

Minnesota Pollution Control Agency

Municipal Division

Order Adopting Rules and Statement of Supporting Reasons

Adoption of Exempt Rules Governing the Use of Alternative Local Standards for Subsurface Sewage Treatment Systems, *Minnesota Rules*, Chapter 7082

OAH Docket No.8-2200-23072-1

Revisor: RD-04086

Governor's Tracking Number: 1093

Statement of Supporting Reasons

Background

The state rules governing Subsurface Sewage Treatment Systems (SSTS) are established in *Minnesota Rule* chapters 7080-7083. Counties are required by statute (*Minnesota Statute* § 115.55, subdivision 2) to adopt ordinances that reflect the state SSTS rules. When the state SSTS rules are amended, *Minnesota Statute* § 115.55, subdivision 2 requires that counties amend their SSTS ordinances to reflect those changes. The SSTS rules that went into effect on April 3, 2006, were significantly amended in 2011. Many counties have adopted the 2011 amendments into their local ordinances, but in some cases, counties have not adopted the 2011 amendments based on concerns relating to their ability to adopt Alternative Local Standards (ALS).

During the 2012 legislative session, the Minnesota Pollution Control Agency (MPCA) worked with legislators and counties to develop legislation to address counties' concerns related to the adoption of ALS for SSTS in designated shoreland areas and for SSTS used in connection with food, beverage and lodging establishments. *Minnesota Session Laws* 2012, chapter 272, section 62 allows counties, under certain circumstances, to adopt ordinances that incorporate ALS that reflect the requirements of the SSTS rules that were adopted in 2006 instead of the most current state requirements.

Specifically, the 2012 legislative amendments provide the following options for county ordinances:

Systems in shoreland areas

A county ordinance may include ALS that are at least as stringent as the provisions in *Minnesota Rule* chapter 7080, as adopted on April 3, 2006, for new or existing residential SSTS with flow less than 2,500 gallons per day that receive normal, household-strength wastewater and that are located in shoreland protection areas.

Systems used in connection with food, beverage and lodging establishments

A county ordinance may include ALS for new or existing SSTS that are used in connection with food, beverage and lodging establishments if:

- 1) the ALS are at least as stringent as the provisions in *Minnesota Rule* chapter 7080, as adopted on April 3, 2006

- 2) the flow to the SSTS is less than 2,500 gallons per day and
- 3) the requirements of the current SSTS standards are met in regard to waste strength
(Because the 2006 SSTS rules did not provide standards for waste strength or for treatment to meet waste strength standards, the legislation requires the application of those parts of the current SSTS rules that regulate waste strength.)

Proposed Amendment

To conform to the legislative directive, the MPCA is amending *Minnesota Rule 7082.0050*, subpart 5 as follows:

Subp. 5. Requirements for alternative local standards.

Counties are authorized to adopt and enforce by ordinance alternative local standards for existing or new construction or replacement of SSTS as part of a conventional program. 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), and must comply with items A to F.

A. Except as provided in items G and H, alternative local standards must not apply to systems in shoreland areas or wellhead protection areas or systems serving food, beverage, or lodging establishments.

[Items B to F- unchanged]

G. A county may adopt alternative local standards for new or replacement residential systems with flow of 2,500 gallons per day or less for systems in shoreland areas regulated under Minnesota Statutes, sections 103F.201 to 103F.221, if the alternative standards are no less stringent than provisions of Minnesota Rules, chapter 7080, that went into effect on April 3, 2006.

H. A county may adopt alternative local standards for new or replacement residential systems with flow of 2,500 gallons per day or less for systems used in connection with food, beverage and lodging establishments regulated under Minnesota Statutes, chapter 157, if the alternative standards are no less stringent than provisions of chapter 7080 that went into effect on April 3, 2006, except that the waste strength must meet the standards established in part 7080.2150, subpart 3, item K. If additional treatment of waste is needed to meet the standard in part 7080.2150, the treatment must be in accordance with part 7080.2150, subpart 3, item A.

It is reasonable to make the above change to ensure that MPCA rules do not conflict with the statutory language. Insertion of the above language into *Minnesota Rule* part 7082.0050 does not result in any interpretation of the statute by the MPCA.

The legislative amendment that established the conditions for the use of ALS also specifically provided the MPCA with the authority to conduct good cause rulemaking to make the necessary changes to state rules. *Minnesota Session Laws* 2012, chapter 272, section 96 directs the commissioner of the MPCA to amend rules necessary to conform to the act and also specifies that the MPCA may use the good cause exemption under *Minnesota Statutes*, section 14.388, subdivision 1, clause (3), and that *Minnesota Statutes*, section 14.386, does not apply.

ORDER ADOPTING RULES

Whereas:

1. The rulemaking provisions of *Minnesota Statutes*, chapter 14, are impracticable and contrary to the public interest when amending a rule to incorporate specific changes set forth in applicable statutes when no interpretation of law is required.
2. The Statement of Supporting Reasons justifies a good cause for the Minnesota Pollution Control Agency (MPCA) to adopt permanent rules that are exempt from the rulemaking provisions of *Minnesota Statutes*, chapter 14, and *Minnesota Rules*, chapter 1400, and are hereby incorporated by reference.
3. The MPCA has complied with all notice and procedural requirements in *Minnesota Statutes*, chapter 14.388, *Minnesota Rules*, chapter 1400.2400, and other applicable laws.
4. As required by *Minnesota Statutes* § 14.388, subdivision 1, clause (3), and *Minnesota Rules*, part 1400.2400, the Revisor of Statutes has approved the form of the rule by certificate, a copy of which is attached.
5. The rules are needed and reasonable.
6. The MPCA submitted the rulemaking on August 20, 2012, to the Office of Administrative Hearings (OAH) for review and approval. The Minnesota Pollution Control Agency adopts the OAH Order on Review of Rules, dated September 4, 2012, from Judge Eric Lipman.

IT IS ORDERED that the above-captioned rule, in the form certified by the Office of the Revisor, file number RD4086, dated August 14, 2012, is adopted pursuant to the authority vested in me by *Minnesota Statutes* §§ 116.07 and 14.388.

9/10/2012
Date


John Linc Stine
Commissioner