SEPTIC CHECK

RECEIVED
By: OAH on 12/23/19 @ 1:56 pm

Brian Koski

EXPERT SERVICE. LASTING VALUE. CLEAN WATER

12/23/2019

OAH Legal Assistant Lisa Armstrong
600 North Robert Street
St. Paul MN 55164

RE: Proposed Amendments to Rules Governing Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements, Minnesota Rules chapters 7081 and 7082

To whom it may concern,

This letter is in response to the proposed rule changes referenced above. Our company is active in the Onsite industry in Minnesota in all licensed disciplines and have experience working with the areas that will be impacted by the proposed changes.

First, I would like to commend the MPCA for proposing to update 7082.0700 to require all septic system compliance inspections to include pumping and inspecting septic tanks through a manhole access. This has been a frustration for our company and others for many years. It has been our experience that the only way to verify tank compliance is to pump it empty and inspect its integrity visually. Not doing so is a guess at best and is certainly not in the best interest of our customers and is not truly verifying our septic tanks are protecting water quality. Our company fully supports this proposed rule change.

I was involved with many of the discussions that lead to the proposed rule changes in 7081.0020 Subpart. 7a, 7081.0040 Subpart 1, and 7081.0130 subpart 1 and fully support the proposed changes. Many of the changes provide licensed professionals flexibility that has been lacking when working with larger septic systems. It is my opinion that this rule change will have a positive economic impact for many of our customers and will allow them to follow the code requirements without having to close the doors on their business due to a costly septic system infrastructure upgrade that is sized beyond what is appropriate.

Lastly, one of the discussion points that was not addressed in this rule change was the application of these code changes to dwellings or residential developments. The language is written with the intent to limit the application of the code changes to other establishments only. It is my opinion, as someone who has worked on many other establishments and residential developments, that there is not enough of a difference between the two to justify this concept. Our training and licensing allow us to work on both types of systems. Therefore, it seems contradictory to apply these changes to one and not the other. It is my opinion that the MPCA should strongly reconsider including dwellings in this code change.

Respectfully submitted,

Brian Koski
President and Owner

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Ronald Jaspersen
1121 137th Ave. N.W
Spicer, Mn. 56288
320-212-1108

OAH legal Assistant Lisa Armstrong
OAH, 600 North Robert Street, PO Box 64620
St. Paul, Minnesota 55164-0620

Re: Proposed amendments to rules governing Subsurface Sewage Treatment Systems Inspections and permit requirements, Minnesota rules Chapters 7080 and 7082

I would like to submit the following comments to this proposed rule change. At the time of the discussions between MPCA and The Minnesota Onsite Wastewater Association (MOWA), I was the chair of the MOWA group that that met for a couple years and hammered out these proposed changes. These comments represent my personal comments and may or may not be consistent with current comments from (MOWA).

Historically the 7080 ½ mile rule was interpreted by all to allow the SDS permit threshold to be determined by calculated flow OR measured flow for other establishments or dwelling and dwelling developments.

The 2008 rule change put the ½ mile rule into 7081 but left the language mostly the same except it inserted the words " the greater of" into rule.

About four years ago when we started this rule proposal we had four objectives: 1, to remove "the greater of" and allow the lessor of charts or measured flow. 2, to better define the measurement protocol. 3, to allow for averaging the flow when using time dosing. 4,to allow some extrapolation of data to proposed expansions. I believe the proposed language accomplishes all four objectives.

1st comment: I am confused by the reference lettering of the paragraphs or items in the new rule and the references to the existing rule. It appears the proposed 7081.0040 leaves item A of existing rule alone. It changes item B, and leaves item C as existing. Then it appears to change item D entirely to the proposed language. Then in proposed subp. 1a, paragraph, or item, A it references existing item C to determine flows but existing item C does not determine flows. Existing item D determines flows, but proposed item D does not. I refer to existing item C as the agency's "blank check" to require an SDS under extreme circumstances.

Possible solution, unless I'm reading it wrong, would be to leave existing item D alone and in proposed subp.1a item A, change the C to D. Then create an item E for the language of proposed item D.

I'm also confused by proposed subp.1a item B. What does "except as provided under item D" mean? I think it is trying to say "For existing SSTS the flow is determined by item D or (1) calculating the average of the maximum.....(a).....(b)....or (2). Why not just say that?

2nd comment: The agency interprets this proposed rule to say it applies only to Other Establishments. I and the MOWA committee agreed at every meeting to hold that days discussions about other establishments but we always stated that at the end we wanted a discussion about applying the agreement to dwellings and dwelling developments. We agreed to discuss other establishments because we understood that they represented the worst of the worst systems. They bring the most variable flows and the nastiest waste strengths and the most challenging sites. If we can agree on them it should be a short and common sense discussion to apply them to dwellings. At the end of the discussions I asked the agency's rep at the meeting "why not dwellings?" That question was met with silence. It was very much like my mother saying "because I said so and I don't want to talk about it". I still do not have even an attempt by the agency to answer that question with any kind of science or data or rule behind it. So I'll rephrase the question; why not allow these advanced designers the ability to do what they were authorized to do before 2008 with all the extra training and the design guidance? One of the major hurdles to solving the unsewered areas is controlling the cost. Allowing the advanced designers to measure flow for dwellings will bring good common sense competition to a market they are licensed, trained and experienced in. The goal of this rule change was to clarify that a 10,000 gallon permit could actually apply 10,000 gallons to a soil disposal area. Again my question begs an answer, why not ALL soil dispersal areas? If it is good enough for the worst systems, why not for the most predictable systems?

Two years ago I told the MOWA committee let's take what we got here and get it into rule. In the future if MOWA has the desire and the will to do so, it will be easy to convince the legislature to put dwellings and developments into the rule thru legislation. Please consider allowing this to apply to dwellings and save us all a lot of work in the future.

Thank you for your consideration of these comments.

Ronald Jaspersen

Collins, Denise (OAH)

From: Harry Vollen <hvollen@bemidjihome.com>
Sent: Tuesday, December 17, 2019 9:24 AM
To: Armstrong, Lisa (OAH)
Subject: Septic tanks

Lisa,
We tell our clients to pump their septic tanks Spring and Summer time. If you pump septic tanks any other time the tank may freeze up.
Thanks,
Harry

--
Harry Vollen
Counselor Realty of Bemidji
Bemidji, MN 56601
218-766-4219 Cell phone
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hvollen@bemidjihome.com
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Collins, Denise (OAH)

From: April Stavig <astavig@wiktel.com>
Sent: Monday, December 16, 2019 12:41 PM
To: Armstrong, Lisa (OAH)
Cc: mspellman@mnrealtor.com
Subject: SSTS Proposed Rule Amendment

I am a real estate broker in Northern Minnesota, on the Canadian Border. Implementing this rule statewide, rather than allowing counties to set their own rules, creates an unecessary burden on homeowners in my area, for
Two reasons, One, the housing supply in our area is increasing in costs, and adding another requirement, especially for lower income households, could and will prevent some homebuyers from making a purchase a reality.
The second reason, and most important, is the ability to actually be able to do this in the winter months. Why would anyone want to deliberately freeze and damage their septic tank in the middle of the winter? It would make the septic , and home, unlivable and inoperable until at least the end of May every year, which is when frost typically leaves the ground in our part of the state. Heavy trucks and machines cannot travel on local roads in the spring, due to weight restrictions, so ripping up and replacing a frozen septic tank would not happen until months after an inspection that pumps a tank empty and freezes it up. This is a Pandora's box of problems for home buyers and home sellers. Please reconsider this proposal.

April Stavig – Broker
Lake Country Realty
108 Wabasha Ave NE, PO Box 62
Warroad MN 56763
Cell (218) 280-2622
MN Lic # 20595809

Collins, Denise (OAH)

From: Lisa Engman <outlook_AF7EFB0D3D59E654@outlook.com> on behalf of lmengman@paulbunyan.net
Sent: Friday, December 13, 2019 11:47 AM
To: Armstrong, Lisa (OAH)
Subject: SSTS new rules

Good morning!

In our rural area of Northern Minnesota this would greatly affect our clients and customers.

If you empty a tank in the dead of winter to do an inspection that system will more than likely freeze.

This would be catastrophic to the buyer as well as the seller.

And there is the issue of having enough companies to pump the systems.

Closing time frames will definitely be affected by this rule.

Our septic guys are out 20 days or more in the summer and with adding another third party that has to pump it before hand will then add more time and more money to every transaction.

Please consider all Rural areas this will affect before it is too late to change.

Thank you,

Lisa M. Engman
Lake-N-Woods Realty, Inc.

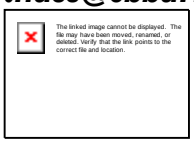
Collins, Denise (OAH)

From: Huss, Jilleen A <JHuss@cbburnet.com>
Sent: Tuesday, December 10, 2019 7:08 PM
To: Armstrong, Lisa (OAH)
Subject: Minnesota septic proposed requirement

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Lisa,
I can appreciate the intention of this new proposed requirement. I love our land and anything to improve it is good. I have been selling for 41 years and I am a country gal so I sell plenty of homes on rural properties. Some counties require septic inspections to make sure they are up to code and some counties don't. I would think we should at least get septic code requirement inspections throughout the state first. Inspecting the empty tank seems to pushing it. I think if all of the counties were required to be up to a code via the state would be a huge improvement. That would force a lot of new tanks. To require emptying the tank for an inspection seems over the top when millions are below code as it is. It will cause many timing issues in our transactions and of course there is not set cost on it also as of now. I would look to set some standards statewide that are basic before going to this extreme. There are many systems out there that may still be a seeping system with no tanks. Shouldn't we address those first?
Thank you for your services and working for the better of our lands.

Jill Huss GRI
952-451-9552
Jhuss@cbburnet.com



HUBBARD COUNTY
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Environmental Services

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December 17, 2019

The Honorable Judge Kimberly Middendorf
Administrative Law Judge
Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

Re: Possible Amendments to Rules Governing Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements, Minnesota Rules, Chapters 7081 and 7082
OAH Docket No. 21-9003-36221

Dear Judge Middendorf,

Hubbard County respectfully submits the following comments on the possible Amendments to Rules Governing Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements, Minnesota Rules, Chapters 7081 and 7082 for your review and consideration. The amendments draft line number references as well as the appropriate Rule citation and our position precede our itemized comments on the amendments language.

MR 7081.0020, Subp. 7a.

Lines 1.6-1.10 **Oppose**

The first paragraph under the "Justification" heading on page 11 of the Statement of Need and Reasonableness (SONAR) states, "...only those professionals competent in groundwater flow and hydrology should be involved in making these [potable water impact] determinations." Why then does the draft allow licensed architects, land surveyors, landscape architects, and interior designers to make these determinations? This cannot be the agency's intent?! These professional fields do not deal with nor have competency in groundwater flow and hydrology. They thus should not be authorized to make such determinations. Rather, licensed SSTS advanced designers, as they are able to design any SSTS up to 10,000 gallons per day, and civil engineers are the appropriate parties to make these determinations.

MR 7081.0040, Subp.1.D

Lines 2.10-2.12 **Clarification Needed**

These lines state flow measurement data must be submitted to the commissioner of the agency for review before a local permit is issued. The problem is that the language does not say "who" is responsible for submitting said data. The SONAR states the landowner is the intended party. If this is the case, the rule language needs to specify the landowner must submit the data.

Also, line 2.11 says the commissioner is to review the data before a local permit is issued, but what is meant by "review" is not clearly specified. Does review mean approval or simply as little as to look at something? How will the local permitting authority be notified and by whom as to whether the commissioner has received data for review and when any such review is complete so it then knows whether a permit can be issued (i.e. MS 15.99 considerations)?

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MR 7081.7081.0130, Subp. 1.B

Lines 8.9-8.11 **Oppose**

While correcting measurements for occupancy or use is an ideal objective, it is not realistic as very few businesses, if any, keep such detailed records and the occupancy of some businesses like restaurants varies depending on the time of day. Also, the measured flow data we receive from businesses consistently comes in well below the Rules' design flow calculations so trying to further dial in flow based on occupancy goes well past the point of diminishing returns and "minimum" statewide standards.

Line 8.14 **Clarification Needed**

The term "similar units" lacks the necessary detail and clarity to know exactly what is "similar" and what constitutes a "unit" as there are no definitions in the Rule for either word. Lack of clarity will lead to interpretation/application differences and unnecessary and avoidable conflicts with landowners and designers.

Line 8.17 **Clarification Needed**

The comment made for Line 8.14 applies to the term "facility" as well. There is no definition of a "facility" in the Rules which will lead to unnecessary interpretation conflicts with landowners and designers.

MR 7082.0700, Subp. 4.B(1)

Lines 9.9-9.10 **Adamantly Oppose**

No Basis

On page 5 of the SONAR, the SSTS Rules' purpose is stated – which is to prevent improper use which could adversely affect water quality and the public health, safety, and welfare (H, S, and W) by the discharge of inadequately treated sewage to surface and groundwater of Minnesota. The SONAR does not meet the agency's burden of proof to:

1. quantify how many leaking septic tanks are being missed during compliance inspections;

2. show that the allegedly missed leaking tanks are adversely affecting water quality and the public H, S, and W; and

3. show that requiring tanks to be empty when inspected will effectively solve this unsubstantiated, alleged missed leaking tanks issue.

The agency bears the burden of proof to prove that a clear, well-documented, statewide, significant environmental problem exists and that the proposed amendment language will cost-effectively address said problem. It has not come close to doing so. The agency's sole justification on page 15 of the SONAR, in the second paragraph under the "Justification" heading, states:

> First, the agency has been notified about an increasing number of tank inspections in the past few years that were deficient; these deficiencies are mostly related to missed observations of cracked or leaking tanks that were identified on subsequent or follow-up tank inspections.

The agency has been collecting and analyzing statewide SSTS data since 2002 and most recently produced a 42 page 2018 SSTS annual report. The lack of data to prove the need for this tank pumping proposal is thus very odd and telling. It is not sound governance to spend a minimum of $3 million of taxpayer money annually

(as stated in the SONAR) to attempt to address an alleged problem that the agency cannot even quantify and instead describes using words such as "some" and "a few every year".

On page 15 of the SONAR, the agency states that the proposed rule change will "level the playing field" and help minimize the number of "bad" inspections that occur. The real root issue thus appears to be the agency's licensing program and a need for enforcement on licensed individuals knowingly doing subpar work. Adding a requirement that a tank be inspected when empty will not cause a "bad" inspector to become a "good" inspector. Morality and ethics cannot be legislated which this tank pumping proposal attempts to do. An inspector who passes a septic system without looking inside its tank will not suddenly comply with a new tank pumping requirement and then start looking inside tanks. To think such will occur is folly.

Senior agency SSTS Program staff openly admitted in meetings with LGUs that they recommended to their superiors that the proposal not move forward because it was unwarranted, but were told this tank pumping proposal was going to happen because high level political figures wanted it to happen.

In addition to the alleged issue that this tank pumping proposal seeks to address really being a license program enforcement issue, the considerations described in the following pages show that the proposal is fraught with significant logistical issues and, if implemented, will create greater environmental problems than the alleged, undocumented problem it seeks to address.

Winter Issues
Minnesota experiences winter weather conditions six months out of the year with increasing severity from south to north. Following is a list of issues of far greater environmental significance and cost (than leaking tanks are allegedly causing) that the proposed tank pumping requirement will cause:

1. It is common knowledge that a septic tank should not be pumped during the winter or just before winter because doing so removes the biological activity that generates heat which keeps a tank from freezing. Water expands as it freezes resulting in…ironically…cracked tanks.

2. Conversely, an empty tank is susceptible to cracking as the surrounding soil freezes and expands against an empty tank that has no liquid weight in it to provide an opposing force against the tank walls and bottom. Thousands of seasonal lakeshore properties that are not occupied during the winter will be at risk.

3. An empty tank in areas of high water tables that exist throughout much of the state can also result in a tank popping out of the ground due to frost heaving.

4. Lastly, there is the issue of how to dispose of the additional septage this proposed requirement would generate. The agency's 2018 SSTS Annual Report states that 14,923 compliance inspections were performed that year statewide. Conservatively estimating each SSTS's tank capacity at 1000 gallons (the minimum required residential tank size), these inspections would generate at least 15 million gallons of septage (i.e. 5,000-6,000 typical maintainer pump truck loads.) Given six months of winter, it is plausible to say roughly 7.5 million gallons of this septage would be pumped during the winter months and need to be land applied on frozen ground which then has a much greater potential to runoff and enter surface waters than if the septage was left in tanks.

5. The State Shoreland Rules (MR 6120.3400 Subp. 3.D) require a current compliance inspection be on file in order to issue any permit in a shoreland area regardless of the time of year when a permit application is made. The Minnesota Department of Natural Resources 2016 annual shoreland program report states that 7,130 permits were issued statewide which means there were 7,130 current compliance inspections on the affected properties. Sixty-one counties, 65 cities, 36 townships, and four other local governmental units (LGU) reported to the agency that they require a current compliance inspection at the time of property transfer. The timing of real estate transactions coupled with these existing compliance inspection regulations will result in a significant number of septic systems' integrity being unnecessarily jeopardized due to forced winter pumping if this proposal becomes rule.

Inadequate Number of Maintainers
Many areas of the state have a shortage of licensed maintainers. The amount of existing tank pumping work already results in licensed designers and inspectors in our area having to wait several days to a couple weeks to get a tank pumped. Time equals money – especially given Minnesota's short construction season. Adding another 14,923 SSTS to be pumped annually when there are only 390 licensed maintainers statewide (i.e. 4.5 maintainers avg./county) will only make matters worse (14,923/390 = 38.3 additional tanks to be pumped/yr per maintainer.)

Inadequate Land Application Sites
Licensed maintainers already have limited approved sites on which septage may be legally applied. The number of these sites continues to decrease due to residential sprawl and the "not in my backyard" syndrome. Very few municipalities accept septage into their wastewater treatment plants. The few that do charge $10-110/1000 gallons which is another cost that will be passed on to the landowner who has a tank ranging in capacity from 1,000-2,500 gallons. When maintainers lack viable, easy options for disposing of pumped septage, the septage is disposed of through other unapproved, illegal, less desirable means such as a documented example of a maintainer emptying his pump truck loads into a municipal storm sewer grate.

As mentioned above, the ground is frozen roughly half of the year. In the remaining half of the year, much of that time window is not suitable to land application due to precipitation and soil conditions thus being too wet to allow extremely heavy pump trucks onto sites to apply septage. The available time windows in which septage can be properly applied are thus very small.

If a tank is cracked and leaking so negligibly that the tank's liquid operating depth is not affected (which is easily observed through a manhole and inlet/outlet inspection risers) and the tank then must be pumped to allow further visual inspection to be performed, the risk of the leak having a potential negative environmental impact is negligible compared to 15 million gallons of septage being land applied throughout the year during which a majority of the year's land application site conditions are not conducive to proper application/incorporation.

Nature of Concrete
Concrete inherently cracks, but stress fractures do not mean a concrete tank is not watertight. The agency via the SSTS Rules, Chapter 7080.1900-.2030 requires tank manufacturers to submit and receive approval of engineered design plans for all tanks before they can be manufactured. The Rule's tank design specifications require tanks to be capable of handling long-term vertical and lateral loads, exposure and stresses from freezing conditions, and exposure to sewage and sewage gasses. The Rule also requires manufacturers to annually test the watertightness of their tanks and maintain records of such. If the agency's own SSTS annual reports state that 34% of statewide SSTS have been installed in the last 17 years (since the agency started

collecting statewide data in 2002), the SSTS Rules existed several years prior to 2002 and required tanks to meet certain design specifications such that the percentage of approved tanks in the ground is even higher, and 13,000 new tanks were installed in 2018 and that number is representative of the ongoing annual new tanks installation number, it seems the statewide effort to have engineered, approved tanks in the ground is well established and will soon have the desired complete turnover of all tanks statewide meeting a State, engineered standard. Thus, a very sound, effective statewide program already exists to ensure septic tanks do not leak.

The only sure way to tell if a tank is leaking due to a crack is to observe the tank's operating liquid level which is the historic practice of inspectors that works very well. If a crack is not watertight, the operating level will be below the outlet pipe elevation and very, easily noticeable. A pumped tank does not allow an inspector to see this liquid level information that is critical to determining if a tank is watertight. If an inspector feels that s/he needs to see a tank empty in order to do a compliance inspection, s/he has the right and ability to ask the landowner to have the tank pumped.

Tank Inspection Logistics

Another commonly known fact is that the intended biological activity that occurs in a septic tank to treat the waste develops a thick, black biofilm on the interior tank surfaces that are in contact with the sewage. It is very difficult to see the majority of cracks through this biofilm. The only way to see what is on the other side of the biofilm is to pressure wash the inside of the tank which then requires Occupational Safety and Health Administration (OSHA) confined space certified operators which greatly increases the cost of a tank inspection and causes an extreme shortage of properly certified inspectors. Cracks that are visible through the film will be so glaring that the tank liquid level will not be able to rise above them and thus be evident by the liquid level being at the same elevation as the crack. Leaving the sewage in the tank at its operational depth (whatever that is) provides an inspector with key information to assess the tank's compliance or lack thereof. If a tank's liquid level is just below the tank outlet, an inspector knows the tank is watertight and operating properly. If an inspector visits a property and finds the tank empty because it was pumped before the inspector arrived, the inspector loses that valuable information and may need to come back to the site another time once the tank is full in order to observe the operational liquid level and determine if the level is where it ought to be. This unnecessarily increases compliance inspection costs.

Many tanks are several feet underground which makes it very difficult to effectively visually evaluate the inside of a tank for cracks through a 20 inch diameter manhole riser especially when there is a black biofilm on the interior tank surfaces. So then an inspector will either need to purchase an expensive lighted, remote operated camera that can be lowered into a tank and recoup the expense by passing it on to customers or try to look inside a tank the old school method (very unadvisable) by peering down inside it which will lead to inevitable confined space OSHA issues and injuries related to falling into a tank.

Creates the Wrong Incentives

The SSTS profession oddly has a high liability:reward ratio. Landowners generally unrealistically expect an SSTS to last forever and require no maintenance. The SSTS Rules have made SSTS so unnecessarily expensive that landowners are quick to go after any contractor they can remotely connect to their SSTS when there is an issue with the system. The result is the good, scrupulous maintainers seek to minimize their liability exposure so many will refuse to complete the assessment form as the Rule does not require them to do so. Other maintainers will have no incentive to complete the form because doing so means they will not get to charge for going out again to pump the tank when a landowner needs a compliance inspection. Yet other maintainers will fill out the form for anyone willing to pay their price.

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The liability concern will also cause inspectors to not utilize a maintainer's signed assessment form because the inspectors will not want to take the maintainer's word that a tank is good and put their business on the line based on some other business' word.

With a shortage of maintainers to do the work, existing maintainers will be tempted to save time by cutting corners on liming their truck tank loads at all (liming is required to raise the septage pH to a level that kills pathogens) or for the required length of time, or overusing a land application site because it is closer to the job sites and thus allows more tanks to be pumped in a day.

In Closing

Thank you very much for your attention to and consideration of our comments.

If you have any questions regarding any of the above comments, please contact Environmental Services Director Eric Buitenwerf via US Mail, phone, or email (ebuitenwerf@co.hubbard.mn.us) using the contact information shown in the header.

Most sincerely,

Eric Buitenwerf
Environmental Services Director

Dan Stacey
Hubbard County Board Chair

36aa1

MINNESOTA REALTORS®
5750 Lincoln Dr
Edina, MN 55436

December 9, 2019

Ms. Katie Izzo – Rule Coordinator
520 Lafayette Road North
St. Paul, Minnesota 55155

RE: Proposed Amendments to Rules Governing SSTS Inspections and Permit Requirements

Dear Ms. Izzo,

Minnesota REALTORS® is the largest trade association in the state with over 21,000 real estate professionals that work with home buyers and sellers, on all aspects of the transaction, every day. This year alone, our members have been involved in over 72,000 transactions, subsequently providing them with unique insights into how government regulations can impact homeowners and more broadly, the housing market as a whole.

I am writing to you on behalf of Minnesota REALTORS® in response to MPCA's dual notice of intent to adopt amendments to rules governing subsurface sewage treatment systems (SSTS). Specifically, our comments focus on the proposed change to require a septic tank to be pumped empty in order to complete a tank integrity inspection, which we believe is neither needed nor reasonable.

Comments

Minnesota Licensed Inspectors Are The Experts

- SSTS inspectors, **licensed by the state of Minnesota**, have the expertise and are in the best position to determine when pumping a tank empty is necessary to complete a tank integrity inspection. For example, comments submitted by Winterberger Inspections on February 13, 2018, found on page 41 of the SONAR report, claim that camera inspections of an empty tank do not always reveal any issues. MPCA should defer to the expertise of the inspectors in order to achieve the best, most efficient results.

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Adds Unnecessary Cost

- Requiring a homeowner to have a tank pumped empty for all tank integrity inspections will increases costs for that service. In order to avoid unnecessarily increasing costs for homeonwers with SSTS, MPCA should defer to licensed inspectors, who have the expertise to determine when a septic tank needs to be pumped empty in order to complete a tank integrity inspection. Increasing costs on homeownership at a time when many Minnesota families are concernced about housing affordability should not be done unless absolutely necessary. We believe this proposal does not meet that standard. In addition, whenever an integrity inspection occurs as a result of a real estate transfer, this new mandate will add another cost to that transaction, and as a consequence, will increase the cost of housing.

Required Pumping Will Delay Real Estate Transaction

- Requiring a septic tank to be pumped empty in order to complete a tank integrity inspection will also delay real estate transactions. Comments submitted by Winterberger Inspections, Thelen's Excavating Inc., and Bob's Econo Pump, Inc., found on pages 41 – 45 of the SONAR report, all indicate that coordinating a pump and inspection is difficult to do in a timely manner. Specifically, Winterberger Inspections claims that scheduling a pump can take two to four weeks. It is not unusual for a transaction, from the buyer submitting a purchase agreement to close, to be completed in less than four weeks.

Science & Data To Support Pumping Requirement

- MN REALTORS® respectfully requests that the MPCA provide data that demonstrates a clear need for requiring a septic tank to be pumped empty in order to complete a tank integrity inspection. Refering back to previous comments made by licensed inspectors on pages 41 – 45 of the SONAR, a pumped tank does not always reveal an existing issue. Again, relying on the expertise of licensed inspectors instead of mandating tanks to be pumped empty is both protective of the environment and avoids having homeonwers incur unnecessary costs.

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Potential For Tanks to Freeze

- Requiring a septic tank to be pumped empty during months in which Minnesota reaches tempatures below 32° F, increases the risk of damaging the tank due to freezing. The Minnesota Department of Transportation (MnDOT) tracks frost depths across the state. Review of this data confirmed that last year alone, frost reached depths ranging from approximately 48 inches in southern parts of the state such as Rochester and Worthington, to approximately 73 inches in Orr and Cass Lake. MN REALTORS® is concerned that mandating that tanks be pumped empty will increase the risk of tank damage due to freezing, resulting in a significant cost to homeowners. The link to MnDOT's frost depth data is:

  http://dotapp7.dot.state.mn.us/research/seasonal_load_limits/thawindex/frost_thaw_graphs.asp.

Seasonal Road Restrictions

- Requiring a tank to be pumped empty to complete system integrity inspections could be problematic during Minnesota's seasonal road restriction periods. If a pumping truck cannot get to properties being sold when road restrictions are in effect, this could stall or negate these real estate transactions.

In summary, MN REALTORS® respectfully requests that the MPCA refrain from moving forward with the proposal to require a septic tank to be pumped empty to complete a tank integrity inspection, which is neither needed nor reasonable.This proposal would add unnecessary costs for homeowners, delay real estate transactions, and further exacerbate the housing affordability challenges faced by Minnesotans, particualry at lower price points.. In addition, MN REALTORS® believes licensed inspectors have the expertise and are capable of determining when septic tanks need to be pumped empty to complete an integrity inspection.

Phone: 952.935.8313
Toll Free: 800.862.6097
Fax: 952.935.3815

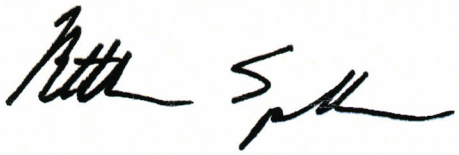
Web: www.mnrealtor.com
Email: info@mnrealtor.com

MINNESOTA REALTORS®

5750 Lincoln Dr
Edina, MN 55436

Please contact me with any questions regarding MN REALTORS® comments or to schedule a meeting to duscuss the concerns outlined in this letter. I can be reached at 651-262-5976 or mspellman@mnrealtor.com.

Sincerely,



Matthew Spellman
Director of Political Affairs
Minnesota REALTORS®

Phone: 952.935.8313
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Fax: 952.935.3815

Web: www.mnrealtor.com
Email: info@mnrealtor.com

From: Armstrong, Lisa (OAH)
To: Collins, Denise (OAH)
Subject: FW: Changes to septic tank regulations
Date: Monday, December 9, 2019 9:53:23 AM

-----Original Message-----
From: Roz Peterson <RozP@cerron.com>
Sent: Monday, December 9, 2019 4:45 AM
To: Armstrong, Lisa (OAH) <lisa.armstrong@state.mn.us>
Cc: mspellman@mnrealtor.com
Subject: Changes to septic tank regulations

Dear Lisa

I am in the process of trying to sell a home in foreclosure so time is of the essence in order for this home to close within the tight time constraints. I am very concerned that additional requirements above what is already in place will create an undo burden on the seller as well as possibly lose the sale to the bank. Our current process protects the environment so please do not move forward with the proposed changes.

I also own a home with a well and septic and am already required to pump it every 3 years. Your proposal will do nothing except delay closings and increase costs for the people of Minnesota.
Sincerely

Roz Peterson, CCIM
Cerron Commercial Properties
Rozp@cerron.com 612.708.5281
21476 Grenada Ave Lakeville, MN 55044

36221 Minnesota Pollution Control Agency Dual Notice of Intent to Adopt Rules

Closed Dec 23, 2019 · Discussion · 11 Participants · 1 Topics · 11 Answers · 0 Replies · 0 Votes

11	1	11	0	0
PARTICIPANTS	TOPICS	ANSWERS	REPLIES	VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

11 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Samuel Skalak · Citizen · (Postal Code: unknown) · Dec 04, 2019 8:32 am

0 Votes

Sherburne County would like to express support for the proposed rule change intended to clarify when septic tank pumping is required during a compliance inspection on existing subsurface sewage treatment systems (SSTS). Sherburne County currently requires an SSTS compliance inspection before a property transfer can occur, and prior to approval for most building permits. County staff believe strongly the proposed rule would benefit the health and safety of homebuyers and property owners within the County by decreasing the number of after-the-fact septic fails, “level the playing field” among septic inspectors, decrease the number of subpar inspections that occur, and increase protections for groundwater in the County through improved identification of failing systems.

Eric Buitenwerf · Citizen · (Postal Code: unknown) · Dec 17, 2019 11:27 am

0 Votes

.On behalf of Hubbard County, I respectfully submit the attached comment letter on the proposed amendments to Minnesota Rules, Chapters 7081 and 7082, OAH Docket No. 21-9003-36221.

Most sincerely,

Eric Buitenwerf

36221 Minnesota Pollution Control Agency Dual Notice of Intent to Adopt Rules

Closed Dec 23, 2019 · Discussion · 11 Participants · 1 Topics · 11 Answers · 0 Replies · 0 Votes

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Environmental Services Director
301 Court Avenue
Park Rapids, MN 56470
218-732-3890 ph
www.co.hubbard.mn.us

Gregor Halling · Citizen · (Postal Code: unknown) · Dec 20, 2019 9:41 am
0 Votes

As an individual I am submitting the attached letter on the proposed amendments to Minnesota Rules, Chapters 7081, OAH Docket No. 21-9003-36221.

Bob LaCroix · Citizen · (Postal Code: unknown) · Dec 20, 2019 10:33 am
0 Votes

On behalf of Camp Omega of Waterville MN, it's staff and Board of Directors, I am respectfully submitting the attached letter in support of the proposed change to Minnesota Rules, Chapters 7081, OAH Docket No. 21-9003-3622.

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troy johnson · Citizen · (Postal Code: unknown) · Dec 20, 2019 11:56 am
0 Votes

On behalf of Wright county, we are in agreement to the intent of the proposed rule change, but the devil is in the details and those details can not be clearly understood at this time. Some 5 years ago I proposed the initial 3 simple changes to the code to alleviate the existing problem the industry was experiencing. The corresponding proposed code language changes are in my opinion incomprehensible. Confusion and varied interpretations of 7080 between the LUG's and the MPCA is what gets us into trouble in the first place. When rules and objectives are clear to the professionals in the industry, compliance will easily follow. But that is not how our industry is currently working.
I would refer the agency to MN executive order 14-07 which requires the various agencies to write in plain English. Our 7080 code does not meet this requirement nor do the proposed rule changes. As such I can not effectively comment on the changes as I can not follow the spaghetti code and chaotic writing style to determine if it meets the original intent of our proposed changes.
I propose that step 1 is to rewrite the proposed changes in plain English.
None the less I will attempt to address the following concerns:
7081.0020 subp 7a, B "...potential water supply". What parcel of land in the state is

not a potential water supply? Statements like this just make the code verbose.
7081.0040 supb 1 B 2 "...drainfields within 1/2 mile of each other". There have been disagreements over how to draw this on a map. It should be clarified that this is a circular area with a 1/2 mile diameter, not 1/2 mile radius.
7081.0040 subp 1a A "...determined according to item C". I can not find an item C, what is this referring to?
7081.0040 supb 1a B "...except as provided under item D". I can not find an item D.
7081.0040 subp 1a B 1 a&b measuring for a year (90 days plus 40 weeks) is excessive, unreasonable and unnecessary. These businesses know when their busy season is, they do not need to measure their water use for a year to figure that out. Simply let the LUG and designer agree on an applicable 30 day window to measure daily.
7081.0040 subp 1a B 2 "...according to item C". again I can not find C.
7081.0130 subp 1 "...measured flows must be used then they are higher than estimated flows". Yes that's typically true, but measured flow should also be used when they are lower than estimated flow, common sense. Better wording could be simply "measured flows take priority over estimated flows". This is a good example of letting the LUG make a common sense judgement call instead of trying to legislate everything.
7081.0130 sub 1 B 7-day averaging AND 7081.0040 subp 1a B 1 7-day averaging. This definition seems to be stated twice, with minor differences, why, what's the difference? It appears permit flow measuring has strict daily requirements while design flow measuring has no stated daily requirements. Really? And is that the only difference? Nothing is clear so I'm confused.
7080.0130 subp 1 C 2 ..."flow must be remeasured...". So yesterdays measurement is no good? How about last years data, or from 5, 10 years ago? How old is too old that we must now remeasure? Perhaps simply state "LUG to approve use of prior measured flow data".

7082.0070 comment: tank pumping requirement for compliance inspection. We have had this requirement locally for the past decade with no problems what so ever. Everyone agrees that to do a respectable assessment of the tank, it needs to be empty. We are fortunate however that we have both land application and municipal drop sites available which is NOT the case statewide.

Those are my general thoughts for now, thanks for your consideration on these matters. :-)

Kimberly Shermo · Citizen · (Postal Code: unknown) · Dec 20, 2019 3:37 pm
0 Votes

On behalf of Waseca County, I am respectfully submitting the attached letter requesting an administrative hearing in order to clarify the proposed rule changes to Minnesota Rules, Chapters 7081 and 7082, OAH Docket No. 21-9003-36221.

Marilee DeGroot · Citizen · (Postal Code: unknown) · Dec 20, 2019 4:16 pm
0 Votes

On behalf of rice County, i respectfully request an Administrative Hearing on the proposed amendments to Minnesota Rules, chapters 7081 and 7082, OAH Docket No. 21-9003-36221 per my concerns identified in the attached comment letter.

36221 Minnesota Pollution Control Agency Dual Notice of Intent to Adopt Rules

Closed Dec 23, 2019 · Discussion · 11 Participants · 1 Topics · 11 Answers · 0 Replies · 0 Votes

---

Pete Otterness · Citizen · (Postal Code: unknown) · Dec 23, 2019 9:34 am
0 Votes

On behalf of Nicollet County, I respectfully request an Administrative Hearing on the proposed amendments to Minnesota Rules, Chapters 7081 and 7082, OAH Docket No. 21-9003-36221 per my concerns identified in the attached comment letter.

Sincerely, Pete Otterness, Senior Sanitarian, Nicollet County

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Ben Wogsland · Citizen · (Postal Code: unknown) · Dec 23, 2019 11:47 am
0 Votes

Hospitality Minnesota and the Minnesota Resort and Campground Association respectfully submit the attached public comments for consideration.

Sincerely, Ben Wogsland, Director of Government Relations, Hospitality Minnesota and the Resort and Campground Association

---

Angela Lipelt · Citizen · (Postal Code: unknown) · Dec 23, 2019 12:56 pm
0 Votes

On behalf of Mower County, I respectfully request and Administrative Hearing on the proposed amendments to MN Rules Chapters 7081 & 7082, OAH Docket No 21-9003-36221; comments/ concerns per letter.

Travis Johnson · Citizen · (Postal Code: unknown) · Dec 23, 2019 4:29 pm
0 Votes

On behalf of the Minnesota Onsite Wastewater Association (MOWA) we are respectfully submitting our support to the proposed rule change as previously documented.

Planning and Zoning Administration
Sherburne County Government Center
13880 Business Center Drive

Suite 100
Elk River, MN 55330-4668
(763) 765-4459
1-800-438-0578

RECEIVED
By: OAH on 12/3/19

Letter of Support

Date: **December 3, 2019**

To: **Minnesota Pollution Control Agency**

From: **Samuel L. Skalak, Sherburne County Solid Waste Env. Specialist** SS

RE: **Proposed MPCA SSTS permit/tank inspection rule change comment period ending Dec. 23**

The County would like to express support for the proposed rule change intended to clarify when septic tank pumping is required during a compliance inspection on existing subsurface sewage treatment systems (SSTS). Sherburne County currently requires an SSTS compliance inspection before a property transfer can occur, and prior to approval for most building permits. County staff believe strongly the proposed rule would benefit the health and safety of homebuyers and property owners within the County by decreasing the number of after-the-fact septic fails, “level the playing field” among septic inspectors, decrease the number of subpar inspections that occur, and increase protections for groundwater in the County through improved identification of failing systems.

Environmental Services

301 Court Avenue, Park Rapids, MN 56470
Phone: 218.732.3890
www.co.hubbard.mn.us/departments/environmental_services/index.php

RECEIVED
By: OAH on 12/17/19 @ 11:27 am

Hubbard County

December 17, 2019

The Honorable Judge Kimberly Middendorf
Administrative Law Judge
Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

Re: Possible Amendments to Rules Governing Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements, Minnesota Rules, Chapters 7081 and 7082
OAH Docket No. 21-9003-36221

Dear Judge Middendorf,

Hubbard County respectfully submits the following comments on the possible Amendments to Rules Governing Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements, Minnesota Rules, Chapters 7081 and 7082 for your review and consideration. The amendments draft line number references as well as the appropriate Rule citation and our position precede our itemized comments on the amendments language.

MR 7081.0020, Subp. 7a.

Lines 1.6-1.10 **Oppose**

The first paragraph under the "Justification" heading on page 11 of the Statement of Need and Reasonableness (SONAR) states, "...only those professionals competent in groundwater flow and hydrology should be involved in making these [potable water impact] determinations." Why then does the draft allow licensed architects, land surveyors, landscape architects, and interior designers to make these determinations? This cannot be the agency's intent?! These professional fields do not deal with nor have competency in groundwater flow and hydrology. They thus should not be authorized to make such determinations. Rather, licensed SSTS advanced designers, as they are able to design any SSTS up to 10,000 gallons per day, and civil engineers are the appropriate parties to make these determinations.

MR 7081.0040, Subp.1.D

Lines 2.10-2.12 **Clarification Needed**

These lines state flow measurement data must be submitted to the commissioner of the agency for review before a local permit is issued. The problem is that the language does not say "who" is responsible for submitting said data. The SONAR states the landowner is the intended party. If this is the case, the rule language needs to specify the landowner must submit the data.

Also, line 2.11 says the commissioner is to review the data before a local permit is issued, but what is meant by "review" is not clearly specified. Does review mean approval or simply as little as to look at something? How will the local permitting authority be notified and by whom as to whether the commissioner has received data for review and when any such review is complete so it then knows whether a permit can be issued (i.e. MS 15.99 considerations)?

HUBBARD COUNTY
EST. 1883 MINNESOTA

Environmental Services

301 Court Avenue, Park Rapids, MN 56470
Phone: 218.732.3890
www.co.hubbard.mn.us/departments/environmental_services/index.php

MR 7081.7081.0130, Subp. 1.B

Lines 8.9-8.11 **Oppose**

While correcting measurements for occupancy or use is an ideal objective, it is not realistic as very few businesses, if any, keep such detailed records and the occupancy of some businesses like restaurants varies depending on the time of day. Also, the measured flow data we receive from businesses consistently comes in well below the Rules' design flow calculations so trying to further dial in flow based on occupancy goes well past the point of diminishing returns and "minimum" statewide standards.

Line 8.14 **Clarification Needed**

The term "similar units" lacks the necessary detail and clarity to know exactly what is "similar" and what constitutes a "unit" as there are no definitions in the Rule for either word. Lack of clarity will lead to interpretation/application differences and unnecessary and avoidable conflicts with landowners and designers.

Line 8.17 **Clarification Needed**

The comment made for Line 8.14 applies to the term "facility" as well. There is no definition of a "facility" in the Rules which will lead to unnecessary interpretation conflicts with landowners and designers.

MR 7082.0700, Subp. 4.B(1)

Lines 9.9-9.10 **Adamantly Oppose**

No Basis

On page 5 of the SONAR, the SSTS Rules' purpose is stated – which is to prevent improper use which could adversely affect water quality and the public health, safety, and welfare (H, S, and W) by the discharge of inadequately treated sewage to surface and groundwater of Minnesota. The SONAR does not meet the agency's burden of proof to:

1. quantify how many leaking septic tanks are being missed during compliance inspections;

2. show that the allegedly missed leaking tanks are adversely affecting water quality and the public H, S, and W; and

3. show that requiring tanks to be empty when inspected will effectively solve this unsubstantiated, alleged missed leaking tanks issue.

The agency bears the burden of proof to prove that a clear, well-documented, statewide, significant environmental problem exists and that the proposed amendment language will cost-effectively address said problem. It has not come close to doing so. The agency's sole justification on page 15 of the SONAR, in the second paragraph under the "Justification" heading, states:

> First, the agency has been notified about an increasing number of tank inspections in the past few years that were deficient; these deficiencies are mostly related to missed observations of cracked or leaking tanks that were identified on subsequent or follow-up tank inspections.

The agency has been collecting and analyzing statewide SSTS data since 2002 and most recently produced a 42 page 2018 SSTS annual report. The lack of data to prove the need for this tank pumping proposal is thus very odd and telling. It is not sound governance to spend a minimum of $3 million of taxpayer money annually

(as stated in the SONAR) to attempt to address an alleged problem that the agency cannot even quantify and instead describes using words such as "some" and "a few every year".

On page 15 of the SONAR, the agency states that the proposed rule change will "level the playing field" and help minimize the number of "bad" inspections that occur. The real root issue thus appears to be the agency's licensing program and a need for enforcement on licensed individuals knowingly doing subpar work. Adding a requirement that a tank be inspected when empty will not cause a "bad" inspector to become a "good" inspector. Morality and ethics cannot be legislated which this tank pumping proposal attempts to do. An inspector who passes a septic system without looking inside its tank will not suddenly comply with a new tank pumping requirement and then start looking inside tanks. To think such will occur is folly.

Senior agency SSTS Program staff openly admitted in meetings with LGUs that they recommended to their superiors that the proposal not move forward because it was unwarranted, but were told this tank pumping proposal was going to happen because high level political figures wanted it to happen.

In addition to the alleged issue that this tank pumping proposal seeks to address really being a license program enforcement issue, the considerations described in the following pages show that the proposal is fraught with significant logistical issues and, if implemented, will create greater environmental problems than the alleged, undocumented problem it seeks to address.

Winter Issues
Minnesota experiences winter weather conditions six months out of the year with increasing severity from south to north. Following is a list of issues of far greater environmental significance and cost (than leaking tanks are allegedly causing) that the proposed tank pumping requirement will cause:

1. It is common knowledge that a septic tank should not be pumped during the winter or just before winter because doing so removes the biological activity that generates heat which keeps a tank from freezing. Water expands as it freezes resulting in…ironically…cracked tanks.

2. Conversely, an empty tank is susceptible to cracking as the surrounding soil freezes and expands against an empty tank that has no liquid weight in it to provide an opposing force against the tank walls and bottom. Thousands of seasonal lakeshore properties that are not occupied during the winter will be at risk.

3. An empty tank in areas of high water tables that exist throughout much of the state can also result in a tank popping out of the ground due to frost heaving.

4. Lastly, there is the issue of how to dispose of the additional septage this proposed requirement would generate. The agency's 2018 SSTS Annual Report states that 14,923 compliance inspections were performed that year statewide. Conservatively estimating each SSTS's tank capacity at 1000 gallons (the minimum required residential tank size), these inspections would generate at least 15 million gallons of septage (i.e. 5,000-6,000 typical maintainer pump truck loads.) Given six months of winter, it is plausible to say roughly 7.5 million gallons of this septage would be pumped during the winter months and need to be land applied on frozen ground which then has a much greater potential to runoff and enter surface waters than if the septage was left in tanks.

5. The State Shoreland Rules (MR 6120.3400 Subp. 3.D) require a current compliance inspection be on file in order to issue any permit in a shoreland area regardless of the time of year when a permit application is made. The Minnesota Department of Natural Resources 2016 annual shoreland program report states that 7,130 permits were issued statewide which means there were 7,130 current compliance inspections on the affected properties. Sixty-one counties, 65 cities, 36 townships, and four other local governmental units (LGU) reported to the agency that they require a current compliance inspection at the time of property transfer. The timing of real estate transactions coupled with these existing compliance inspection regulations will result in a significant number of septic systems' integrity being unnecessarily jeopardized due to forced winter pumping if this proposal becomes rule.

Inadequate Number of Maintainers
Many areas of the state have a shortage of licensed maintainers. The amount of existing tank pumping work already results in licensed designers and inspectors in our area having to wait several days to a couple weeks to get a tank pumped. Time equals money – especially given Minnesota's short construction season. Adding another 14,923 SSTS to be pumped annually when there are only 390 licensed maintainers statewide (i.e. 4.5 maintainers avg./county) will only make matters worse (14,923/390 = 38.3 additional tanks to be pumped/yr per maintainer.)

Inadequate Land Application Sites
Licensed maintainers already have limited approved sites on which septage may be legally applied. The number of these sites continues to decrease due to residential sprawl and the "not in my backyard" syndrome. Very few municipalities accept septage into their wastewater treatment plants. The few that do charge $10-110/1000 gallons which is another cost that will be passed on to the landowner who has a tank ranging in capacity from 1,000-2,500 gallons. When maintainers lack viable, easy options for disposing of pumped septage, the septage is disposed of through other unapproved, illegal, less desirable means such as a documented example of a maintainer emptying his pump truck loads into a municipal storm sewer grate.

As mentioned above, the ground is frozen roughly half of the year. In the remaining half of the year, much of that time window is not suitable to land application due to precipitation and soil conditions thus being too wet to allow extremely heavy pump trucks onto sites to apply septage. The available time windows in which septage can be properly applied are thus very small.

If a tank is cracked and leaking so negligibly that the tank's liquid operating depth is not affected (which is easily observed through a manhole and inlet/outlet inspection risers) and the tank then must be pumped to allow further visual inspection to be performed, the risk of the leak having a potential negative environmental impact is negligible compared to 15 million gallons of septage being land applied throughout the year during which a majority of the year's land application site conditions are not conducive to proper application/incorporation.

Nature of Concrete
Concrete inherently cracks, but stress fractures do not mean a concrete tank is not watertight. The agency via the SSTS Rules, Chapter 7080.1900-.2030 requires tank manufacturers to submit and receive approval of engineered design plans for all tanks before they can be manufactured. The Rule's tank design specifications require tanks to be capable of handling long-term vertical and lateral loads, exposure and stresses from freezing conditions, and exposure to sewage and sewage gasses. The Rule also requires manufacturers to annually test the watertightness of their tanks and maintain records of such. If the agency's own SSTS annual reports state that 34% of statewide SSTS have been installed in the last 17 years (since the agency started

collecting statewide data in 2002), the SSTS Rules existed several years prior to 2002 and required tanks to meet certain design specifications such that the percentage of approved tanks in the ground is even higher, and 13,000 new tanks were installed in 2018 and that number is representative of the ongoing annual new tanks installation number, it seems the statewide effort to have engineered, approved tanks in the ground is well established and will soon have the desired complete turnover of all tanks statewide meeting a State, engineered standard. Thus, a very sound, effective statewide program already exists to ensure septic tanks do not leak.

The only sure way to tell if a tank is leaking due to a crack is to observe the tank's operating liquid level which is the historic practice of inspectors that works very well. If a crack is not watertight, the operating level will be below the outlet pipe elevation and very, easily noticeable. A pumped tank does not allow an inspector to see this liquid level information that is critical to determining if a tank is watertight. If an inspector feels that s/he needs to see a tank empty in order to do a compliance inspection, s/he has the right and ability to ask the landowner to have the tank pumped.

Tank Inspection Logistics

Another commonly known fact is that the intended biological activity that occurs in a septic tank to treat the waste develops a thick, black biofilm on the interior tank surfaces that are in contact with the sewage. It is very difficult to see the majority of cracks through this biofilm. The only way to see what is on the other side of the biofilm is to pressure wash the inside of the tank which then requires Occupational Safety and Health Administration (OSHA) confined space certified operators which greatly increases the cost of a tank inspection and causes an extreme shortage of properly certified inspectors. Cracks that are visible through the film will be so glaring that the tank liquid level will not be able to rise above them and thus be evident by the liquid level being at the same elevation as the crack. Leaving the sewage in the tank at its operational depth (whatever that is) provides an inspector with key information to assess the tank's compliance or lack thereof. If a tank's liquid level is just below the tank outlet, an inspector knows the tank is watertight and operating properly. If an inspector visits a property and finds the tank empty because it was pumped before the inspector arrived, the inspector loses that valuable information and may need to come back to the site another time once the tank is full in order to observe the operational liquid level and determine if the level is where it ought to be. This unnecessarily increases compliance inspection costs.

Many tanks are several feet underground which makes it very difficult to effectively visually evaluate the inside of a tank for cracks through a 20 inch diameter manhole riser especially when there is a black biofilm on the interior tank surfaces. So then an inspector will either need to purchase an expensive lighted, remote operated camera that can be lowered into a tank and recoup the expense by passing it on to customers or try to look inside a tank the old school method (very unadvisable) by peering down inside it which will lead to inevitable confined space OSHA issues and injuries related to falling into a tank.

Creates the Wrong Incentives

The SSTS profession oddly has a high liability:reward ratio. Landowners generally unrealistically expect an SSTS to last forever and require no maintenance. The SSTS Rules have made SSTS so unnecessarily expensive that landowners are quick to go after any contractor they can remotely connect to their SSTS when there is an issue with the system. The result is the good, scrupulous maintainers seek to minimize their liability exposure so many will refuse to complete the assessment form as the Rule does not require them to do so. Other maintainers will have no incentive to complete the form because doing so means they will not get to charge for going out again to pump the tank when a landowner needs a compliance inspection. Yet other maintainers will fill out the form for anyone willing to pay their price.

HUBBARD COUNTY
EST. 1883 MINNESOTA

Environmental Services

301 Court Avenue, Park Rapids, MN 56470
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The liability concern will also cause inspectors to not utilize a maintainer's signed assessment form because the inspectors will not want to take the maintainer's word that a tank is good and put their business on the line based on some other business' word.

With a shortage of maintainers to do the work, existing maintainers will be tempted to save time by cutting corners on liming their truck tank loads at all (liming is required to raise the septage pH to a level that kills pathogens) or for the required length of time, or overusing a land application site because it is closer to the job sites and thus allows more tanks to be pumped in a day.

In Closing

Thank you very much for your attention to and consideration of our comments.

If you have any questions regarding any of the above comments, please contact Environmental Services Director Eric Buitenwerf via US Mail, phone, or email (ebuitenwerf@co.hubbard.mn.us) using the contact information shown in the header.

Most sincerely,

Eric Buitenwerf
Environmental Services Director

Dan Stacey
Hubbard County Board Chair

Gregory Halling

Halling Engineering, Inc.

3727 E 255th Street ● Webster, MN 55088 ● Phone: 952-440-1680

December 20, 2019

The Honorable Judge Kimberly Middendorf

Re: Possible Amendments to Rules Governing Subsurface Sewage Treatment Systems Inspections and Permit Requirements, MN rules Chapters 7081

Dear Judge Middendorf,

I respectfully submit my comments on the proposed rule change. I am a professional engineer and a MPCA certified advanced designer and inspector. I have served with MOWA as a board member for four three-year terms and have served on the MPCA Technical Advisory Panel on SSTS registration of products since its inception in 2010.

The state is required to permit SSTS that are over 10,000 gpd and may permit those under 10,000 gpd as well but typically allows the county to issue those permits. Overly burdensome regulations has caused many SSTS that will never exceed 10,000 gpd to get a state permit. This rule change helps to address this issue. Over the past two decades I have heard of many businesses that have been negatively impacted by the requirement to obtain a state permit for their SSTS. Improvement projects are canceled or the business quits operating entirely because of the costs associated with a state permit. I fully support the rule change to allow measured flows to be used to determine the need for a state permit. However, due to the different uses there is a need for greater flexibility when using measured flows for permitting. Following are some examples:

It is very common for a restaurant to have a large banquet room that is needed for Christmas parties and special events but is normally not used most of the time and the restaurant may even need to close the remainder of the restaurant for these events. If the restaurant is open for three meals a day, they need to take all of their seating that is available for determining their permit flow. Say they have 100 seats for normal use and a banquet area for 200 people that is typically used for large groups so they have 300 seats. This equates to 2100 meals per week at full occupancy. If normal meals are typically 75 three times per day and the banquet for weekends, you would have an occupancy rate of 75% on the regular meals and only two meals out of 21 possible for the banquet area or less than 10% occupancy for 2/3 of the restaurant. The measured flow might be at their peak use but the permit flow needs to be multiplied times 4.29. The permitted flow should be allowed to be adjusted by the local government unit to the mode of operation that pertains to that facility; thereby in this case considering the maximum flow to be multiplied by 1.1 for permit use because it is at 75% for the main dining area and 100% for the large meeting room. A factor of safety would still be used in the design.

Churches are also an example of low occupancy during the week with high weekend use. Schools are an example of the opposite extreme with little use typically during the weekends or certainly a very different use during the weekends. Another example might be a wedding venue. They will be unoccupied for most of the week and then a high use for two nights per week or whatever the operator has planned for. A meeting hall can accommodate a large number of people but is only used once or twice per week. There are many other examples of special use that we can't even contemplate and there needs to be flexibility for the LGU to spell out the plan in a condition use permit, planned unit development, or some other type of legally binding document that spells out the use of the facility which spells out and limits the use as necessary to operate the facility.

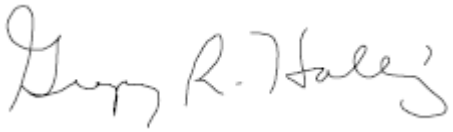
Below is a suggested addition to the proposed language:

Measurements must be corrected for occupancy or use according to Prescriptive Designs 7081.0040 2 11/06/18 REVISOR CKM/JC RD4478 3.1 and Design Guidance for Advanced Designers, incorporated by reference under part 3.2 7080.1550, subpart 2 unless use is legally restricted by the local government unit through the use of a conditional use permit, planned unit development, or some other agreement that restricts the use of the facility.

So I fully support the proposed rules amendment regarding flows and would suggest the above change to allow flexibility in the rules for real world operations so as to allow businesses to serve the people of Minnesota in a cost effective way. The MPCA can regulate and/or assist counties with permits that need it. In this way the LGU can continue to regulate those SSTS that they are intended by the state legislature to regulate.

Thank you for the opportunity to comment on this rule.

Sincerely,



Gregory R. Halling, PE MN #12783 & Advanced Designer & Inspector, MPCA Lic No C914

CAMP OMEGA, INC.
22750 Lind Avenue
Waterville, Minnesota 56096-9320
Phone 507-685-4266
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www.CampOmega.org • info@campomega.org

RECEIVED
By: OAH on 12/20/19 @ 10:33 am

Bob La Croix

December 18, 2019

The Honorable Judge Kimberly Middendorf

Re: Possible Amendments to Rules Governing Subsurface Sewage Treatment Systems Inspections and Permit Requirements, MN rules Chapters 7081

Dear Judge Middendorf,

The Board of Directors and staff of Camp Omega, a non-profit summer camp and retreat center near Waterville MN, is respectfully submitting our support for the proposed rule change that would allow for measured values to be used to obtain a local permit to design a new subsurface sewage treatment system (SSTS) . Due to program requirements, guests to staff ratios, and accreditation standards place on Camp Omega by an outside agency, we are confined to a limited number of guests at any one time. Therefore, Camp Omega stays well below the 10,000 gpd measured flows per the detailed record of regular meter readings verify. However, there is a need to have more than the allotted beds per the current "table values" in order to have the flexibility to house guests according to program needs, the number of events happening simultaneously, gender and simply guest's desires. Because we have limited space for SSTS, the current "table values" restrict Camp Omega to a level of which is nearly inoperable and self-sustaining as every bed or remote campsite is never filled simultaneously. Due to the above restricted use, it is important to have variable facilities for our use but not use all of our beds or remote sites at the same time.

Our PE has the following additional comments: "For Camp Omega, the table values under current rules show a value of 11,250 gpd if the camp has every bed filled and all remote campsites occupied with access to toilets and showers for every day of the week. However, at their peak capacity, their actual flows are an average of 3600 gpd for their peak week. Their actual flows to their sewer systems at what is their full capacity was 19595 gallons for their peak week (2800 gpd average) in 2018 and was 25,134 gallons (3600 gpd average) for the peak week in 2019. For Camp Omega, going to a state permit from a county permit increases their annual operating costs from as estimated $4300 per year to $42,000 per year, increases the design costs a minimum of $20,000 to $30,000 and permit fees from $1200 to $9600. Getting a state permit instead of a county permit increases the permitting time from a couple of months to more than a year plus the additional design time which is likely to be several months for testing. This prevents many facilities from expanding or even repairing their ISTS as they can't afford to operate with a state permit.

In order to allow flexibility for owners and operators of specialized uses, we request that the following be considered for measured flows: "Measurements must be corrected for occupancy or use per Prescriptive Designs and Design Guidance for Advanced Designers, as incorporated by reference under part 7080.1550, subpart 2 except in cases where a legal stipulation such as conditions of a CUP, PUD, etc. is placed on the operation of a facility that limit the full use of the facility." This language would allow our county board to limit the number of guests at our facility even though the facility can technically accommodate more. In our case, our site can accommodate up to 244 guests (164 beds plus 80 remote sites) but our maximum in 2019 was 171 guests (53 at

our remote sites) for 5 days as we can't operate 7 days per week as we have 3 day and 5 day programs and need time between events to prepare for the next retreat. With a maximum of 5 days use per week at our peaks, this gives us a 30% down time each week even if we are at maximum use. Using our maximum week also means that the majority of the time the SSTS is further underutilized and our system rests for 9 months of the year. Thank you for taking my comments under consideration.

Regards,

Bob LaCroix
Executive Director

Kimberly Shermo

WASECA COUNTY
PUBLIC HEALTH SERVICES

Public Health
Prevent. Promote. Protect.

299 Johnson Ave SW, Suite 160
Waseca, MN 56093
Nursing (507) 835.0685
Environmental Health (507) 835.0587
Fax (507) 835.0687

December 20, 2019

The Honorable Judge Kimberly Middendorf
Administrative Law Judge
Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

RE: Possible Amendments to Rules Governing Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements, Minnesota Rules, Chapters 7081 and 7082, OAH Docket No. 21-9003-36221

Dear Judge Middendorf,

Waseca County respectfully submits the following comments on the proposed Amendments to Rules Governing Subsurface Sewage Treatment Systems (SSTS) Permit Requirements, MN Rules Chapter 7081 and 7082 for your review and consideration. Draft line numbers are referenced to identify the applicable amendments language for each comment.

MR 7081.0020, Subp. 7a.
Lines 1.6-1.14 **Oppose**

The justification for Subpart 7a. found on p. 11 of the SONAR states that Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design (AELSLAGID) professionals are to work in their areas of expertise and are the determining factor of a "SSTS with low impact to potable water." These professionals may have some knowledge in groundwater flow and hydrology, but a hydrologist would be better suited to make such a determination.

A "SSTS with low impact to potable water" as defined in the proposed rule states it is a system where the groundwater plume from a soil dispersal component "is discharging into a surface water bordering the property the SSTS soil dispersal component is located on; and is not discharging into the capture zone of any existing or potential water supply wells." This definition is vague and does not consider future use. What conditions does

bordering the property mean? Could the land be owned or leased? Is this one parcel or could it be several parcels owned by the same entity? Would this land be restricted from being split, sold, and or developed in the future? Who is responsible for ensuring the land remains in the present condition? Would wells be able to be drilled in the future?

MR 7081.0040, Subp. 1D

Lines 2.8-2.12 Oppose

States flow measurement is to be submitted to the commissioner of the agency for review before a local permit is issued, but will there be an outlined process approved by the state and local agencies? Does the process include approving the method of measurement data before measurement begins and who is reviewing the data? Who will be allowed to submit the data?

The allowance of flow measurement in this part and the proposed exemption under "SSTS with low impact to potable water" will have a major impact on local units of government that are not set up to handle these kinds of facilities. SDS permits cost property owners thousands of dollars. This fact reflects how much time and energy is invested at the state level reviewing these systems. Existing and projected staffing needs at local government units (LGUs) have not been considered with this change, nor has the education level required to handle such a system. If a LGU does not have staff qualified to handle these systems more training would be required or a contract with a licensed professional would be required, both of which would require a significant amount of money. Budgets have already been set and do not allow for this major impact. Ordinances and fee schedules may need to be adjusted in order to handle this change too, especially as fee schedules are not likely to come anywhere near covering the cost LGUs would incur.

At the present time, these changes would greatly impact many Minnesota Counties and, also, may one day impact Waseca County. Therefore, due to the concerns mentioned above that need to be addressed, we, on behalf of Waseca County, respectfully request an Administrative Hearing on these proposed amendments to Minnesota Rules, Chapters 7081 and 7082, OAH Docket No. 21-9003-36221.

Sincerely,

Kimberly Shermo

Kimberly Shermo
Environmental Health Specialist

Sarah Berry
Public Health Director

Re: Possible Amendments to Rules Governing Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements, Minnesota Rules, Chapters 7081 and 7082

RECEIVED
By: OAH on 12/20/19 @ 4:16 pm

Marilee DeGroot

Dear Judge Middendorf,

The following comments are being respectfully submitted on the proposed Amendments to Rules Governing Subsurface Sewage Treat Systems (SSTS) Permit Requirements, MN Rules Chapters 7081 and 7082 for your review and consideration. Draft line numbers are referenced to identify the applicable amendments language for each comment.

MR 7081.0020, Subp. 7a.

Lines 1.6-1.14 **Adamantly Oppose**

SONAR p. 11 'Justification' Subpart 7a. states, "SSTS with low impact to potable water. A new subpart 7a defines the term SSTS with low impact to potable water. This term is needed to more closely align the SSTS program with those LSTS systems receiving an SDS permit from the MPCA." MN. SSTS regulation has continually identified a definitive threshold of 10,000 gallons per day and the requirement of an SDS permit if the system's estimated flow is >10,000 gallons per day. Therefore there is no necessity to more closely align the SSTS program with an LSTS system. Prior notices, publications, presentations from the Agency and lobbyist for a rule amendment identified a goal to allow measured flow for SDS determination which concludes it unnecessary that the term "SSTS with low impact to potable water" be added to rule.

The definition of "SSTS with low impact to potable water" is needed to provide adequate protection to groundwater resources by restricting specific areas where no source water for drinking is found. A system <10,000 gallons per day designed by an licensed SSTS Advanced Designer already protects the public health, safety, and general welfare by the discharge of adequately treated sewage to the groundwater in accordance with Chapter 7081 therefore, the term "SSTS with low impact to potable water" is not required. In addition the definition requires land control up to the border of the potential surface water therefore restricting potential future uses to only the property owner or the systems in question. Such a requirement is too ambiguous and requires language clarification, does that require ownership of the land? Could the land be leased? What authority determines the restrictions? Who will be required to regulate and enforce those restrictions? What if the land is sold in the future? The term low impact to potable water should not be added to rule.

B. "is not discharging into the capture zone of any existing or potential water supply wells". Such cannot be definitively determined by speculation or a desktop model and should require down gradient monitoring components. Will restrictions be placed on any wells drilled in the future? Many cities obtain their water supply from a river is that considered a water supply well?

"AELSLAGID professionals are required to work within their areas of expertise, as such, only those professionals competent in groundwater flow and hydrology should be involved in making these determinations." Why does the draft allow licensed architects, land surveyors, landscape architects, and interior designers to make these determinations since they do not have competency in groundwater flow and hydrology?

MR 7081.0040, Subpart 1. B **Adamantly Oppose**

Lines 2.5-2.6

These lines state "Flow from an SSTS with low impact to potable water is not counted in this subitem" when determining the requirement of an SDS permit.

SONAR p. 12 'Justification' Subpart 1B(2) states the subitem also adds the language allowing for system flows within area with low impact to potable water to be excluded from the 10,000 gpd, half mile calculation.

This rule language will result in the requirement that local units of government (LUG) issue permits and perform regulation on systems in exceedance of 10,000 gpd.

An example of the proposed application: An existing facility with multiple systems that either proposes an expansion in exceedance or their measured flows are in exceedance of 10,000 gallons per day would require an SDS permit but, if a report by a AELSLAGID professional is submitted that the SSTS has or will have a low impact to potable water due to discharging into a surface water bordering the property (line 1.11 to 1.12) and is not discharging into the capture zone of any existing or potential water supply wells (line 1.13 to 1.14) an SDS permit would not be required therefore requiring a local permit for a system that would essentially not have a capacity limitation.

The language does not say if the LGU has the ability to decline a local permit.

The proposed rule requires clarification since such does not identify who the 'low impact to potable water' report is submitted to or if a review for accurateness is required and by whom, or if approval of such is required and by whom. Review of such a report would exceed the capability and authority of an LGU.

The allowance of flow measurement and the proposed exemption identified in lines 2.5-2.6 will result in facilities with a current SDS permit desire to cancel their state permit to move to a local permit for financial savings. The requirement of a local permit will increase the LUG current workload. The proposed language does not say an LUG has the ability of declining the issuance of a local permit for a facility that already has a state permit. Will the agency be providing funding for additional LUG staffing to perform continual regulation sufficiently to assure the health of the public and the environment are continually protected? This rule change will not only increase the time required to regulate for an LUG to perform tracking, service report review, lab test reports, monitoring notices, renewals, transfers, enforcement and the additional regulation necessary to assure that these systems continue to function as designed so the Public and Environment is consistently protected.

SONAR p. 16 B. The probable costs to agency and to any other agency of the implementation and enforcement of the proposed rule.... The allowance of flow measurement and the proposed exemption identified in lines 2.5-2.6 will result in the requirement that LUG's issue additional permits and perform regulation on systems that are more complex, with large flows which have an increased risk of negatively impacting the health of the public and the environment. "In addition, facilities with a current SDS permit will desire to cancel their state permit to move to a local permit for the reasons identified in SONAR p. 17 E. ...these proposed rules could have cost savings to tens of thousands of dollars....Examples include a current SDS permitted facility that can cancel their state permit and move to a local permit.. This would result in a cost savings." The owner of a facility desires a local permit to eliminate paying for a $10,000 SDS permit fee but, duly the charge of Agency fees are justified accordingly based upon staff time processing such which attests to the impacts this proposed rule amendment will have on LUG's. LUG's are not properly staffed to perform the necessary regulation on systems in exceedance of 10,000 gpd.

Subp. 1D

Lines 2.8-2.12 **Clarification required**

States flow measurement data must be submitted to the commissioner for review before a local permit is issued. Why does it not require that the Agency pre-approve the measuring 'plan' prior to the recording of measurements to assure the acceptability of the 90 day measurements? In addition 'who' is required to submit said data?

Statement of Need and Reasonableness P 10 A.

"need has come to mean that a problem exists that requires administrative attention, and reasonableness means that the solution proposed by the MPCA is appropriate.

The proposed amendments are needed to ensure that the technical standards applied to SSTS are accurate, reflect the MPCA's regulatory intent, and are responsive to the specific needs of the regulated community as well as the LGUs that implement standards." The proposed amendments to Minnesota Rules, Chapters 7081 and 7082, OAH Docket No. 21-9003-36221 cannot be defined as minimal due to the significant impact they will pose upon an LUG by requiring a local permit for a system without a capacity limitation in addition to requiring an LUG they regulate additional systems that would have required and or were regulated by an SDS prior.

RECEIVED
By: OAH on 12/23/19 @ 9:34 am

Pete Otterness

On behalf of Nicollet County, I respectfully request an Administrative Hearing on the proposed amendments to Minnesota Rules, Chapters 7081 and 7082, OAH Docket No. 21-9003-36221 per my concerns identified in the attached comment letter.

Sincerely, Pete Otterness, Senior Sanitarian, Nicollet County

December 23, 2019

Re: Possible Amendments to Rules Governing Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements, Minnesota Rules, Chapters 7081 and 7082

Dear Judge Middendorf,

The following comments are being respectfully submitted on the proposed Amendments to Rules Governing Subsurface Sewage Treat Systems (SSTS) Permit Requirements, MN Rules Chapters 7081 and 7082 for your review and consideration.

We support the use of measured flows and the correct sizing and the permitting of septic systems. We oppose the discounting of flows by the receiving environment declaration. We are concerned that potential deregulation of systems by a new terminology will place a burden on local governments to protect the wellbeing of the citizens and the environment of the county. Additionally, we have grave concern that pressures will be made to deregulate systems solely for a reduction in financial costs of permitting and operations by moving from a state permitted facility to a locally regulated facility within the State.

In consideration, please see the portions of the proposal that we are most concerned with. Draft line numbers are referenced to identify the applicable amendments language for each comment.

MR 7081.0020, Subp. 7a.
Lines 1.6-1.14 **Oppose**

SONAR p. 11 'Justification' Subpart 7a. states, "SSTS with low impact to potable water. A new subpart 7a defines the term SSTS with low impact to potable water. This term is needed to more closely align the SSTS program with those LSTS systems receiving an SDS permit from the MPCA."

MN. SSTS regulation has continually identified a definitive threshold of 10,000 gallons per day and the requirement of an State Disposal System (SDS) permit if the system's estimated flow is >10,000 gallons per day. Therefore there is no necessity to more closely align the SSTS program with an LSTS system. Prior notices, publications, presentations from the Agency and lobbyist for a rule amendment identified a goal to allow measured flow for SDS determination which concludes it unnecessary that the term "SSTS with low impact to potable water" be added to rule.

The definition of "SSTS with low impact to potable water" is needed to provide adequate protection to groundwater resources by restricting specific areas where no source water for drinking is found.

A system <10,000 gallons per day designed by an licensed SSTS Advanced Designer already protects the public health, safety, and general welfare by the discharge of adequately treated sewage to the groundwater in accordance with Chapter 7081 therefore, the term "SSTS with low impact to potable water" is not required. In addition the definition requires land control up to the border of the potential surface water therefore restricting potential future uses to only the property owner or the systems in question. Such a requirement is too ambiguous and requires language clarification; does that require ownership of the land? Could the land be leased? How much land? What authority determines the restrictions? Who will be required to regulate and enforce those restrictions? What if the land is sold in the future? Who and how will the location of wells and the use of the groundwater be regulated or prohibited in the future? How will the other affected industries know of the conditions required by the septic system to remain in the low impact definition? The term "low impact to potable water" should not be added to rule.

"is not discharging into the capture zone of any existing or potential water supply wells".

Such potential cannot be definitively determined by speculation or a desktop model and should require down gradient monitoring components. Will restrictions be placed on any wells drilled in the future? Many cities obtain their water supply from a river is that considered with the same standards as a water supply well?

MR 7081.0040, Subpart 1. B **Adamantly Oppose**
Lines 2.5-2.6
These lines state "*Flow from an SSTS with low impact to potable water is not counted in this subitem"* when determining the requirement of an SDS permit.

SONAR p. 12 'Justification' Subpart 1B(2) states the subitem also adds the language allowing for system flows within area with low impact to potable water to be excluded from the 10,000 gpd, half mile calculation.

This rule language will result in the requirement that local units of government (LUG) issue permits and perform regulation on systems in exceedance of 10,000 gpd as currently required by the half mile calculation.

The proposed rule requires clarification as the proposal does not identify who the 'low impact to potable water' report is submitted to or if a review for accurateness is required and by whom, or if approval of such is required and by whom. Review of such a report would exceed the capability and authority of an LGU.

An example of the proposed application: An existing facility with multiple systems that either proposes an expansion in exceedance or their measured flows are in exceedance of 10,000 gallons per day would require an SDS permit but, if a report by a AELSLAGID professional is submitted that the SSTS has or will have a low impact to potable water due to discharging into a surface water bordering the property (line 1.11 to 1.12) and is not discharging into the capture zone of any existing or potential water supply wells (line 1.13 to 1.14) an SDS permit would not be required therefore requiring a local permit for a system that would essentially not have a capacity limitation.

The allowance of flow measurement and the proposed exemption identified in lines 2.5-2.6 will result in facilities with a current SDS permit desire to cancel their state permit to move to a local permit for financial savings. The requirement of a local permit will increase the LUG current workload and level of certification of staff. The proposed language does not say an LUG has the ability of declining the issuance of a local permit for a facility that already has a state permit. The language does not say if the LGU has the ability to decline a local permit for a new proposed system nor is there stipulation to return a system to the SDS permit if the LGU cannot adequately regulate that size of system. This needs to be stated and clarified.

Will the agency be providing funding for additional LUG staffing to perform continual regulation sufficiently to assure the health of the public and the environment are continually protected? This rule change will not only increase the time required to regulate for an LUG to perform tracking, service report review, lab test reports, monitoring notices, renewals, transfers, enforcement and the additional regulation necessary to assure that these systems continue to function as designed so the Public and Environment is consistently protected.

Please consider these points and require justification and assurances that the larger subsurface sewage treatment system will be regulated correctly for the protection of the people of the state and the environment in which we live.

Pete Otterness
Sanitarian – Senior
Nicollet County
Property Services Department
501 S Minnesota Ave,
St. Peter, MN 56082
General Office 507 934-7070
Direct 507 934-7076

Ben Wogsland

Hospitality MINNESOTA

RESTAURANT, LODGING, RESORT AND CAMPGROUND ASSOCIATIONS

MINNESOTA RESORT & CAMPGROUND ASSOCIATION

December 23, 2019

Ms. Lisa Armstrong
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620

RE: MN 3426 MPCA Proposed Rule on SSTS Regulation

Thank you for the opportunity to provide comments on the Minnesota Pollution Control Agency's ("MPCA") proposed amendments to Minnesota Rules relating to the regulation of septic systems. Ensuring the safety of our water and natural resources is critical to hospitality businesses and tourism in Minnesota. These natural resources and the public's trust related to health and safety are the lifeblood of our Minnesota tourism operators. Achieving the correct balance between ensuring public safety, environmental stewardship and a regulatory framework that is not overly burdensome is in the best interest of our state, our economy and the people of Minnesota.

Hospitality Minnesota and the Minnesota Resort and Campground Association represent hundreds of resort and campground small businesses in Minnesota. Our members are important stewards of our state's natural resources and in fact rely upon the health and bounty of these resources daily to market and run successful hospitality businesses that create jobs, support and drive local economies and help foster our Minnesota tourism culture and state economy. In short, no one cares more about the safety and reputation of the waters and natural resources associated with these properties than our resort and campground operators in Minnesota and we will continue to be staunch advocates in this regard.

Minnesota's statewide SDS permit—at over $10,000—is a very large expense for small business operators and can be a financial hardship to small mom-and-pop operations that may be facing other financial pressures in the current market. The financial pressures facing Minnesota resorts and campgrounds in the current market are significant, with recent news reports noting that Minnesota has lost over 500 resorts and campgrounds in the last 15 years. It is in our state's interest to continue to support a robust and healthy resort, campground and tourism economy in Minnesota, as it is a vital part of our diverse state economy. In fact, the hospitality industry supports approximately 1 in 10 jobs in Minnesota.

In recent years, Hospitality Minnesota and the Minnesota Resorts and Campground Association have been engaged in efforts with the MPCA to streamline certain regulations in Minnesota in order to reduce unnecessary cost to resorts and campgrounds, while still protecting our water and natural

resources through a reasonable regulatory structure. To that end, the proposed rule includes two provisions that we support:

First, we support allowing existing SSTS systems to calculate flow using actual measured flow rates, rather than estimated flow tables when determining whether a system will reach the 10,000-gallon threshold necessitating an expensive SDS permit. The current estimated flow table tends to generate *inflated* projected flow rates for campgrounds and resorts which appear to be significantly decoupled from risk mitigation and the real experience of operators. For example, a campground may report a typical flow for an average site at their operation at 40 gallons per day. If the operator has 100 sites, the daily flow would be calculated at 4,000 gallon per day in actual measured flow. However, under the current *estimated* flow table, it is assumed each site *must* experience 100 gallons per day (a rate far higher than our members report or that is supported by any of the data that the MPCA has shared with us to date). At an inflated presumption of 100 gallons-per-day, the same operator with 100 sites would be falsely presumed to generate 10,000 gallons per-day, necessitating the need for a nearly $10,000 SDS permit. Again, this type of financial burden can pose a hardship to small businesses, especially when it does not appear to be connected to the actual risk posed by a given system or the need for mitigation. In recent years, the MPCA began to allow seasonal resorts and campgrounds open 180 days-per-year or less to use measured flow rather than prescriptive estimated flow tables. The current proposal will allow other resorts and campgrounds to take advantage of the same process, rather than relying on estimated flow table values. To that end, we view the current proposal as a positive development and appreciate the work of the MPCA to advance it.

Second, we also appreciate the MPCA's proposal to allow existing systems to use measured flow when expanding a given system in 25% increments, rather than using the prescriptive estimated flow tables discussed in detail above. In recent years, Minnesota operators may have been disincentivized from expanding their campground or resort operations by several regulatory factors, including the presumptively high estimated flow values, the so-called "half-mile-rule," and the overall high cost of the SDS permit (see below). From an economic, tourism and community development perspective, we do not believe it is in the state's interest to support policies that chill or suppress business expansion or growth and the current proposal is one step forward toward addressing the issue of allowing resorts and campgrounds to expand through reasonable measurement and risk mitigation practices.

We appreciate the MPCA's interest in updating these rules and streamlining certain regulatory provisions relating to SSTS systems in Minnesota. We would be remiss, however, if we did not mention for the record several major issues that we have been communicating to the MPCA for some time that are *not* addressed in the Agency's current proposal and hope that they can be addressed going forward:

First, the proposed rule does not address the unfair treatment of systems "under common ownership and within one-half mile." Currently, systems within one-half-mile under common ownership are treated as one system for the purposes of calculating whether the 10,000 gallon-per-day threshold is met, potentially necessitating a costly $10,000 SDS state permit. Conversely, two systems within a half-mile under *separate* ownership—such as owners in a townhome association—may pose the exact same risk (or perhaps greater in some cases) of failure or performance integrity issues yet are not required to pay these exorbitant SDS fees. This is a matter of fairness. Two classes of property owners are being treated unevenly, with no actual risk mitigation difference or clear risk mitigation purpose under the law. Under this analysis, the half-mile rule should be eliminated. In addition to treating one class of property owner unevenly, it also may limit a campground or resort owner's ability to expand and grow their business, as again the steep cost of the SDS permit can be cost prohibitive. We would encourage

the MPCA to address this issue in a thoughtful and comprehensive way and stand ready to assist in any way possible.

Second, the proposed rule does not address the potential for new systems to use measured flow values and/or extrapolations rather than the prescriptive estimated flow charts. For resorts and campground operators, the ability to model a new system (with expert assistance) on either their previous experience at another location or that of another resort or campground similar in size and expected capacity seems reasonable. We believe this is an area that the MPCA should address going forward.

Finally, we believe the current cost of an SDS permit in Minnesota is excessive and we are concerned by comments that the Agency may be considering an *increase* of fees for operators in Minnesota. At over $10,000 per permit, we're told the cost of an SDS may be significantly higher than what is being charged in neighboring states such as Wisconsin and Iowa. We have previously suggested and again strongly encourage that the MPCA conduct a thorough side-by-side analysis of the fees charged by other states in our region and consider significantly reducing the cost of any SDS permit fee charged to resorts and campgrounds in Minnesota. The high cost of these fees can be a financial hardship to a small business and can serve as an undue barrier to entry for an entrepreneur looking to develop a new business or a chilling factor to an operator looking to expand their operation.

Again, we appreciate the MPCA's work to streamline some of the SSTS regulations in a more fair and commonsense manner that works better for resort and campground operators while ensuring safety of our natural resources and we look forward to continuing conversations with the Agency in the areas we feel there is still opportunity for improvement.

Minnesota relies upon a healthy and thriving resort, campground and tourism industry to help drive our state's diverse and robust economy and to maintain our hospitality culture and Minnesota way of life. We appreciate the opportunity to share the above comments in the hopes that we can continue to work with regulators, policymakers, local officials, tourism partners and other stakeholders to strike the correct balance between a fair and just regulatory framework while ensuring the safety and integrity of our state's precious natural resources and waters.

Thank you for your consideration.

Ben Wogsland
Director of Government Relations
Hospitality Minnesota
Minnesota Resort and Campground Association (MRCA)

cc: Ms. Katie Izzo, MPCA
Mr. Aaron Jensen, MPCA

RECEIVED
By: OAH on 12/23/19 @ 12:56 pm

Angela Lipelt

On behalf of Mower County, I respectfully request an Administrative Hearing on the proposed amendments to Minnesota Rules, Chapters 7081 and 7082, OAH Docket No. 21-9003-36221 per my concerns identified in the attached comment letter.

Sincerely, Angela M. Lipelt, Mower County Environmental Services Supervisor

December 23, 2019

Re: Possible Amendments to Rules Governing Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements, Minnesota Rules, Chapters 7081 and 7082

Dear Judge Middendorf,

The following comments are being respectfully submitted on the proposed Amendments to Rules Governing Subsurface Sewage Treat Systems (SSTS) Permit Requirements, MN Rules Chapters 7081 and 7082 for your review and consideration.

Mower County supports the use of measured flows and the correct sizing and the permitting of septic systems. We oppose the discounting of flows by the receiving environment declaration. We are concerned that potential deregulation of systems by a new terminology will place a burden on local governments to protect the wellbeing of the citizens and the environment of the county. Additionally, we have grave concern that pressures will be made to deregulate systems solely for a reduction in financial costs of permitting and operations by moving from a state permitted facility to a locally regulated facility within the State.

In consideration, please see the portions of the proposal that we are most concerned with. Draft line numbers are referenced to identify the applicable amendments language for each comment.

Further explanation: Not all counties employ the expertise needed to support a staffing level required to provide this service due to the rare need for and expense of this level of expertise internally. Finding an outside agent for this level of service to provide to a county is scarce and expensive. Some Counties may have the luxury of having staff at this level of training and have a regular need for this level; others do not. For those that do not, it should be left as a choice to the county in a written agreement with the state that they are willing and (responsibly) able to take this burden on. Without such written agreement is too easy to become an unfunded mandate for the state to transfer responsibility to counties.

As an example, regarding permitting of certain transmission lines locally. Under the Power Plant Siting Act, a permit from the Public Utilities Commission (PUC) is required for transmission line projects over 100kV (MN Stat. 216E). However, local review and permitting is possible for eligible projects when the local unit of government is willing to take on that authority. Decision of the local unit of government to do so and Notice to the Public Utilities in writing is required when taking on that authority otherwise the responsibility remains with the PUC. I request a similar structure to this rule should be employed so it is not solely at the discretion of the state to hand-off work to local units of government without just compensation or staffing levels which are able to take those responsibilities over.

I feel this issue can easily and reasonably be resolved with clarified language.

MR 7081.0020, Subp. 7a.

Lines 1.6-1.14 **Oppose**

SONAR p. 11 'Justification' Subpart 7a. states, "SSTS with low impact to potable water. A new subpart 7a defines the term SSTS with low impact to potable water. This term is needed to more closely align the SSTS program with those LSTS systems receiving an SDS permit from the MPCA."

MN. SSTS regulation has continually identified a definitive threshold of 10,000 gallons per day and the requirement of an State Disposal System (SDS) permit if the system's estimated flow is >10,000 gallons per day. Therefore there is no necessity to more closely align the SSTS program with an LSTS system. Prior notices, publications, presentations from the Agency and lobbyist for a rule amendment identified a goal to allow measured flow for SDS determination which concludes it unnecessary that the term "SSTS with low impact to potable water" be added to rule.

The definition of "SSTS with low impact to potable water" is needed to provide adequate protection to groundwater resources by restricting specific areas where no source water for drinking is found.

A system <10,000 gallons per day designed by an licensed SSTS Advanced Designer already protects the public health, safety, and general welfare by the discharge of adequately treated sewage to the groundwater in accordance with Chapter 7081 therefore, the term "SSTS with low impact to potable water" is not required. In addition the definition requires land control up to the border of the potential surface water therefore restricting potential future uses to only the property owner or the systems in question. Such a requirement is too ambiguous and requires language clarification; does that require ownership of the land? Could the land be leased? How much land? What authority determines the restrictions? Who will be required to regulate and enforce those restrictions? What if the land is sold in the future? Who and how will the location of wells and the use of the groundwater be regulated or prohibited in the future? How will the other affected industries know of the conditions required by the septic system to remain in the low impact definition? The term "low impact to potable water" should not be added to rule.

"is not discharging into the capture zone of any existing or potential water supply wells".

Such potential cannot be definitively determined by speculation or a desktop model and should require down gradient monitoring components. Will restrictions be placed on any wells drilled in the future? Many cities obtain their water supply from a river is that considered with the same standards as a water supply well?

MR 7081.0040, Subpart 1. B **Adamantly Oppose**

Lines 2.5-2.6

These lines state "*Flow from an SSTS with low impact to potable water is not counted in this subitem"* when determining the requirement of an SDS permit.

SONAR p. 12 'Justification' Subpart 1B(2) states the subitem also adds the language allowing for system flows within area with low impact to potable water to be excluded from the 10,000 gpd, half mile calculation.

This rule language will result in the requirement that local units of government (LUG) issue permits and perform regulation on systems in exceedance of 10,000 gpd as currently required by the half mile calculation.

The proposed rule requires clarification as the proposal does not identify who the 'low impact to potable water' report is submitted to or if a review for accurateness is required and by whom, or if approval of such is required and by whom. Review of such a report would exceed the capability and authority of an LGU.

An example of the proposed application: An existing facility with multiple systems that either proposes an expansion in exceedance or their measured flows are in exceedance of 10,000 gallons per day would require an SDS permit but, if a report by a AELSLAGID professional is submitted that the SSTS has or will have a low impact to potable water due to discharging into a surface water bordering the property (line 1.11 to 1.12) and is not discharging into the capture zone of any existing or potential water supply wells (line 1.13 to 1.14) an SDS permit would not be required therefore requiring a local permit for a system that would essentially not have a capacity limitation.

The allowance of flow measurement and the proposed exemption identified in lines 2.5-2.6 will result in facilities with a current SDS permit desire to cancel their state permit to move to a local permit for financial savings. The requirement of a local permit will increase the LUG current workload and level of certification of staff. The proposed language does not say an LUG has the ability of declining the issuance of a local permit for a facility that already has a state permit. The language does not say if the LGU has the ability to decline a local permit for a new proposed system nor is there stipulation to return a system to the SDS permit if the LGU cannot adequately regulate that size of system. This needs to be stated and clarified.

Will the agency be providing funding for additional LUG staffing to perform continual regulation sufficiently to assure the health of the public and the environment are continually protected? This rule change will not only increase the time required to regulate for an LUG to perform tracking, service report review, lab test reports, monitoring notices, renewals, transfers, enforcement and the additional regulation necessary to assure that these systems continue to function as designed so the Public and Environment is consistently protected.

Please consider these points and require justification and assurances that the larger subsurface sewage treatment system will be regulated correctly for the protection of the people of the state and the environment in which we live.

Thank you for your time and consideration of our comments.

Sincerely,

Angela M. Lipelt
Mower County Environmental Services Supervisor
1105 8th Avenue NE
Austin MN 55912
507-437-9560

Izzo, Katie (MPCA)

From: Jacob Snyder <jacob.snyder@co.polk.mn.us>
Sent: Friday, November 15, 2019 10:49 AM
To: Izzo, Katie (MPCA)
Subject: SSTS Rule change comment

Follow Up Flag: Follow up
Flag Status: Flagged

Hello,

First of all, I really like that the State is so passionate about doing things the right way as I think all septic professionals should care. I understand both parties arguments for and against emptying the tank before compliance. The real question is that if the tank integrity is not going to be something that our area septic pumpers are willing to share with us County folks than what is the point for the rule if pumpers are not willing to file the correct paperwork and submit on behalf of the parcel. Discussion with most of our area pumpers is they don't want any liability with tank integrity either. So why involve 2 parties in a compliance inspector and a septic pumper into the tank integrity question. Does the State feel there septic pumpers are more qualified than SSTS staff at determining tank integrity?

This has been a concern of mine since hearing of this rule change two years ago at commented about it through the septic talking tour and with area County folks. So the pumper/maintainer fills out the tank integrity form then he is liable for the tank if something should happen where a compliance inspector takes his document and uses that form to validate tank integrity. Now you have two people with possible liability for issues if something comes up within the 3 year compliance window. My point in all of this, if this rule is viewed by the State to have two sets of eyes looking at the tanks I see it as two people or companies liable for issues and if I were a pumper/maintainer no way in hell am I filling a tank integrity form. What benefit does it provide a pumper other than for a compliance inspection they will be called to service the tank so more business of unnecessary pumping. I know where the root of this rule came from and it had to do with roots growing into someone's tank and thus this was missed by a compliance inspector and the system functionally failed. Now I see this as a situational mishap, things happen but lets' not make a rule that has no bearing on anything relevant for SSTS compliance.

Cracks in the tank doesn't necessarily mean that a tank is failing at liquid functional depth. What I mean is that a crack can still be water tight. Now a large crack is an issue but I see these hairline cracks that are inevitable as a real issue in all of this. So the pumper sees some cracking now what constitutes a leaky crack and what constitutes a small hairline crack. I see this tank pumping requirement as needing more definition and direction than it is worth. Also, existing tanks have black scum staining most of the sidewalls of tanks making this determination even when a tank is empty problematic. Simply put an inspector should be able to know this information at observing the liquid/ solid capacity of the tank, if the cracks leak or not? Now this mean yes the inspector must look at the tank to do a good inspection! I think that the compliance inspector should be looking at the tanks with full capacity and not empty, as this can tell us more about a good function than an empty tank. For example a compliance inspector shows up at the site and the tank is empty. Does he know that the tank had very little liquid capacity in it when pumped, possibly queuing the inspector to question if the tank leaks. Just as if a tank is filled to overcapacity. These are ques for the inspector to know if the tank is water tight or not, and is functioning at the proper liquid capacity. How does the inspector do that if the tank is empty.

Another issue I have is pumping tanks too close to the winter months for seasonal or recreational places. Empty tanks going into the winter months are problematic in NW Minnesota. They are more prone to floating come frost out and if it is a seasonal place than the tank is most likely going to be less full than ideal and possibly freeze. Healthy bacteria that

forms in the septic tank usually keeps tanks warm through the winter months but with less effluent in them than less warming factor.

This is a pointless rule change for tank pumping required for compliance, again just my two sense but I want other Counties to band together and fight this ridiculousness. If pumpers want to provide this service super but don't force a rule that is more detrimental than beneficial. I see this rule as a way to get pumpers business and weed out the pumpers that may not provide the pumper integrity form certifications.

Thank you for the opportunity to comment,

Jacob J. Snyder
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Izzo, Katie (MPCA)

From: Clint Parnell <clint@thegrumpyminnow.com>
Sent: Monday, November 25, 2019 8:10 PM
To: Izzo, Katie (MPCA)
Subject: Comment for possible permitting rule change

Follow Up Flag: Follow up
Flag Status: Flagged

As a campground owner, I would be in favor of the rule to change using measured values from the facility. In my particular situation, I took numerous readings, including the busy 4th of July holiday. My averages showed 2.5 gallons per day per site. So that is almost 98% less than the 100 gallons per day average that is used in permitting at this time. I am fully in support of this change!