

DEPARTMENT: POLLUTION CONTROL AGENCY

STATE OF MINNESOTA

Office Memorandum

DATE: June 11, 2010

TO: MPCA Citizens' Board

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Municipal Division

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SUBJECT: Subsurface Sewage Treatment Systems Rules Amendment

In 2008 the Minnesota Pollution Control Agency (MPCA) adopted extensive amendments to the rules governing subsurface sewage treatment systems (SSTS). Shortly after the rules were adopted, the MPCA began the process of identifying the need for additional amendments to clarify and expand on the 2008 changes. A number of changes were suggested by the regulated community, identified by MPCA SSTS program staff and prompted by legislative actions. The amendments:

- Address two legislative changes that have become effective since rules were adopted.
- Add, expand or clarify the existing rules (either to update with new information or to address unexpected concerns).
- Correct errors or simplify the existing language.

The process of drafting the amendments has taken more than a year and has been extensively discussed with the regulated and affected SSTS community.

The MPCA staff does not believe that the amendments being proposed are controversial. Although they are extensive, which has been identified as a concern by some parties, they are mainly clarifications and corrections that have been developed in response to needs identified by the SSTS community. However, the fact that the MPCA is amending the SSTS rules so soon after adopting major changes has resulted in some controversy with some of the local units of government that are charged with implementing the rules through local ordinances. These local units of government, mainly counties, have expressed concerns about the timing of the amendments in relation to their process for amending ordinances and have also voiced ongoing dissatisfaction with elements of the existing SSTS rules adopted in 2008. The concerns with the proposed amendment process and with the existing SSTS rules were discussed in the 2010 legislative session with the result that a legislative extension has been provided for the adoption of the state rules into local ordinances and a deadline has been established for the MPCA to complete the amendment process. (Attachment 1)

The next step in the rulemaking process is the public comment period. The proposed amendments will be published in the June 21, 2010, *State Register* along with a Dual Notice of Hearing, which means that hearings have been scheduled, but they will not be held unless there is sufficient interest to justify the hearing. If 25 persons request it, hearings will be held on the evening of August 2 and the morning of August 3, 2010. The MPCA will be taking comments and requests for hearings from the date of publication on June 21, 2010, until 4:30 on July 21, 2010.

LJT:img

Final Legislative Language:
S.F. No. 3275, Conference Committee Report - 86th Legislative Session (2009-2010)

<https://www.revisor.mn.gov/bin/bldbill.php?bill=ccrsf3275.html&session=ls86>

75.29 Sec. 62. Minnesota Statutes 2008, section 115.55, is amended by adding a subdivision
75.30 to read:

75.31 **Subd. 13. Subsurface sewage treatment systems implementation and**

75.32 **enforcement task force.** (a) By September 1, 2010, the agency shall appoint a subsurface
75.33 sewage treatment systems implementation and enforcement task force in collaboration
76.1 with the Association of Minnesota Counties, Minnesota Association of Realtors,
76.2 Minnesota Association of County Planning and Zoning Administrators, and the Minnesota
76.3 Onsite Wastewater Association. The agency shall work in collaboration with the task
76.4 force to develop effective and timely implementation and enforcement methods in order to
76.5 rapidly reduce the number of subsurface sewage treatment systems that are an imminent
76.6 threat to public health or safety and effectively enforce all violations of the subsurface
76.7 sewage treatment system rules. The agency shall meet at least three times per year with
76.8 the task force to address implementation and enforcement issues. The meetings shall be
76.9 scheduled so that they do not interfere with the construction season.

76.10 (b) The agency, in collaboration with the task force and in consultation with the
76.11 attorney general, county attorneys, and county planning and zoning staff, shall develop,
76.12 periodically update, and provide to counties enforcement protocols and a checklist that
76.13 county inspectors, field staff, and others may use when inspecting subsurface sewage
76.14 treatment systems and enforcing subsurface sewage treatment system rules.
76.15 **EFFECTIVE DATE.** This section is effective the day following final enactment.

89.4 Sec. 73. **SUBSURFACE SEWAGE TREATMENT SYSTEMS ORDINANCE**

89.5 **ADOPTION DELAY.**

89.6 (a) Notwithstanding Minnesota Statutes, section 115.55, subdivision 2, a county may
89.7 adopt an ordinance by February 4, 2012, to comply with the February 4, 2008, revisions
89.8 to subsurface sewage treatment system rules. By April 4, 2011, the Pollution Control
89.9 Agency shall adopt the final rule amendments to the February 4, 2008, subsurface sewage
89.10 treatment system rules. A county must continue to enforce its current ordinance until a
89.11 new one has been adopted.

89.12 (b) By January 15, 2011, the agency, after consultation with the Board of Water and
89.13 Soil Resources and the Association of Minnesota Counties, shall report to the chairs and
89.14 ranking minority members of the senate and house of representatives environment and
89.15 natural resources policy and finance committees and divisions on:

89.16 (1) the technical changes in the rules for subsurface sewage treatment systems
89.17 that were adopted on February 4, 2008;

89.18 (2) the progress in local adoption of ordinances to comply with the rules; and

89.19 (3) the progress in protecting the state's water resources from pollution due to
89.20 subsurface sewage treatment systems.

89.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.