alert designers, installers, and other service providers.)*

### **2.01    Adopted Standards**

The County hereby adopts the technical standards in Minnesota Rules, Chapters 7080 and 7081 by this reference (list here the specific chapter sections that are adopted) as now constituted and from time to time amended. This adoption does not supersede the County's right or ability to adopt local standards that are in compliance with Minnesota Statute 115.55.

**Options:**

- a) Other applicable local ordinances would be referenced here as appropriate.
- b) Other applicable sections of federal and state regulations such as federal septage management rules, and recreational vehicle waste tank disposal rules would be referenced here as appropriate.
- c) Other applicable federal regulations such as U.S. EPA Underground Injection Control Program Class V rules, Clean Water Act rules, and Drinking Water Act rules would be referenced here as appropriate.

**2.02 Compliance Criteria for Existing SSTS**

SSTS built before April 1, 1996 outside of areas designated as shoreland areas, wellhead protection areas, or SSTS providing sewage treatment for food, beverage, or lodging establishments must have at least two feet of vertical separation between the bottom of the dispersal system and seasonal saturation or bedrock.

*Optional Provision:*

*Existing SSTS built after March 31, 1996 or SSTS located in a Shoreland area, wellhead Protection area, or serving a food, beverage, or lodging establishment as defined under 7080.1100, Subp. 84 shall have a three-foot vertical separation between the bottom soil infiltrative surface and the periodically saturated soil and/or bedrock. Existing systems that have no more than a 15 percent reduction in this separation distance (a separation distance no less than 30.6 inches) to account for settling of sand or soil, normal variation of separation distance measurements and interpretation of limiting layer characteristics may be considered compliant under this ordinance. The vertical separation measurement shall be made outside the area of system influence but in an area of similar soil. 7080.1500, Subp.4*

**2.03 Holding Tanks**

**Option:**

*If counties wish to allow **holding tanks**, the specific conditions under which their use will be allowed must be specified (7082.0100, Subp.3G). These conditions should be listed as an amendment to the adopted standards in this section. Note that to qualify as a holding tank, tanks must comply with 7080.2290, items A through F. Further, all owners of holding tanks shall be issued an operating permit (7082.0600, Subp.2A), which must include the minimum provisions listed in 7082.0600, Subp.2B, (1) through (8). See Article V. Section 2.0 of this ordinance.*

*Many jurisdictions prohibit or severely limit the use of holding tanks because of the concern that owners will allow illicit discharges to occur. Yet, holding tanks are a practical method of handling wastewater for a variety of applications where water use is low such as in seasonal homes, buildings located on sensitive sites, parks, playgrounds service station drains ,etc. However, reliable management, which ensures that the tanks are pumped and the contents are hauled to permitted treatment facilities is a critical and necessary element of holding tank use. With rigorous management assured, holding tanks offer safe, effective and affordable options for low water use applications.*

*Example holding tank provisions are provided:*

***Restrictive Provision:** Holding tanks may be allowed for the following applications; as replacements for existing failing SSTS, SSTS that pose an imminent threat to public health or safety, or for new construction on lots existing as of the date of the enactment of this ordinance and only where it can be shown conclusively that a SSTS permitted under this ordinance cannot be feasibly installed. Holding tanks shall not be allowed for all other wastewater applications except for the exempted uses listed here. (List of exemptions to be allowed.)*

***Conditional Provision:** Holding tanks may be used for single family homes and other buildings with limited water use under the following conditions:*

- 1) The owner shall install a holding tank in accordance with MR Chapter 7080.2290.*
- 2) The owner shall install a remote reading water meter to continuously record indoor water use.*
- 3) The owner shall maintain a valid contract with a licensed liquid waste hauler to pump and haul the holding tank to a licensed treatment facility.*
- 4) The holding tank shall be regularly pumped, no less frequently than bi-weekly or other regular schedule agreed upon with the Department.*
- 5) The pumper shall certify each date the tank is pumped, the volume of the liquid waste removed, the treatment facility to which the waste was discharged, and the water meter reading at the time of pumping and report to the Department that the holding tank is pumped less frequently than bi-weekly or other schedule agreed upon with the Department.*

*Failure to meet these requirements will result in (insert penalties to be applied).*

## **ARTICLE V, SECTION 3.0 VARIANCES**

*Note:*

*Variations are not necessary in a performance program because prescriptive requirements are avoided. However, SSTS programs may wish to maintain certain minimums, such as a one foot minimum separation distance to a saturated zone. Also, other departments outside the local SSTS program may have promulgated their own requirements such as the Minnesota Department of Health with minimum requirements for water supply well setbacks. Therefore, it may be necessary to include a variance provision here. (See Article V, section 3 of the Conventional SSTS Program Ordinance Model in this manual.)*

## **ARTICLE VI SSTS PERMITTING**

### **ARTICLE VI, SECTION 1.0 PERMITS REQUIRED**

It is unlawful for any person to construct, install, modify, replace, or operate a subsurface sewage treatment system without the appropriate permit from the (DEPARTMENT NAME), (COUNTY NAME). The issuing of any permit, variance, or conditional use under the provisions of this Ordinance shall not absolve the applicant's responsibility to obtain any other required permit.

## ARTICLE VI, SECTION 2.0 NOTICE OF INTENT TO CONSTRUCT OR REPAIR A SSTS

### 2.01 Purpose

Any owner or owners of any building or other facility, which has or will have a wastewater discharge requiring a permit under this Ordinance, shall submit a Notice of Intent to Construct or Repair an SSTS to the Department. The purpose of this Notice is to provide the Department sufficient information to inform the submitter of the performance requirements for the proposed SSTS.

***Comment:***

*The Notice of Intent is intended to provide the owner a preliminary determination based on available information of the performance stipulations that the County anticipates will be incorporating into the Operating Permit of the proposed SSTS. The owner needs these preliminary stipulations to design an appropriate SSTS to meet the requirements.*

### 2.02 Required Contents

The owner shall provide the following information on a form available from the Department:

- A. Owner name and contact information
- B. Property tax identification number and address or legal description
- C. Intended use of the property and buildings
- D. Type of wastewater to be treated (eg, domestic, restaurant, convenience store, etc.)
- E. Projected daily average and peak flow volumes

### 2.03 Department Response

Within (10) working days of receipt of the Notice, the Department shall review the Notice of Intent and determine the specific performance requirements appropriate for the location, nature of the proposed property use, and projected wastewater characteristics in accordance with Article V of this ordinance. The Department shall provide the owner with written preliminary performance, maintenance, monitoring, and reporting requirements for the proposed SSTS.

### 2.04 Disputes

- A. The applicant may contest any or all of the stipulations in the written response to the Notice of Intent by providing relevant and detailed reasons why the Department should reconsider the stipulations.
- B. If the owner contests the stipulations, the Department shall review the stipulations and inform the owner of its decision in writing within (30) working days of the contest notice. The reasons behind the decision must be clearly documented whether the request is denied or the stipulations are revised.

## 2.05 Transfers

The performance requirements stipulated in the written response to the Notice of Intent are not transferable to a new owner of the referenced property.

*Comment:*

*This is necessary because the intended use of the property may change with a change in ownership.*

## 2.06 Revisions

The Department may revise the performance requirements at any time prior to issuing a final Operating Permit. Revisions may be necessary as the result of site characteristics not conforming to the criteria of the designated receiving environment, rule changes, or false statements or misrepresentation of facts by the applicant.

### ARTICLE VI, SECTION 3.0. CONSTRUCTION PERMIT

A construction permit shall be obtained by the property owner or an agent of the property owner from the county prior to the installation, construction, replacement, modification, alteration, repair, or capacity expansion of a SSTS. The purpose of this permit is to ensure that the proposed construction activity is sited, designed, and constructed in accordance with the provisions of this Ordinance by appropriately certified and/or licensed practitioner(s).

#### 3.01 Activities Requiring a Construction Permit

A construction permit is required for installation of a new SSTS, for replacement of an existing SSTS, or for any repair or replacement of components that will alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout, or function.

#### 3.02 Activities Not Requiring a Construction Permit

A construction permit is not required for minor repairs or replacements of system components that do not alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout, or function.

*Optional provision:*

#### 3.03 Construction Permit Required to Obtain Building Permit

*For counties that issue building permits: Any property for which a SSTS permit is required, approval and issuance of a valid SSTS Construction Permit must be obtained before a building permit may be issued by the Department.*

*Optional provision:*

#### 3.04 Conformance to Prevailing Requirements

*Any activity involving an existing system that requires a Construction Permit shall require that the entire system be brought into compliance with this Ordinance.*

### 3.05 Permit Application Requirements

Construction permit applications shall be made on forms provided by the (DEPARTMENT) and signed by the applicant and also, if prepared by an appropriately certified practitioner, signed by that practitioner including the practitioner's certification number and date of expiration. The applications shall include the listed documents.

- F. Name, mailing address, telephone number, and email address.
- G. Property Identification Number and address or other description of property location.
- H. Site Evaluation Report as described in Minnesota Rules, Chapter 7080.1730
- I. Design Report as described in Minnesota Rules, Chapter 7080.2430.
- J. Management Plan as described in Minnesota Rules, Chapter 7082.0600.

### 3.06 Application Review and Response

The Department shall review a permit application and supporting documents within (15) working days from the date of receipt of a satisfactorily completed application. Upon satisfaction that the proposed work will conform to the provisions of this ordinance the Department shall issue a written permit authorizing construction of the SSTS as designed. In the event that for any reason the applicant makes a significant change to the approved application, the applicant must file an amended application detailing the changed conditions for approval prior to initiating or continuing construction, modification, or operation for approval or denial. The Department shall complete the review of the amended application within 15 working days of receipt of the amended application. If the permit application is incomplete or does not meet the requirements of this ordinance the Department shall deny the application. A notice of denial shall be provided to the applicant, which must state the reason for the denial.

### 3.07 Appeal

The applicant may appeal the Departments decision to deny the Construction Permit in accordance with the County's established policies and appeal procedures.

### 3.08 Permit Expiration

The Construction Permit is valid for a period of no more than (ONE) year from its date of issue, unless it is extended in accordance with this section or construction has been completed satisfactorily, whichever is shorter. Satisfactory completion of construction shall be determined by receipt of final record drawings and a signed certification that the construction or installation of the system was completed in reasonable conformance to the approved design documents by a qualified employee of the Department or a licensed inspection business, which is authorized by the Department and independent of the owner and the SSTS installer.

*Comment:*

*This provision is included to track the status of the Construction Permit. If construction does not proceed within the valid permit period, the permit should be voided automatically and the applicant noticed. A formal closure of the permit is needed to*



*ensure that the Department is aware and that proper construction documents are submitted and recorded so that a Certificate of Compliance may be issued.*

*Optional:*

### **3.09 Extensions and Renewals**

*The Department may grant an extension of the Construction Permit if the construction has commenced prior to the original expiration date of the permit. (The permit may be extended for a period of no more than (6) months.*

*Comment:*

*This provision provides the opportunity for the Department to require the applicant to reapply and conform to the prevailing rules if they have been revised after the original date of the permit.*

### **3.10 Transferability**

A Construction Permit shall not be transferred to a new owner. The new owner must apply for a new Construction Permit in accordance with this section.

*Comment:*

*This provision provides the opportunity for the Department to require the new owner to conform to any revised rules since the date of the original permit but also provides a “teaching moment” to ensure the new owner is aware of the SSTS and his/her responsibilities associated with it.*

### **3.11 Suspension or Revocation**

The Department may suspend or revoke a Construction Permit issued under this section for any false statements, misrepresentations of facts on which the Construction Permit was issued, or unauthorized changes to the system design that alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system’s design, layout, or function. A notice of suspension or revocation and the reasons for the suspension or revocation shall be conveyed in writing to the permit holder. If suspended or revoked, installation or modification of a treatment system may not commence or continue until a valid Construction Permit is obtained.

### **3.12 Posting**

The Construction Permit shall be posted on the property in such a location and manner so that the permit is visible and available for inspection until construction is completed and certified.

## **ARTICLE VI, SECTION 4.0 OPERATING PERMIT**

### **4.01 SSTS Requiring an Operating Permit**

An Operating Permit shall be required of all owners of SSTS unless otherwise exempted by this Ordinance. Wastewater shall not be discharged to any SSTS until the Department certifies that the SSTS was installed in conformance with the approved plans and receives the final record drawings of the SSTS.

## 4.02 Permit Application Requirements

*Comment:*

*Minnesota Rules, Chapter 7082.0500, Subp. 2 requires that the local unit of government must issue and enforce operating permits for all holding tanks, Type IV and Type V systems, and MSTs and any other system deemed by the local unit of government to require operational oversight. Also, Chapter 7082.0100, Subp. 3.L requires that the local program must require that owners of systems not operated under a management plan (typically existing SSTS) must inspect and remove solids from septic tanks if necessary every three years. Counties should consider requiring operating permits for these systems as well to confirm that inspections are performed when required and solids removed as necessary. Operating permits are also useful in identifying systems that are no longer in use and must be properly abandoned.*

- A. Application for an operating permit shall be made on a form provided by the (DEPARTMENT) including:
- (1) Owner name, mailing address, telephone, and email address
  - (2) Construction permit reference number and date of issue
  - (3) Final record drawings of the treatment system
  - (4) Owners of holding tanks must submit a copy of a valid executed monitoring and disposal contract with a licensed maintenance business
- B. Monitoring and Disposal Contract

*Note:*

*See Minnesota Rules, Chapter 7082.0100, Subp. 3.G*

Owners of holding tanks shall provide to the (DEPARTMENT) a copy of a valid monitoring and disposal contract executed between the owner and a licensed maintenance business, which guarantees the removal of the holding tank contents in a timely manner that prevents an illegal discharge. This requirement is waived if the owner is a farmer who is exempt from licensing under Minnesota Statutes, section 115.56, subdivision 3, paragraph (b), clause (3).

*Comment:*

*While individual contracts may be terminated by either the owner or the licensed business, counties should consider requiring that the owner hold a valid contract with a licensed maintenance business at all times until which time the holding tank is abandoned or the property sold.*

*Optional:*

- C. All SSTS existing prior to the effective date of this ordinance shall require an operating permit upon transfer of ownership, replacement, any modification or expansion that requires a permit, or following any SSTS enforcement action.

#### 4.03 Department Response

The Department shall review the final record drawings, operation and maintenance manual, management plan, maintenance and servicing contract and any other pertinent documents as appropriate for accuracy and completeness. If any deficiencies are identified, the operating permit shall be denied until the deficiencies are corrected to the satisfaction of the Department. If the submitted documents fulfill the requirements, the Department shall issue an operating permit within (10) working days of receipt of the permit application.

***Comment:***

*Consideration should be given to allow a temporary permit to be issued to alleviate a hardship if the owner has need to occupy the building before the operating permit can be issued. The temporary permit should be limited to operating the treatment tank(s) as a holding tank until the operating permit is issued. The permit should expire within (60) days of its issue date.*

#### 4.04 Operating Permit Terms and Conditions

The Operating Permit shall include

*See Minnesota Rules, Chapter 7082.0600, Subp2.B:*

- A. System performance requirements
- B. System operating requirements
- C. Monitoring locations, procedures and recording requirements
- D. Maintenance requirements and schedules
- E. Compliance limits and boundaries
- F. Reporting requirements
- G. Department notification requirements for non-compliant conditions
- H. Valid contract between the owner and a licensed maintenance business
- I. Disclosure, location and condition of acceptable soil treatment and dispersal system site
- J. Descriptions of acceptable and prohibited discharges

#### 4.05 Permit Expiration and Renewal

- A. Operating permits shall be valid for a specific term stated on the permit as determined by the Department.
- B. An operating permit must be renewed prior to its expiration. If not renewed, the Department may require the system to be removed from service or operated as a holding tank until which time the permit is renewed. If not renewed within in (90) calendar days of the expiration date, the County may require that the system be abandoned in accordance with Article V, Section 4.0.

- C. The Department shall notify the holder of an operating permit at least (90) calendar days prior to expiration of the permit. The Owner must apply for renewal at least (30) calendar days before the expiration date.
- D. Application shall be made on a form provided by the Department including:
  - (1) Applicant name, mailing address and phone number.
  - (2) Reference number of previous owner's operating permit.
  - (3) Any and all outstanding Compliance Monitoring Reports as required by the Operating Permit.
  - (4) Certified treatment system inspection signed and/or sealed by a certified designer, maintenance contractor, or operator at the discretion of the County.
  - (5) Any revisions made to the operation and maintenance manual.
  - (6) Payment of application review fee as determined by the County.

#### **4.06 Compliance Monitoring**

- A. Performance monitoring of a SSTS shall be performed by a licensed inspection business or licensed service provider hired by the holder of the operating permit in accordance with the monitoring frequency and parameters stipulated in the permit. The Department shall notify owners (60) days prior to their scheduled compliance monitoring dates of their requirements for preparing and submitting the compliance monitoring reports.
- B. A monitoring report shall be prepared and certified by a licensed inspection business or licensed service provider. The report shall be submitted to the Department on a form provided by the Department on or before the compliance reporting date stipulated in the operating permit. The report shall identify the maintenance and servicing activities performed since the last compliance monitoring report as described below:
  - (1) Owner name and address
  - (2) Operating permit number
  - (3) Average daily flow since last compliance monitoring report
  - (4) Description of type of maintenance and date performed
  - (5) Description of samples taken (if required), analytical laboratory used, and results of analyses
  - (6) Problems noted with the system and actions proposed or taken to correct them
  - (7) Name, signature, license and license number of the licensed professional who performed the work

#### **4.07 Interim Operating Agreement**

***Comment:***

*The purpose of the Interim Operating Agreement is to establish an agreement between*

*the Owner and County for a specific Compliance Plan and schedule for completion in response to a Notice of Violation pursuant to §100.275(a).*

- A. The owner of an SSTS that receives a notice of violation from the Department for a system that is violating a condition or conditions of its operating permit shall not be permitted to continue operation of the system unless the owner has obtained an interim operating agreement based on a compliance plan approved by the County.
- B. The notice of violation shall describe the specific conditions which were the cause for the issuance of the notice of violation.
- C. Within (60) days of receipt of the notice of violation, the owner shall submit an Interim Operating Agreement application to the Department. The owner shall provide the following information on a form provided by the Department:
  - (1) Reference number of current operating permit.
  - (2) Reference number of the notice of violation.
  - (3) Compliance plan signed by the Owner that includes:
    - (a) A description of specific actions that will be taken by the owner to address the specific compliance conditions described in the notice of violation to bring the SSTS into compliance with this rule.
    - (b) A schedule indicating the dates by which time each action will be completed in a manner acceptable to the County. The schedule shall not exceed (24) months from the date the notice of violation was issued.
  - (4) Relevant supporting documentation as appropriate.
  - (5) The County may assess a fee for the application review and issuance of the interim agreement.
- D. County response
  - (1) The County shall review the compliance plan and any supporting documentation to evaluate the appropriateness of the plan to achieve system compliance.
  - (2) The County may request additional information or recommend revisions to the compliance plan that are deemed necessary to achieve system compliance.
  - (3) Within (30) working days of receipt of the permit application or receipt of any requested additional documentation or revisions the County shall:
    - (a) Approve the interim operating agreement and suspend the existing operating permit.
    - (b) Deny the interim operating agreement application explaining in writing to the applicant the reasons for denial, re-submittal procedures and the procedures for appeal.
    - (c) Suspend or revoke the current operating permit if the owner fails to negotiate a compliance plan acceptable to the Department within a reasonable time period from the date of the notice of violation.

F. Appeals

The owner may appeal the Department's decision to deny approval of an interim operating agreement in accordance with county policies and procedures.

G. Expiration

- (1) The interim operating agreement is valid for a stipulated period of time determined by the Department to be necessary to successfully implement the compliance plan, but no longer than a normal term of the operating permit or until satisfactory completion of construction or installation, whichever is shorter.
- (2) The interim operating agreement shall be voided after satisfactory completion of the compliance plan, as documented by a certificate signed and/or sealed by a certified designer, contractor, or operator.

G. Extensions

The term of the interim operating agreement may be extended at the discretion of the Department

- (1) An interim operating agreement must be extended if the existing term of the agreement will expire before the compliance plan has been completed.
- (2) The application for extension of an interim operating agreement shall be made in a format prescribed by the Department. The Department may require resubmission of the application for review.

H. Transfers

The interim operating agreement may not be transferred from an Owner to another party.

I. Suspension or Revocation

- (1) The regulatory authority may revoke an interim operating agreement under this section for any false statements or misrepresentations of facts on which the interim operating agreement was issued.
- (2) Notice of revocation and the reasons for revocation shall be conveyed in writing to the Owner.
- (3) If revoked, the treatment system must be removed from service until a valid interim operating agreement is approved by the regulatory authority.
- (4) The applicant may appeal the regulatory authority's decision to revoke the interim operating permit in accordance with county policies and procedures.

**4.08 Amendments to Existing Permits not Allowed**

The Department may not amend an existing permit to reflect changes in this rule until the permit term has expired and is renewed unless an amendment is necessary to eliminate an imminent threat to public health or safety.

#### 4.9 Transfers

The operating permit may not be transferred. A new owner shall apply for an operating permit in accordance with Article V, Section 3.02. The Department shall not terminate the current permit until (60) calendar days after the date of sale unless an imminent threat to public health and safety exists. To consider the new owner's application, the Department may require a performance inspection of the treatment system certified by a licensed inspector or qualified employee.

#### 4.10 Suspension or Revocation

- A. The Department may suspend or revoke any operating permit issued under this section for any false statements or misrepresentations of facts on which the operating permit was issued.
- B. Notice of suspension revocation and the reasons for revocation shall be conveyed in writing to the owner.
- C. If suspended or revoked, the Department may require that the treatment system be removed from service, operated as a holding tank or abandoned in accordance with Article V, Section 4.0.
- D. At the Department's discretion, the operating permit may be reinstated or renewed upon the owner taking appropriate corrective actions.

### ARTICLE VI, SECTION 5.0 ABANDONMENT CERTIFICATION

#### 5.01 Purpose

The purpose of the system abandonment certification is to ensure that a treatment system no longer in service is abandoned within a reasonable time following decommissioning and in a manner that protects public health, safety and water quality. It also terminates all permits associated with the system.

*Comment:*

*Proper abandonment of systems must be confirmed for health and safety reasons. An owner may overlook the abandonment requirement when discontinuing use of the system. If the County has an operating permit program, these systems can be readily identified when the owner fails to renew the operating permit. If the County does not have an operating permit program, the county must rely on disclosure statements and property transfers to identify systems that have not been properly abandoned. This approach is not reliable however. Alternatively, abandonment requirements could be sent out with maintenance reminders. When a decommissioned system or component is discovered, the county should issue a Notice of Violation, which directs the owner to obtain an abandonment certificate from a licensed/certified contractor.*

#### 5.02 Abandonment Requirements

- A. Whenever the use of a SSTS or any system component is discontinued as the result of a system repair, modification, replacement or decommissioning following connection to a municipal or private sanitary sewer, or condemnation or demolition of a building

- served by the system, further use of the system or any system component for any purpose under this Ordinance shall be prohibited.
- B. Continued use of a treatment tank where the tank is to become an integral part of a replacement system or a sanitary sewer system requires the prior written approval of the Department.
- C. An owner of an SSTS must retain a licensed installation business to abandon all components of the treatment system within (60) calendar days of a system. Abandonment shall be completed in accordance with Minnesota Rules, Chapter 7080.2500. No prior notification of the Department of an owner's intent to abandon a system is necessary.
- D. A report of abandonment certified by the licensed installation business shall be submitted to the Department. The report shall include:
- (1) Owner's name and contact information
  - (2) Property address
  - (3) System construction permit and operating permit
  - (4) The reason(s) for abandonment
  - (5) A brief description of the abandonment methods used, description of the system components removed or abandoned in place, and disposition of any materials or residuals.

### **5.03 Abandonment Certificate**

Upon receipt of an abandonment report and verification that the SSTS has been abandoned according to the requirements of this Ordinance, the Department shall issue an abandonment certificate. If the abandonment is not completed according to the requirements of this Ordinance the County shall notify the owner of the SSTS of the deficiencies, which shall be corrected within (30) calendar days.

## **ARTICLE X RECORD KEEPING**

### **ARTICLE X, SECTION 1.0 Permitted SSTS**

The County shall maintain a current record of all permitted systems. The record shall contain all permit applications, issued permits, fees assessed, variance requests, certificates of compliance, notices of noncompliance, enforcement proceedings, site evaluation reports, design reports, record drawings, management agreement plans, maintenance reports, an annual list of all sewage tanks installed in the county sorted by licensed installation businesses, and other records relevant to each system.

*Note:*

*See Minnesota Rules, Chapter 7082.0300, Subp. 4, which describes the records that MPCA requires the County to retain.*



**ARTICLE X, SECTION 2.0    Tracking Residuals Hauling, Treatment, and Disposal**

Only Minnesota licensed pumpers are allowed to service, clean, and pump and remove residuals from SSTS. The pumper must develop and maintain a record keeping system to track residuals hauling, treatment, and disposal in accordance with the Code of Federal Regulations, title 40, parts 257 and 503, and applicable state, tribal, and local requirements.

**SECTION 4:**  
**ALTERNATIVE LOCAL STANDARDS PROGRAM**  
**ORDINANCE MODEL**

## **SECTION 4:**

# **ALTERNATIVE LOCAL STANDARDS PROGRAM MODEL ORDINANCE**

### **MPCA Requirements**

7082.0050 General Requirements for Local Ordinances, Subp. 5. Requirements for alternative local programs. A county is authorized to adopt and enforce by ordinance alternative local standards as part of a conventional program that are less restrictive than the agency's rules for existing systems or new construction or replacement of SSTS in areas of sustained and projected low population density where conditions render conformance to MR Chapter 7082 difficult or otherwise inappropriate. The alternative local standards must protect public health and the environment as stipulated in Minnesota Statutes, section 115.55, subdivision 7, paragraphs (a) and (b).

### **Program Ordinance Requirements**

For a county to promulgate alternative local standards for SSTS, they must be a part of a Conventional SSTS Program. In addition, the Alternative Local Standards Ordinance must comply with the following requirements in accordance with 7082.0050, Subp. 5, A through F.

#### **7082.0050 Subp. 5: Requirements for alternative local standards:**

- A. A provision stating alternative local standards do not apply in shoreland or wellhead protection areas or to SSTS serving food, beverage, or lodging establishments.
- B. Alternative local standards must comply with the requirements of other applicable state laws, state rules, and local ordinances.
- C. (part 1): A provision that establishes a specific time period to upgrade, replace, or discontinue use of an existing system that does not comply with the ordinance.  
  
(part 2): The draft local ordinance, including alternative local standards for existing systems only, must demonstrate that, based on local circumstances, the alternative local standards adequately protect public health and the environment. Possible considerations for justifying the alternative local standards include:
  - (1) Unsaturated soil separation,
  - (2) Soil classification,
  - (3) Vegetation,
  - (4) System use,
  - (5) Placement and construction of wells in proximity,
  - (6) Density of SSTS and wells in proximity,
  - (7) Extent of area to be covered by the alternative local standard,

- (8) Groundwater flow directions, and
- (9) Existing natural and constructed drainage systems.

D. and F.

In accordance with Minnesota Statutes, section 115.55, subdivision 7, paragraph (b), counties are authorized to adopt alternative local standards for new construction and replacement SSTS that are less restrictive than the agency's rules only in areas of sustained and projected low population density where conditions render conformance to 7082 difficult or otherwise inappropriate. If the alternative local standards are intended to be applied to new and replacement SSTS, the appropriateness of the alternative local standards must be documented including the following information:

- (1) Population density of the area covered by the alternative local standard,
- (2) Reasons why conformance to 7082 is difficult or otherwise inappropriate,
- (3) Description of the hardship that would result from strict adherence to the agency's rules,
- (4) Evidence of sustained and projected low population density,
- (5) Evidence that the proposed alternative local standard provides cost-effective and long-term treatment,
- (6) Delineation of the area of the county where the alternative local standard will apply,
- (7) Applicable justifications listed under C above.

If the draft ordinance includes alternative local standards for new and replacement SSTS, it must be submitted to the local water planning advisory committee created under Minnesota Statutes, section 103B.321, subdivision 3.

The draft ordinance, including the alternative local standards, must be submitted to the MPCA commissioner at least 30 days before adoption for review and comment by the commissioner regarding justification based on local circumstances that the alternative local standards adequately protect public health and the environment. If the draft ordinance includes alternative local standards that are to apply to new and replacement SSTS, the draft ordinance must be submitted after review by the local water planning advisory committee with a committee statement providing justification for adoption.

Local ordinances for a Conventional SSTS Program must include the provisions in the following list as required by 7082.0100, Subp.1 through Subp.3. In addition, 7082.0050 list additional requirements that must be met to implement alternative local standards. The list of these requirements is also included.

Counties must confirm the inclusion of these items by completing the *Ordinance Checklist* provided by the commissioner of MPCA. This checklist must be included with the submittal of the proposed ordinance to the commissioner at least 30 days prior to the county's adoption of the ordinance. The location of each required provision in the proposed ordinance must be cited by the county in the Ordinance Checklist. This checklist is available from the commissioner and is provided in Attachment A of this manual.

Listed below are the required provisions extracted from the *Ordinance Checklist*, which includes the citations of each within this model ordinance.

**7082.0100 Subp. 1: Provisions required by law for all local SSTS programs:**

- A. A provision requiring upgrade, replacement, repair, or discontinued use of systems failing to protect groundwater within a specified period from the date of issue of the notice of noncompliance (7080.1500 Subp. 4).

Model ordinance citation: Article IV, Sec. 2.03

- B. A provision requiring upgrade, replacement, repair, or discontinued use of systems posing an imminent threat within 10 months from the date of issue of the notice of noncompliance (7080.1500 Subp. 4).

Model ordinance citation: See Article IV, Sec. 2.04

- C. A provision requiring that a system owner has five years from the date of receipt of a permit to add a bedroom to upgrade, replace, repair or discontinue use of the system.

*Note: This requirement applies only if the local unit of government issues a permit for a bedroom addition..*

Model ordinance citation: See Article IV, Sec. 2.02

- D. A provision regulating vertical separation for systems built in non-SWF before April 1, 1996 must meet the requirements in 7080.1500, Subp. 4E.

Model ordinance citation: See Article V, Sec. 2.03

**7082.0100 Subp. 2: List of differences:**

List any technical and program administrative differences between the local ordinance and Chapters 7080 and 7081. (This list is a helpful tool for SSTS contractors to use in designing, installing and maintaining systems according to the local code.)

Model ordinance citation: See Article V, Sec. 2.01

**7082.0100 Subp. 3A: Provisions required in rule for all local SSTS programs:**

- A. A provision requiring all work performed on SSTS be done by appropriately licensed businesses, qualified employees or persons exempt from licensing in 7083.0700, Subp. 1.

*Note: Local SSTS ordinances cannot require additional local licenses, certificates, or registrations of practitioners or service providers doing business in its jurisdictional area..)*

Model ordinance citation: See Article IV, Sec. 5.0

- B. A provision requiring abandonment of systems no longer in use according to 7080.2500.  
Model ordinance citation: See Article IV, Section 2.05 and Article V, Sec. 4.0
- C. A provision specifying technical standards and criteria for new and existing SSTS that adequately protect the public health and environment. Conventional programs should specifically adopt technical standards in 7080.1710 to 7080.0290.  
Model ordinance citation: See Article V, Sec. 1.0
- D. A provision specifying whether local variances may be allowed and if so, how an application must be made.  
Model ordinance citation: See Article V, Sec. 4.0
- E. Provisions for design review, permit issuance, construction inspection, and system operation.  
Model ordinance citation: See Article VI
- F. A provision which requires that all lots created after January 23, 1996, have a minimum of two soil treatment and dispersal areas (in accordance with 7082.0100, Subp. 3F) that support Type I systems as described in parts 7080.2200 to 7080.2730 or site conditions as described in 7080.0270, Subp. 3 to Subp. 7 (see).  
Model ordinance citation: See Article IV, Sec 1.03
- G. A provision specifying the conditions necessary to allow the use of holding tanks, holding tank operation and maintenance requirements, and the requirement for an executed contract between the owner and a licensed maintenance business.  
Model ordinance citation: See Article V, Sec. 2.04
- H. A provision prohibiting surface discharge of sewage without a NPDES permit issued by MPCA.  
Model ordinance citation: See Article IV, Sec. 6.02
- I. A provision specifying the necessary conditions for allowable use and location of SSTS in floodplains in compliance with applicable state and local requirements.  
Model ordinance citation: See Article IV, Sec. 3.0
- J. A provision requiring an approved management plan before issuance of a construction permit for all new and replacement SSTS as described in 7080.1100, Subp. 52.  
Model ordinance citation: See Article VII, Sec. 2.0
- K. A provision requiring operating permits for Type IV and V systems, systems which are built under Alternative Local Standards, and all MSTs.  
Model ordinance citation: See Article VI, Sec. 3.02
- L. A provision for systems not operated under a management plan or operating permit which requires SSTS maintenance evaluations at least every three years and maintenance when needed, with residuals removed as specified in 7080.2450.  
Model ordinance citation: See Article VII, Sec. 2.03

M. A provision requiring that owners of Class V wells (see 40 CFR 144.50 of the Federal Register) submit inventory information to USEPA and that property transfer disclosures identify such Class V wells.

Model ordinance citation: See Article IV, Sec. 4.0

N. A provision outlining how conflicting inspections and other technical disputes between SSTS certified professionals will be resolved when they occur as described in 7082.0700, Subp. 5.

Model ordinance citation: See Article VIII, Sec. 2.03 B

O. A provision specifying what level of local approval is needed for repair, rejuvenation or remediation of SSTS as defined in local ordinance.

Model ordinance citation: See Article VI, Sec. 2.01 & 2.02

P. A provision which specifies the allowed methods for determining the soil treatment and dispersal system design loading rate from 7080.2150, Subp. 3E Tables IX or IXa.

Model ordinance citation: See Article V, Sec. 2.02

Q. A provision that requires all sewage generated in the jurisdiction to be treated either in an agency-permitted facility or a system designed under 7080 and 7081 standards.

Model ordinance citation: See Article III, Sec. 1.0 and Article VI, Sec. 1.0

R. An optional provision that allows a no more than a 15% reduction in the minimum three foot separation distance to groundwater below an individual SSTS soil treatment and dispersal system installed after March 31, 1996, or in Shoreland or Wellhead protection areas, or systems serving food, beverage, or lodging establishments as described in 7080.1500, Subp. 4D.

Model ordinance citation: Article V, Sec. 2.02

#### **7082.0050 Subp. 5: Requirements for Alternative Local Standards**

C. For existing systems: The draft local ordinance must be submitted to MMPCA at least 30 days before adoption. The submittal package must include the following:

(1) The draft standard that is less restrictive than the 7080 standards for existing systems.

Model ordinance citation: Article V., Sec. 3.01

(2) Based on local circumstances, demonstrate that the alternative local standards adequately protect public health and the environment. Include information on soil separation, soil classification, vegetation, system use, localized well placement and construction, localized density of systems and wells, groundwater flow patterns, and existing natural or artificial drainage.

Included in submittal package?

D. For new or replacement systems:

The draft local ordinance must be submitted to MMPCA at least 30 days before adoption. The submittal package must include the following:

- (1) The draft standard that is less restrictive than the 7080 standards for new or replacement systems

Model ordinance citation: See Article V. Sec. 3.02

Included in submittal package?

- (2) A map showing the areas of the county covered by the alternative local standards for new or replacement systems.

Included in submittal package?

- (3) Documentation of population density in the area covered by the alternative local standard

Included in submittal package?

- (4) Description of the reasons why conformance to 7080 standards is difficult or otherwise inappropriate

Included in submittal package?

- (5) Description of the hardship that would result from strict conformance to 7080

Included in submittal package?

- (6) Evidence of sustained and projected low population density

Included in submittal package?

Demonstration that, based on local circumstances, the alternative local standards adequately protect public health and the environment. Include information on soil separation, soil classification, vegetation, system use, localized well placement and construction, localized density of systems and wells, groundwater flow patterns, and existing natural or artificial drainage.

Included in submittal package?

Date the draft ordinance was submitted to the county's local water planning advisory committee, and any comments that may have been received

Included in submittal package?



**SUBSURFACE SEWAGE TREATMENT  
SYSTEM ORDINANCE  
(COUNTY NAME)**

COUNTY ORDINANCE NUMBER \_\_\_\_\_

(Effective Date)

## Alternative Local Standards SSTS Program Ordinance Table of Contents

*Note:*

*The alternative local standards program ordinance model is identical to the conventional program ordinance model except for the alternative local standards provisions below. Only the alternative local standards provisions are provided following the table of contents. These are limited to specific sections in Article V. A local unit of government wishing to promulgate an alternative local standards program must replace the sections in Article V of the conventional program with the Article V sections provided here.*

<b>ARTICLE V</b>	<b>SSTS STANDARDS</b> .....	<b>87</b>
<b>Section 3.0</b>	<b>Alternative Local Standards</b> .....	87
3.01	Alternative Local Standards for Existing SSTS.....	87
3.02	Alternative Local Standards for New and Replacement SSTS .....	87
3.03	Locations where the Alternative Local Standards do not Apply.....	87
<b>Section 4.0</b>	<b>Variances</b> .....	<b>87</b>
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4.02	Affected Agency.....	<b>87</b>
4.03	Board of Adjustment (Optional).....	<b>88</b>

## ALTERNATIVE LOCAL STANDARDS ORDINANCE PROVISIONS

*Note:*

*If local alternative standards are to be adopted, the following provisions should be substituted for Article V, Section 3.0 in the Conventional Program Ordinance Model. By replacing the existing section with these two sections, the original section will be included as Section 4.0.*

### ARTICLE V SSTS STANDARDS

#### ARTICLE V, SECTION 3.0 ALTERNATIVE LOCAL STANDARDS

##### 3.01 Alternative Local Standards for Existing SSTS

- A. *List and/or describe the alternative local standards intended for existing systems.*
- B. Existing systems that are not in compliance with this rule must be upgraded, replaced, or its use discontinued within (10) months of the owner's receipt of a Notice of Violation.

*Optional:*

*Alternative local standards that are less restrictive than 7080 and 7081 may be adopted for new construction or replacement in areas of sustained and projected growth may also be applied to new and replacement SSTS if the requirements in 7082.0050, Subp. 5 are met.*

##### 3.02 Alternative Local Standards for New and Replacement SSTS

*List and/or describe the alternative local standards intended for new and replacement systems and provide a map of where the alternative local standards apply..*

##### 3.03 Locations where the Alternative Local Standards do not Apply

These alternative local standards shall not apply to systems in shoreland or wellhead protection areas or to systems serving food, beverage, or lodging establishments.

#### ARTICLE V, SECTION 4.0 VARIANCES

##### 4.01 Variance Requests

A property owner may request a variance from the standards as specified in this ordinance pursuant to county policies and procedures.

##### 4.02 Affected Agency

Variations that pertain to the standards and requirements of the State of Minnesota must be approved by the affected State Agency pursuant to the requirements of the State Agency.

*Note:*

*Counties may request a variance from MR Chapter 7082 or public health or environmental protection standards in Chapter 7080.2150, Subp. 2 and 7081.0080, Subp. 3 through Subp. 5 from MPCA. Counties may approve variances from standards and*

*criteria not listed above on a case-by-case basis if local variance procedures are followed. The language below, which uses the Board of Adjustment for variance approvals, is offered as an optional provision.*

**Optional provision:**

**4.03 Board of Adjustment**

*The Board of Adjustment shall have the authority only to consider variances to horizontal setbacks from property lines, rights of way, structures, or buildings. Variances shall be permitted only when they are in harmony with the general purposes and intent of this Ordinance where there are practical difficulties or particular hardships in meeting the strict letter of this Ordinance. Variance requests to deviate from the design flow determination procedures in Minnesota Rules, Chapter 7081.0110 if the deviation reduces the average daily estimated flow from greater than 10,000 gallons per day to less than 10,000 gallons per day, or to provisions in 7080.2150, Subp. 2 and 7081.0080, Subp. 2 through 5 regarding the vertical separation required beneath the treatment and dispersal soil system and saturated soil or bedrock from the required three feet of unsaturated soil material (except as provided in 7082.1700, Subp. 4D) must be approved by MPCA. Variances to wells and water supply lines must be approved by the Minnesota Department of Health.*

**Comment:**

*If variances from more technical requirements are to be considered by the Board of Adjustment, establishment of an Advisory Committee as described in the optional provision under Article III, Section 6.0 should be considered. The Committee would advise the Board of Adjustment on the merits of requested variances from technical requirements in this Ordinance.*

*A. Any property owner requesting relief from the strict application of the provisions in this ordinance must complete and submit an Application for Variance to the Department on a form provided by the Department. The variance request must include, as applicable:*

- (1) A statement identifying the specific provision or provisions in the ordinance from which the variance is requested;*
- (2) A description of the hardship that prevents compliance with the rule;*
- (3) The alternative measures that will be taken to achieve a comparable degree of compliance with the purposes and intent of the applicable provisions;*
- (4) The length of time for which the variance is requested;*
- (5) Cost considerations only if a reasonable use of the property does not exist under the term of the Ordinance; and*
- (6) Other relevant information requested by the Department as necessary to properly evaluate the variance request.*

*B. The appropriate fee shall be paid at the time of submittal of the application to receive consideration by the Board of Adjustment.*

- C. Upon receipt of the variance application, the Department shall decide if a site investigation conducted by the Department will be necessary. After the necessary information has been gathered, the Department shall make a written recommendation to approve or deny the variance to the Board of Adjustment.*
- D. The Board of Adjustment shall make the final decision after conducting a public hearing. The variance may be granted provided that:
  - 1. The condition causing the demonstrated hardship is unique to the property and was not caused by the actions of applicant;*
  - 2. The granting of the variance will not be contrary to the public interest or damaging to the rights of other persons or to property values in the vicinity;*
  - 3. The property owner would have no reasonable use of the land without the variance;*
  - 4. The granting of the variance would not allow a prohibited use; and*
  - 5. The granting of the variance would be in accordance with Minnesota Rules, Chapters 7080, 7081, and 7082**
- E. In granting a request for a variance, the Board of Adjustment may attach such conditions as it deems necessary to conform to the purpose and intent of this ordinance.*
- F. Any violation of the terms and conditions of a variance issued pursuant to this ordinance, or any violation of any provision of this ordinance relating to the specific issue of the variance, shall result in immediate revocation of the variance.*
- G. Any variance granted shall automatically expire if the system is not installed within one year of the grant of the variance.*
- H. An appeal from any order, requirement, decision, or determination of the Board of Adjustment may be made in accordance with its policies and procedures.*

## **ATTACHMENTS**

<b>A.</b>	<b>MPCA ORDINANCE CHECKLIST.....</b>	<b>91</b>
<b>B.</b>	<b>SELLER’S SUPPLEMENTAL SEWER/SSTS DISCLOSURE STATEMENT....</b>	<b>99</b>

## ORDINANCE CHECKLIST

**This Checklist** is to be completed and sent to the MMPCA Commissioner at least 30 days prior to adoption of the ordinance. The Commissioner has up to six months to respond. The ordinance may be adopted and implemented during this time.

Local Unit of Government: \_\_\_\_\_

Administrator: \_\_\_\_\_ Date: \_\_\_\_\_

### **For a county program:**

Regulatory model chosen:

Conventional

Performance

Alternative Local Standards (Existing systems)

Alternative Local Standards (New and replacement systems)

*Note: Conventional programs adopt the technical standards of 7080 and 7081 by reference. A performance program adopts the technical standards of 7080 and 7081 for use as prescriptive standards where appropriate, and the provisions of a conventional program plus the provisions of 7082.0100 sub.4. Counties adopting conventional or performance standards must submit their adopted ordinances to MMPCA within 30 days after adoption. MMPCA will review the ordinance to verify that all applicable provisions of 7082 have been met. The ordinances may be implemented prior to MMPCA comment.*

*Alternative local standards are locally adopted standards that are less restrictive than 7080 and 7081; for new systems they may apply only in areas of the county that are low population density, where no population growth is planned and do not apply in shoreland or wellhead protection areas, or to facilities licensed as food, beverage or lodging facilities. Ordinances with alternative local standards must be submitted to the county's local water planning committee, and to the MMPCA at least 30 days before adoption. MMPCA will review the ordinance to verify that its provisions are protective of public health and the environment and that all applicable provisions of 7082 have been met.*

### **For a city, township or other program:**

County in which your jurisdiction lies: \_\_\_\_\_

Regulatory model chosen:

Conventional

Performance

*Note: City, township and other non-county programs must chose the conventional model, unless the county in which they lie has chosen the performance model. If this is the case, the cities and townships have the option of choosing between performance and conventional programs. City, township and other non-county programs must be at least as strict as the county's program.*



**Part One – Description of Local Program**

**7082.0040 Subp. 4: Required fiscal and physical capacity**

*Each local program must have an inspector who will make system judgments on behalf of the LGU. Inspectors may be qualified government employees or contracted from licensed inspection businesses, and may work for more than one LGU.*

Certified inspector:

Name: \_\_\_\_\_ Certification number: R\_\_\_\_\_

Address: \_\_\_\_\_

Certifications held:

Basic Inspector  Advanced Inspector   
Designer  Advanced Designer   
Installer  Maintainer  Service Provider

Qualified employee?

Contract inspector from licensed business?  If so,

Business name: \_\_\_\_\_ License number: L\_\_\_\_\_

Business address: \_\_\_\_\_

Certified inspector:

Name: \_\_\_\_\_ Certification number: R\_\_\_\_\_

Address: \_\_\_\_\_

Certifications held:

Basic Inspector  Advanced Inspector   
Designer  Advanced Designer   
Installer  Maintainer  Service Provider

Qualified employee?

Contract inspector from licensed business?  If so,

Business name: \_\_\_\_\_ License number: L\_\_\_\_\_

Business address: \_\_\_\_\_





SSTS Administrator: (Local government employee who has attended SSTS program administration training; does not need to be certified.)

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Date and location of training:** \_\_\_\_\_

**7082.0040 Subp. 4: Reporting Requirements**

*MR 7082 requires the reporting of specific items every year in the Annual Report. The local government must have a information management system (paper or automated) that can be used to provide the needed data. This section outlines the reporting requirements. For purposes of this checklist, the LGU must verify that they are able to provide the required data elements.*

The number of permits issued in the reporting year in the following categories:

Part 1:

1-2,499 gallons per day	2,500-4,999 gallons per day	5,000-10,000 gallons per day
-------------------------	-----------------------------	------------------------------

New SSTS construction  
Replacement SSTS  
Total SSTS by type permitted in year

Part 2:

Residential	Other establishments
-------------	----------------------

Type I  
Type II  
Type III  
Type IV  
Type V

Additional program information:

- a. the total number of systems serving full-time residences and seasonal residences \_\_\_\_\_
- b. the total number of cluster systems \_\_\_\_\_
- c. the total number of other establishments \_\_\_\_\_
- d. the estimated percentage of existing SSTS in compliance \_\_\_\_\_
- e. the number of systems regulated under an operating permit \_\_\_\_\_
- f. the number of septic system tanks installed by each licensed installation business or homeowner (by license number or homeowner name/address) \_\_\_\_\_
- g. for counties only, the names of cities and townships that have administer SSTS programs within the county \_\_\_\_\_
- h. a narrative reporting of problem areas in local SSTS administration based on LGU experience \_\_\_\_\_



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**ORDINANCE REQUIREMENTS**

**For all ordinances:**

**7082.0100 Subp. 1: Required by law for all local SSTS programs:**

1. A provision requiring upgrade, replacement, repair, or discontinued use of systems failing to protect groundwater as defined in 7080.1500 Subp. 4.

Included?  Ordinance citation (page or part number) \_\_\_\_\_

Specified time period for upgrade after notice: \_\_\_\_\_

2. A provision requiring upgrade, replacement, repair, or discontinued use of systems posing an imminent threat as defined in 7080.1500 Subp. 4.

Included?  Ordinance citation (page or part number) \_\_\_\_\_

3. If the local unit issues permits to add a bedroom, a provision requiring that the owner has five years from the date of the bedroom permit issuance to upgrade, replace, repair or discontinue use of the system.

Do not issue permits for bedroom additions

Issue bedroom permits; included?  Ordinance citation \_\_\_\_\_

**7082.0100 Subp. 2: List of differences:**

Please attach a list of technical differences (if any) between 7080 and 7081, and the local ordinance. Ideally, this list will be a helpful tool for SSTS contractors to use in designing, installing and maintaining systems according to the local code.

**7082.0100 Subp. 3A: Required in rule for all local SSTS programs:**

1. Provision requiring all SSTS work to be done by licensed businesses, qualified employees or persons exempt from licensing in 7083.0700, Subp. 1.

Included?  Ordinance citation (page or part number) \_\_\_\_\_

2. Provision requiring abandonment of systems no longer in use.

Included?  Ordinance citation (page or part number) \_\_\_\_\_

3. Technical standards and criteria for new and existing SSTS.

Included?  Ordinance citation (page or part number) \_\_\_\_\_

4. Provision specifying whether local variances may be allowed and if so, how to apply.

Included?  Ordinance citation (page or part number) \_\_\_\_\_

5. Provisions for design review, permit issuance, construction inspection and system operation

Included?  Ordinance citation (page or part number) \_\_\_\_\_

6. Provision requiring space for two Type I soil treatment areas

Included?  Ordinance citation (page or part number) \_\_\_\_\_



7. Provision specifying conditions for holding tanks  
Included?  Ordinance citation (page or part number) \_\_\_\_\_
8. Provision prohibiting surface discharge of sewage without NPDES permit issued by MMPCA  
Included?  Ordinance citation (page or part number) \_\_\_\_\_
9. Provision specifying the allowable use and location for SSTS in floodplains  
Included?  Ordinance citation (page or part number) \_\_\_\_\_
10. Provision requiring management plan for all new and replacement SSTS  
Included?  Ordinance citation (page or part number) \_\_\_\_\_
11. Provision requiring operating permits for Type IV and V systems, systems built under Alternative Local Standards, and MSTs  
Included?  Ordinance citation (page or part number) \_\_\_\_\_
12. Provision requiring SSTS maintenance evaluation no less than every three years and maintenance when needed, with residuals removed as specified in 7080.2450, for systems not operated under a management plan or operating permit  
Included?  Ordinance citation (page or part number) \_\_\_\_\_
13. Provision requiring that owners of Class V wells submit inventory information to EPA and that Class V wells be identified as such in property transfer disclosures  
Included?  Ordinance citation (page or part number) \_\_\_\_\_
14. Provision outlining how disputes between SSTS professionals will be resolved  
Included?  Ordinance citation (page or part number) \_\_\_\_\_
15. Provision specifying what level of local approval is needed for repair, rejuvenation or remediation of SSTS as defined in local ordinance  
Included?  Ordinance citation (page or part number) \_\_\_\_\_
16. Provision specifying the allowed methods to determine the loading rate from part 7080.2150, Subp. 3, item E, Tables IX or IXa  
Included?  Ordinance citation (page or part number) \_\_\_\_\_
17. Provision that requires all sewage generated in the jurisdiction to be treated either in an agency-permitted facility or a system designed under 7080 and 7081 standards  
Included?  Ordinance citation (page or part number) \_\_\_\_\_
18. Does the ordinance include a provision that allows a reduced separation distance as described in part 7080.1500, Subp. art 3, item D? Included?  *If so, this reduction must not be more than 15% in the vertical separation distance ordinarily required for that system.*



**7082.0100 Subp. 4: Additional Requirements for Performance Programs:**

A. An education program for SSTS owners

Included?  Ordinance citation (page or part number) \_\_\_\_\_

B. A program to evaluate risks of SSTS receiving environments and work with local planning authority to evaluate impacts of SSTS regulation on land use

Included?  Ordinance citation (page or part number) \_\_\_\_\_

C. A program to determine performance requirements necessary for each receiving environment that ensures that underground sources of drinking water are protected to the standards of chapter 4717 and surface water are protected to the standards of chapter 7050.

Included?  Ordinance citation (page or part number) \_\_\_\_\_

D. Specify site evaluation requirements to define the process to characterize the receiving environment

Included?  Ordinance citation (page or part number) \_\_\_\_\_

E. A program for operating permits for all system owners, including tracking and review of compliance monitoring reports

Included?  Ordinance citation (page or part number) \_\_\_\_\_

F. A program to track residuals hauling, treatment and disposal according to EPA's 503 regulations and applicable state, tribal and local requirements

Included?  Ordinance citation (page or part number) \_\_\_\_\_

G. A program for notifying owners of pending scheduled submittals and for performing system inspections randomly or at the time of operating permit reissuance

Included?  Ordinance citation (page or part number) \_\_\_\_\_

H. An enforcement program including penalties for failure to comply with the compliance schedule and requiring system inspection by certified inspection at the time of operating permit reissuance

Included?  Ordinance citation (page or part number) \_\_\_\_\_

I. A record-keeping program that includes a data-base inventory with locations, site evaluations, record drawings, permits, inspection reports, tracking for operating permits and compliance reporting

Included?  Ordinance citation (page or part number) \_\_\_\_\_

J. A financial assistance and funding program to support the management program

Included?  Ordinance citation (page or part number) \_\_\_\_\_



**7082.0050 Subp. 5: Requirements for Alternative Local Standards**

C. For existing systems:

The draft local ordinance must be submitted to MMPCA at least 30 days before adoption. The submittal package must include the following:

The draft standard that is less restrictive than the 7080 standards for existing systems (cite) Ordinance citation (page or part number) \_\_\_\_\_

Included in submittal package?

Demonstration that, based on local circumstances, the alternative local standards adequately protect public health and the environment. Include information on soil separation, soil classification, vegetation, system use, localized well placement and construction, localized density of systems and wells, groundwater flow patterns, and existing natural or artificial drainage. Included in submittal package?

D. For new or replacement systems:

The draft local ordinance must be submitted to MMPCA at least 30 days before adoption. The submittal package must include the following:

The draft standard that is less restrictive than the 7080 standards for new or replacement systems (cite)

Included in submittal package?

A map showing the areas of the county covered by the alternative local standards for new or replacement systems.

Included in submittal package?

Documentation of population density in the area covered by the alternative local standard

Included in submittal package?

Description of the reasons why conformance to 7080 standards is difficult or otherwise inappropriate

Included in submittal package?

Description of the hardship that would result from strict conformance to 7080

Included in submittal package?

Evidence of sustained and projected low population density

Included in submittal package?

Demonstration that, based on local circumstances, the alternative local standards adequately protect public health and the environment. Include information on soil separation, soil classification, vegetation, system use, localized well placement and construction, localized

density of systems and wells, groundwater flow patterns, and existing natural or artificial drainage.

Included in submittal package?

Date the draft ordinance was submitted to the county's local water planning advisory committee, and any comments that may have been received

Included in submittal package?



**ATTACHMENT B**  
**SELLER'S SUPPLEMENTAL SEWER/SSTS DISCLOSURE**  
**STATEMENT**

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