# Response to Comments Received During the Public Comment Period on the Notice of Intent to Adopt Rules Governing Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements, Minnesota Rules chapters 7081 and 7082

The Minnesota Pollution Control Agency (MPCA) placed the Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More People Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received on public notice in the *State Register* volume 44 number 20 on November 12, 2019. The MPCA received 22 comment letters on the proposed rule amendments during the public comment period. Only 4 commenters requested a hearing; and, as such, the 25 requests for hearing threshold was not met. There were several general comments; however, comments were mainly about specific rule parts and rule language. The MPCA's rationale for changes it will make to the proposed rules as a result of the comments received on specific rule parts is provided in the Order Adopting Rules and at the end of this document. The MPCA's response to the general comments and its response to comments on specific rule parts where no change is proposed are provided in this Response to Comments document.

The Response to Comments is organized by comments in favor of the proposed rule in item B, general comments in item C, comments on specific rule parts in item D, other comments in item E, and proposed changes based on comments in item F. The comments are summarized and not presented verbatim. General comments submitted were about the proposed rule and were not necessarily directly related to a specific rule part. The comments on specific rule parts are provided sequentially by rule section. Each rule section is followed by a listing of the comments submitted related to the rule section, and the MPCA's response.

## A. List of interested parties

The following is a list of interested parties who submitted written comments to the MPCA during the public notice comment period from November 12, 2019, through December 23, 2019.

1. Letter from Brian Koski, Septic Check President and Owner, dated December 23, 2019;
2. Letter from Ron Jasperson, on behalf of himself, received on December 23, 2019 ;
3. Email from Harry Volen, Counselor Realty of Bemidji, dated December 17, 2019;
4. Email from April Stavig, Lake Country Realty, dated December 16, 2019;
5. Email from Lisa M. Engman, Lake-N-Woods Realty, dated December 13, 2019;
6. Email from Jill Huss, Coldwell Banker Burnet, dated December 10, 2019;
7. Letter from Eric Buitenwerf and Dan Stacey, on behalf of Hubbard County, dated December 17, 2019;
8. Letter from Matthew Spellman, on behalf of Minnesota REALTORS, dated December 9, 2019
9. Email from Roz Peterson, Cerron Commercial Properties, dated December 9, 2019;
10. OAH eComment and letter from Samuel Skalak, on behalf of Sherburne County, dated December 4, 2019;
11. OAH eComment and letter from Eric Buitenwerf and Dan Stacey, on behalf of Hubbard County, dated December 17, 2019;
12. OAH eComment and letter from Gregory Halling, Halling Engineering, Inc., dated December 20, 2019;
13. OAH eComment and letter from Bob La Croix, Camp Omega, Inc., dated December 18, 2019;
14. OAH eComment from Troy Johnson, on behalf of Wright County, dated December 20, 2019;
15. OAH eComment and letter from Kimberly Shermo, on behalf of Waseca County, dated December 20, 2019;
16. OAH eComment and letter from Marilee DeGroot, on behalf of Rice County, dated December 20, 2019;
17. OAH eComment and letter from Pete Otterness, on behalf of Nicollet County, dated December 4, 2019;
18. OAH eComment and letter from Ben Wogsland, on behalf of Hospitality Minnesota and Minnesota Resort and Campground Association, dated December 23, 2019;
19. OAH eComment and letter from Angela Lipelt, on behalf of Mower County, dated December 23, 2019;
20. OAH eComment from Travis Johnson, on behalf of Minnesota Onsite Wastewater Association, dated December 23, 2019;

21. Emailed comment from Jacob Snyder, Polk County Planning & Zoning, dated November 15, 2019; and
22. Emailed comment from Clint Parnell, The Grumpy Minnow, dated November 25, 2019.

These comments will be referred to in the responses below for clarity and to accurately reference the comments received. The following example reference - (Commenter 1) would refer to the letter received from Brian Koski. Direct quotes from comments will also be used where applicable.

## B. Support for the Proposed Rule

Relates to:

Minn. R. 7081.0020 (Definitions)

Minn. R. 7081.0040 (State Regulation)

Minn. R. 7081.0130 (Flow and Waste Concentration Determination for Other Establishments)

Minn. R. 7082.0700 (Inspection Program for Subsurface Sewage Treatment Systems)

### 1. Support of the Proposed Amendments

**Summary of Comments:**

Multiple Commenters expressed support for the adoption of the proposed amendments or parts of the amendments. Specifically, support for the proposed rule language in Minn. R. 7082.0700 is expressed by commenters 1, 10, 14, and 20. Additionally, comment 14 states that a local requirement similar to the proposed rule language has been in effect for 10 years in their jurisdiction and they have seen no issues with the implementation.

Multiple commenters also expressed support for expanding permitting flexibility for larger SSTS by using measured flows to make permit determinations. Commenters 1, 12, 13, 17, 18, 20, and 22 all shared their agreement with providing the expanded flexibility for using those measured flows in making permit determination. Those comments received in favor of the additional flexibility represent multiple counties, multiple campgrounds, an engineering firm, and Minnesota's onsite professional organization which represent approximately 300 certified SSTS professionals.

**MPCA Response:**

The MPCA appreciates the statements of support for the two primary goals of these proposed rules, which are expanding permitting flexibility for larger SSTS and introducing minimum requirements for sewage tank inspections. These rule changes are intended to meet the legislative charge of the MPCA for providing "minimum standards and criteria… of subsurface sewage treatment systems," as stated in Minn. § 115.55 subd. 1 J, while also meeting the MPCA mission to "[p]rotect and improve the environment and human health."

## C. General comments

### 1. Applicability of rule changes to dwellings or residential developments (Commenter 1, Commenter 2 – second comment)

**Response:** The commenters appear to be speaking to the changes regarding when an SDS permit is required (Minn. R. 7081.0040). Specifically, the comments appear to relate to utilizing measured flow values for determining permit applicability. The proposed language in Minn. R. 7081.0040 subp. 1a B does not distinguish between other establishments or dwellings in allowing measured flows to be utilized. An existing SSTS serving dwellings or a combination of dwellings and other establishments would be able to utilize measured flows for permit applicability in a manner consistent with those systems serving only other establishments.

## 2. Tanks freezing after pumping (Commenters 3, 4, 5, 7, 8, 21)

**Response:** This viewpoint, while commonly shared by the commenters, has not been able to be verified by the MPCA. Annually, the MPCA travels the state of Minnesota to meet with local unit of government (LGU) employees in public meetings known as "talking tours." In the 2019 January meetings, the MPCA asked all meeting attendees if there had ever been instances of tanks freezing, due to pumping, or other reasons that they were aware of. Of the 132 meeting attendees, which represented 81 of the 218 LGUs in Minnesota, including 60 of the 87 counties in the state, no one was aware of any instances, at any time, of a tank freezing due to a pumping activity.

Additionally, one commenter suggests reviewing MnDOT data as it relates to frost depth. The MnDOT data set has a major limitation in that their recordings are taken under pavement which freezes deeper than natural soil. As such, the data is not applicable to conditions found around a sewage tank. Also, frost depth does not translate to frozen sewage tanks. Finally, the MPCA has been unable to find any information, in research articles or otherwise, that supports the narrative that pumping a tank during wintertime, or colder time periods, results in frozen and damaged sewage tanks.

In addition to the lack of evidence that maintaining, or pumping, a sewage tank results in any freezing, there is also no state requirement in place, or being proposed, requiring tank pumping during wintertime, or colder time periods. While the proposed rules require that a tank integrity assessment be completed on an empty tank, there is no requirement in state rule to empty a sewage tank during winter months. Contrarily, Minn. R. 7082.0500 subp. 3 C allows local units of government to waive a compliance inspection requirement from November 1 to April 30 provided the compliance inspection is completed by the subsequent June 1st. This rule part is specific to building permits for bedrooms as that is the only MPCA rule requiring a compliance inspection to be completed. There is nothing in Minn. R. 7082 prohibiting an LGU from adopting these same date waivers on compliance inspections for any locally required inspection triggers; and, many have.

Finally, with regards to compliance inspections, an existing tank integrity assessment from the previous three years is allowed to be used to make a determination of system compliance. Prior assessments, coupled with a lack of a state requirement to pump a tank out in the winter, and LGU flexibility in requiring compliance inspections makes it unlikely that a tank would ever truly need to be pumped out in the winter months. Moreover, in the event that a tank integrity assessment must be completed during winter months, the rule requirement that the tank integrity assessment be completed on an empty tank does not mean that the tank must remain empty after the assessment has been completed. It is possible to backfill the tank with sewage from the pump truck, or fill the tank with water from the home or a water tank on a vehicle. While wintertime assessments of a tank are likely not the preferred time of assessment, in the event that there is a wintertime assessment and there are concerns over freezing tanks, there are options available to mitigate those freezing concerns.

## 3. Adequate number of professionals to pump tanks for inspections (Commenters 5 and 7)

**Response:** In 2018, there were 14,923 compliance inspections completed on 575,726 SSTS in Minnesota. As of February 19, 2020 there were 392 licensed maintenance businesses across Minnesota. This would mean that, if no tanks were pumped as part of a compliance inspection in 2018, and no individuals were able to utilize tank integrity assessments completed within the previous three years, each licensed maintenance business would need to complete 38 additional maintenance visits in the year to meet the added demand from this rule change. On average, a maintainer can complete three maintenance pump-outs in a day. Furthermore, many maintenance businesses employ multiple certified maintainers and as of 2/19/2020 there were 541 certified maintainers within the state. Moreover, certified maintainers are allowed to provide oversight of other non-certified employees thereby allowing the employees to maintain tanks. The non-certified individuals could not certify a tanks watertightness, but would be able to empty a tank allowing an inspector to complete the tank integrity assessment. As such, maintenance businesses can hire additional personnel to complete maintenance; and in fact, there are many businesses that already do this.

There is no statewide database which tracks number of maintenance activities completed; however, there is a county in central Minnesota which does track all maintenance activities occurring within that county. In 2018, that county had 4,725 maintenance activities completed by 8 maintenance companies, while only having approximately 1%, or 5,850, of the total SSTS in Minnesota. This shows that the MPCA estimation that roughly 1/6th of the SSTS in Minnesota (

are maintained in a given year is likely conservative. Using a conservative estimate, this translates to 245 maintenance activities per licensed business per year versus the county data showing an average of 591 maintenance activities per licensed business per year in one county. The addition of 38 maintenance activities per maintenance business would represent a 15% increase in work load per business per year. In practice, factoring in the additional certified maintainers working for the 392 businesses, the use of previous tank integrity assessments, the number of maintenance activities occurring at the time of inspection (estimated 50% of inspections currently), and the larger number of maintenance activities on average per business, it is unlikely that the number of increased maintenance activities per certified maintainer increases more than a small number (5-7) per year.

4. **Burden on home transactions; cost of inspections and timing of sales for both buyers and sellers (Commenters 4, 5, 6, 8, 9)**

**Response:** The Minnesota Attorney General currently recommends setting a closing date six weeks from the date that a purchase agreement is signed by both the seller and buyer. Additionally, the National Association of Realtors found, in 2016, that closing times averaged 50 days, up from 40 days in 2015. SSTS compliance inspections in Minnesota are required to be submitted to the owner, or owner's agent, and the local unit of government within 15 days of compliance determination. Viewing these timeframes together, it appears that there should be adequate time between a signed purchase agreement and a sale to have a compliance inspection conducted.

This process can be viewed as similar to the home inspection process. However, there is one difference between the inspection of the SSTS and a traditional home inspection: who hires the inspector. In the home inspection process, the buyer is typically tasked with choosing, and paying for the home inspection. An SSTS inspector is typically hired by the seller, or seller's agent, and is paid by the seller. This means that anyone who lists, or plans to list a property for sale can initiate a compliance inspection on their system even before a signed purchase agreement is in place. Furthermore, because compliance inspections are valid for up to three years this process can occur well before the property is listed for sale.

As of 2018, 166 of the approximately 220 local units of government running SSTS programs had voluntarily chosen to require SSTS compliance inspections prior to property transfers. Adding the requirement for the inspector to have viewed the tank while empty, or use a tank integrity assessment from the previous three years is unlikely to significantly impact the timing of this process. However, in the event that there is a location in the state that does experience issues from this added requirement, the local unit of government maintains the option to remove any locally adopted inspection triggers for property transfers thereby negating any timing issues.

Finally, there are additional, unseen burdens already being placed on homebuyers and real estate agents due to the lack of adequate tank inspections occurring where the LGU is requiring inspections at time of property transfer. Page 26 of the statement of need and reasonableness highlights one of the potential issues from inadequate inspections occurring.

5. **Ability to inspect tanks when a tank is full versus empty, concrete structural integrity/cracking, Occupational and Safety Health Administration (OSHA) Confined space entry. (Commenters 7, 8, 21)**

**Response:** The proposed rule changes contain no language that restricts an SSTS inspector from using any method they deem appropriate to assess the condition of a tank. If an inspector chooses to view a tanks operating level they are well within their inspection discretion to assess the tank in that method. That same discretion applies to OSHA confined space entry situations. There is no requirement that an inspector perform a confined space entry, but in the event that they view that as an appropriate inspection tool they are free to use that method. The methods an inspector chooses to utilize to view the tank while empty are entirely up to the inspector.

Regarding concrete cracking – There is no standard size, shape, or orientation of cracking that indicates a tank is leaking below the designed operating depth. The inspector, or professional assessing the tank integrity, as always, should document the results of their inspection as well as the methods of inspection and make a final determination of integrity. The standard for what is, and is not, a watertight tank is not changing. Only the minimum requirement to assess the tanks integrity is being implemented. There is also no requirement being implemented that states tank walls need to be power-washed, scrubbed clean, or viewed in a bare concrete manner. Again, the discretion of the

professional will ultimately determine which additional steps need to be completed in order to make a determination of the tank integrity. This rule change will require that the tank be assessed, while empty, in order to determine compliance. It does not restrict assessment on a full tank, or specify the method of assessment while empty.

## D. Comments on specific rule parts

### 1. 7081.0020 Subp. 7a. SSTS with low impact to potable water

#### Comment 6 & 7

"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."

"'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?"

**Response:** The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design maintains professional licensure for a multitude of professional occupations within the state of Minnesota. The MPCA appropriately utilized the full name of the Board in describing the conditions under which work is allowed to be completed. The fact that the name of the Board includes many professionals outside of the expected groundwater professionals does not mean that the MPCA intends, or expects, those professionals who are unqualified to be involved in groundwater and hydrology work.

As was stated in the same paragraph that was referenced in the comment above – "(AELSLAGID) professionals are required to work within their areas of expertise." Furthermore, the webpage of the AELSLAGID Board states the following –

> "The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design regulates the professions and enforces the statutes and rules in order to protect the health, safety and welfare of the public.
>
> We ensure that individuals meet the education, examination and experience standards for licensure or certification, and maintain their records in good standing.
>
> We take disciplinary action against those who violate the statutes, rules and standards governing the practice of the professions."

As such, the Board regulates the professional licensure of AELSLAGID individuals and takes disciplinary action against those licensed professionals who violate the rules and standards of the professions. It is the intention of the MPCA to rely on the professionals who are licensed by the Board, and who understand the limits of their own licensure, to conduct professional work to determine groundwater flow direction and hydrology. In the event that there is a concern with the appropriateness, or quality, of work of any of the AELSLAGID licensed professionals, it should be reported to the Board via their formal complaint process.

#### Comment 8

"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."

**Response:** There is no professional hydrologist licensure in Minnesota. There is currently a professional geoscience discipline which encompasses geology and soil science (Minn. R. 1800.3900). Further, Minn. § 326.02 subd. 3a states that, ""Geoscience" means the science which includes treatment of the earth and its origin and history; the investigation, measurement or sampling, of the earth's constituent rocks, natural and induced fields of force, minerals, fossils, solids, *soils, fluids including surface and underground waters* [emphasis added], gases, and other materials; and the study, interpretation, and analysis of the natural agents, forces, and processes which cause changes in the earth."

The MPCA finds, based on the above rule and statute references that, in fact, licensed geoscience professionals (geologists and soil scientists) would be the most appropriate licensed professionals to determine groundwater flow and hydrology. In the event that there is a concern with the appropriateness, or quality, of work of any of the AELSLAGID licensed professionals, it should be reported to the Board via their formal complaint process.

**Comment 9**

"A 'SSTS with low impact to potable water' as define 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?"

**Response:** In the absence of a specific definition of property in Minn. R. 7080 to 7083 it is reasonable to assume that 'property' has the meaning given to it under a dictionary definition: "something owned or possessed *specifically:* a piece of real estate." Further, Minn. R. 7080.1100 subp. 56 defines owner as "any person having possession of, control over, or title to property with an ISTS." The intention of the rule is to ensure that the owner of the SSTS has land control up to the surface body of water in question. The MPCA believes that the definition as written allows for flexibility on the part of the owner and professional conducting the assessment while also restricting the interpretation to those areas that could reasonably meet the definition. The MPCA also believes that adding more specificity in the definition would further restrict, and confuse, professionals attempting to utilize this rule part.

The MPCA does not intend to, nor think it is appropriate, to restrict the property rights of an SSTS owner who utilizes this rule part. By restricting the use of this rule part to the property owned by the SSTS owner it is intended to minimize any potential future water supply wells. However, as the MPCA creates minimum rules, if an LGU wishes to restrict splitting/sales/development they are able to implement additional local controls via planning and zoning ordinance. Furthermore, Minn. R. 7080.2150 subp. 3 F and Minn. R. 7081.0270 subp. 2 specify that SSTS must be setback from water supply wells in accordance with Minn. R. 4717 and 4725. As such, in the event that a water supply well is ever placed in the groundwater flow path of an SSTS it will still need to meet appropriate setbacks. This is not the MPCA's intention but does provide an extra layer of protection against any potential water supply issues. Finally, Minn. R. 4725.4450 subp. 1 states "[w]henever possible, water-supply wells should not be located down slope or down gradient of a contamination source." As such, well drilling contractors should actively be avoiding any area between an SSTS and surface water body when groundwater flow direction is towards the surface water body.

**Comment 10**

"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."

**Response:** The MPCA agrees that licensed SSTS Advanced Designers do design systems that protect public health, safety, and general welfare. That is one of the reasons for allowing measured flow to be used in determining when an SDS permit is required. Because advanced designers do create systems that provide protection to public health and the environment, it is reasonable to allow for an expanded flow calculation via measured flow, or not counting flow from SSTS with low impact to potable water, prior to requiring an SDS permit. This discussion was had between the Minnesota Onsite Wastewater Association (MOWA) and the MPCA and was one of the major rationales behind the agreement to propose modified rules.

**Comment 11**

"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?"

**Response:** The MPCA is requiring the determination of SSTS with low impact to potable water to be completed by a licensed AELSLAGID professional. Requiring a professional to complete this determination ensures that appropriate investigation, sampling, and monitoring is completed to accurately make a determination of SSTS with low impact to potable water. While it is unlikely that a desktop model alone would accurately determine groundwater flow direction that determination should be left to the professional discretion of the licensed AELSLAGID individual. In the event that there is a concern with the appropriateness, or quality, of work of any of the AELSLAGID licensed professionals, it should be reported to the Board via their formal complaint process.

The MPCA does not intend to, nor think it is appropriate, to restrict the property rights of an SSTS owner who utilizes this rule part. By restricting the use of this rule part to the property owned by the SSTS owner it is intended to minimize any potential future water supply wells. Furthermore, Minn. R. 7080.2150 subp. 3 F and Minn. R. 7081.0270 subp. 2 specify that SSTS must be setback from water supply wells in accordance with Minn. R. 4717 and 4725. As such, in the event that a water supply well is ever placed in the groundwater flow path of an SSTS it will still need to meet appropriate setbacks. This is not the MPCA's intention but does provide an extra layer of protection against any potential water supply issues. Finally, while the MPCA does not intend to promulgate any new rule language restricting the placement of wells on a property, Minn. R. 4725.4450 subp. 1 states "[w]henever possible, water-supply wells should not be located down slope or down gradient of a contamination source." As such, well drilling contractors should actively be avoiding any area between an SSTS and surface water body when groundwater flow direction is towards the surface water body.

Finally, this proposed rule specifies that the groundwater plume "is not discharging into the capture zone of any existing or potential water supply wells." "Water supply well," and "well" are both defined terms in Minn. R. 4725.0100 and are subsequently defined in Minn. § 103I.005 subd. 20a and 21 respectively. Based on these definitions a water supply from a river would not be applicable in meeting the proposed definition of an SSTS with low impact to potable water.

**Comment 12**

"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."

**Response:** The determination for when an SDS permit is required in Minnesota has changed multiple times over the past 50 years. The current proposal to allow greater permitting flexibility to SSTS is a result of better SSTS professional training in Minnesota and was agreed to after working in conjunction with the largest SSTS professional organization in the state, MOWA. Including measured flow in SDS permit determination is one method that was agreed to that allows for greater flexibility and more accurately captures the actual wastewater flows to the environment versus only the estimated flows. In addition to allowing measured flow for SDS permit determination, discussions with MOWA revealed

that it was appropriate to better align the SDS permitting program and large subsurface sewage treatment system (LSTS) permitting requirements due to inconsistencies present that resulted in less stringent permit requirements for LSTS than MSTS.

Introducing language pertinent to SSTS with low impact to potable water does nothing more than move groups of systems that may have needed an SDS permit in the past to local permitting authority. This change does not alter how the systems will be constructed, nor does it change the rule requirements of the systems from a technical perspective. It simply creates an additional area of compromise between ISTS, LISTS, MSTS, and LSTS systems and local and state permits. The MPCA is confident that the existing regulations that apply to ISTS, LSTS, and MSTS adequately protect human health and the environment and as such the SSTS with low impact to potable water definition is being introduced to ensure that Minn. R. 7080 to 7083 represent the minimum requirements of an SSTS as was charged by the legislature (Minn. § 115.55 subd. 1 j).

## 2. 7081.0040 Subp. 1 Agency Regulation

### Comment 13

"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."

**Response:** The proposed rule modifications leave 7081.0040 subp. 1 item A unchanged. 7081.0040 subp. 1 item B is being modified in the proposal and 7081.0040 subp. 1 item C is remaining unchanged. Minn. R. 7081.0040 subp. 1 item D is new language that is being introduced. Currently, there is no Minn. R. 7081.0040 subp. 1 item D.

Existing rule 7081.0040 subp. 1a item C does currently contain information and references specific to flow determination. Existing rule 7081.0040 subp. 1a item D also calculates flow but only for campgrounds and resorts existing as of June 14, 2015 open 180 days or less. This item, Minn. R. 7081.0040 subp. 1a item D, is not proposed to be modified in this rule proposal.

Minn. R. 7081.0040 subp. 1 item c allows the commissioner of the MPCA to require an SDS permit if warranted, not Minn. R. 7081.0040 subp. 1a item c. These subparts are different and as such the items under each subpart are not interchangeable. The draft rule language is correctly written and referenced, and has been approved by the state Revisor and reviewed by MPCA staff.

### Comment 14

"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?"

**Response:** Minn. R. 7081.0040 subp. 1a item B explains the options available for determining flow for existing SSTS. Minn. R. 7081.0040 subp. 1a item D specifies how campgrounds and resorts existing as of June 14, 2015, that are open 180 days per year or less can measure flow. So, existing SSTS, except for those that can use Minn. R. 7081.0040 subp. 1a item D, must determine flow in accordance with Minn. R. 7081.0040 subp. 1a item B. The draft rule language is correctly written and referenced and has been approved by the state Revisor and reviewed by MPCA staff.

### Comment 15

"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."

**Response:** The SONAR language indicates that the owner or owners should submit the data to the agency as they are ultimately the responsible party for ensuring compliance with all applicable rules for their property. That said, there is no absolute requirement that the data be submitted by the owner or owners. There are many other rule requirements in 7080 -7083 where information must be submitted to either the commissioner or local permitting authority where no individual is specified. This is done on purpose as there are many times when the SSTS professional hired to complete the work, the owner, the owner's agent, or a number of other individuals complete the required submittal on behalf of the owner.

In this instance the agency is not concerned with the specific individual who is submitting the required data; only that the required data is being submitted. If the owner, or owners, wish to hire someone to help ensure compliance with Minn. R. 7080 – 7083 and that individual is in charge of submitting the required data to meet Minn. R. 7081.0040 subp. 1 item D, the MPCA has no objection to that agreement. In this situation, the MPCA believes that not being more specific is in the best interest of the applicable parties; and, by not specifying who must submit the data, maximum flexibility is being allowed.

**Comment 16**

"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 outlines 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?"

**Response:** Minn. R. 7081.0040 subp. 1a B specifies that measurements used for determining flow must be corrected for occupancy or use according to Prescriptive Designs and Design Guidance for Advanced Designers. This design guidance document contains information pertinent to how measured flows should be calculated and corrected. There is also guidance for currently permitted SDS systems that will be shared with all permittees that may be able to utilize the proposed rules.

There is no official approval process for the method of data measurement to occur. The MPCA always suggests that interested parties submit measurement plans prior to implementation to ensure adherence with all applicable rules; however, pre-approval is not a rule requirement with this proposal and as long as measurement occurs in accordance with the proposed rules the results of the measurement should be valid.

The SONAR language indicates that the owner or owners should submit the data to the MPCA as they are ultimately the responsible party for ensuring compliance with all applicable rules for their property. That said, there is no absolute requirement that the data be submitted by the owner or owners. There are many other rule requirements in 7080 -7083 where information must be submitted to either the commissioner or local permitting authority where no individual is specified. This is done on purpose as there are many times when the SSTS professional hired to complete the work, the owner, the owner's agent, or a number of other individuals complete the required submittal on behalf of the owner.

**Comment 17**

"Also, line 2.11 says the commissioner is to review the date 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)?"

**Response:** There is no language pertaining to approval, only review, of the flow measurement data in the proposed language in Minn. R. 7081.0040 subp. 1 D. The intention of the item is to ensure that the MPCA is aware of those systems that have a potential to need an SDS permit but that will be permitted locally due to measured flow

information. In the event that the information submitted to the MPCA for review demonstrates a deficiency, or problem, the MPCA will communicate that information to the appropriate parties.

Additionally, Minn. R. 7081.0040 subp. 1 C states, "[a]n SDS permit is required for any subsurface sewage treatment system or group of subsurface sewage treatment systems that the commissioner determines has the potential or an increased potential to cause adverse public health or environmental impacts if not regulated under a state permit. Conditions for these permits include systems in environmentally sensitive areas, unsubstantiated or unexpected flow volumes, and systems requiring exceptional operation, monitoring, and management." In the event that the review of submitted data demonstrates a potential for adverse public health or environmental impacts, the commissioner could also require an SDS permit of the facility in question.

After the MPCA completes a review of the flow measurement data the local permitting authority will be contacted, if appropriate, via an official method of communication and phone call. As there will likely be more than one MPCA employee who reviews submitted data, there will not be only one individual responsible for communicating with the local permitting authority. Further, with regards to Minn. § 15.99 and a 60 day approval deadline for a local permitting authority, Minn. § 15.99 subd. 3 e states, "[t]he time limit in subdivision 2 is extended if: (1) a request submitted to a state agency [MPCA] requires prior approval of a federal agency; or (2) an application submitted to a city, county, town, school district, metropolitan or regional entity, or other political subdivision requires prior approval of a state or federal agency. In cases described in this paragraph, the deadline for agency action is extended to 60 days after the required prior approval is granted."

**Comment 18**

"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."

**Response:** Local units of government are currently already required to permit SSTS in their jurisdiction. This proposed change does not change the technical requirements of any SSTS being installed. As such, there is no difference between permitting a new ISTS, LISTS, or MSTS and permitting an existing ISTS, LISTS, or MSTS from a technical expertise perspective at an LGU level. If an LGU cannot, or does not have a plan in place, to permit a LISTS or MSTS at the current time, then the LGU is operating a program that is not capable of handling the existing rule requirements. The proposed changes should not create a program deficiency. Further, every LGU should already have a fee schedule in place that covers systems from 0 – 10,000 gpd. If an LGU does not currently have a fee structure that adequately accounts for the costs associated with permitting ISTS, and MSTS, this rule change will not be the reason for a budget deficit.

The proposed rules clearly states, in Minn. R. 7081.0040 subp. 1 B (1), that "[t]he owner or owners of an SSTS must obtain an SDS permit from the agency [MPCA] according to chapter 7001 when:... a single proposed or existing soil dispersal area receives a flow greater than 10,000 gallons per day." As such, no LGU will ever be required to permit an individual system that has a flow greater than 10,000 gallons per day. It is also important to note that the SSTS with low impact to potable water definition does not apply to any single systems determination of SDS permit applicability, only to multiple systems, less than 10,000 gallons per day that meet the requirements of proposed Minn. R. 7081. 0040 subp. 1 B (2).

It is important to note that multiple individuals that work in SSTS permitting roles for local units of government were directly involved in the discussions to create the proposed rules. Their input, and potential impacts to their programs, were carefully considered and the resulting proposed rules subsequently should have minimal impact on the effective

operation of a local program. Finally, Minn. R. 7082.0040 subp. 4 A states, "[a]ll local governments that administer SSTS programs must have:...adequate personnel to properly conduct SSTS technical and administrative functions."

**Comment 19**

"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."

**Response:** The proposed rules clearly states, in Minn. R. 7081.0040 subp. 1 B (1), that "The owner or owners of an SSTS must obtain an SDS permit from the agency [MPCA] according to chapter 7001 when: ... a single proposed or existing soil dispersal area receives a flow greater than 10,000 gallons per day." As such, no LGU will ever be required to permit an individual system that has a flow greater than 10,000 gallons per day. It is also important to note that the SSTS with low impact to potable water definition does not apply to any single systems determination of SDS permit applicability, only to multiple systems, less than 10,000 gallons per day that meet the requirements of proposed Minn. R. 7081. 0040 subp. 1 B (2).

It is true that the sum of flow from multiple systems may exceed 10,000 gpd and not require an SDS permit from the MPCA. There is also no maximum flow value for the sum of the multiple systems provided that the systems with low impact to potable water keep the countable flow less than 10,000 gpd. No individual system will be allowed to be greater than 10,000 gpd and not require an SDS permit. Also, the technical and permitting requirements for multiple systems that are able to use the low impact to potable water definition will be no different than any other group of systems, not under common ownership, that have greater than 10,000 gpd combined flow.

**Comment 20**

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

**Response:** The proposed rule contains no language requiring a local unit of government to issue a permit for any system. Local units of government maintain the authority to implement and enforce ordinances that are more restrictive than Minn. R. 7082.0100 subp. 5. As such, if an existing SDS permitted system measures flow and determines that they do not need an SDS permit under Minn. R. 7081.0040 subp. 1 B, but the local unit of government has an ordinance that restricts the permitting of a specific system type that encompasses the system in question (i.e. type 5, type 4), then the MPCA intends to maintain the existing SDS permit under Minn. R. 7081.0040 subp. 1 C.

Discussions during rule development with interested stakeholders focused around this issue and options available to both the MPCA and the LGU in questions. It is the intention of the MPCA to retain SDS permits for those facilities that meet Minn. R. 7081.0040 subp. 1 C and those facilities that are in jurisdictions that cannot adequately maintain and manage the technologies or intricacies of a nonstandard or performance system. Essentially, the expectation is that any system that would be locally permitted as a new system should be able to be permitted locally if it is going to a local permit from an SDS permit.

**Comment 21**

"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."

**Response:** As with all flow determination calculations for SSTS, the flow calculation is done by the designer and is submitted to the LGU with all other permit exhibits. The LGU then reviews the submitted exhibits and determines whether the information submitted demonstrates compliance with applicable requirements.

Minn. R 7082.0500 subp. 1 B states, "[a] local unit of government with an SSTS ordinance adopted under part 7082.0040, subparts 2 and 3, must have a permit program that specifically addresses the following:

(1) permit application requirements;
(2) site, design, and soil review and approval requirements and procedures;
(3) record keeping; and
(4) reporting to the commissioner."

Additionally, Minn. R. 7082.0500 subp. 2 states, "SSTS permit applications must require the submittal of exhibits necessary for issuing a permit as described in this chapter, along with general requirements for identifying the property and owners, a site evaluation report, a design report, a management plan, and any other information requested by the local unit of government pertinent to this process. Exhibits for site evaluation, design, and applicable construction information must be complete and include a certified statement from the certified person who conducted or oversaw the work. An approval process must be developed to address changes in the approved design that served as the basis for issuing a permit."

Finally, Minn. R. 7082.0500 subp. 3 A states, "[a] qualified employee with jurisdiction or licensed inspection business who is authorized by the local unit of government must review the permit application and other exhibits to determine whether site evaluation procedures, observations, and conclusions are accurate and fulfill applicable requirements and whether the proposed system will meet applicable requirements."

Therefore, the SSTS designer and owner, in discussions about the specifics of the system design would determine whether it was appropriate to hire an AELSLAGID professional to assess whether the proposed SSTS meets the "SSTS with low impact to potable water" designation. If the proposed SSTS does meet the requirements, and the flow as it relates to an SDS permit is modified, that information should be included in the design submittal exhibits for the LGU review. The LGU then subsequently determines whether all submitted exhibits are sufficient to issue a local permit. There is no requirement that the LGU replicate, or disprove the AELSLAGID professional's work. Similar to engineer submittals, the LGU can determine how much or what level of review is locally appropriate. In the event that there is a concern with the appropriateness, or quality, of work of any of the AELSLAGID licensed professionals, it should be reported to the Board via their formal complaint process.

**Comment 22**

"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."

**Response:** The proposed rule contains no language requiring a local unit of government to issue a permit for any system. Local units of government maintain the authority to implement and enforce ordinances that are more restrictive than

Minn. R. 7082.0100 subp. 5. As such, if an existing SDS permitted system measures flow and determines that they do not need an SDS permit under Minn. R. 7081.0040 subp. 1 B, but the local unit of government has an ordinance that restricts the permitting of a specific system type that encompasses the system in question (i.e. type 5, type 4), then the MPCA intends to maintain the existing SDS permit under Minn. R. 7081.0040 subp. 1 C.

Discussions during rule development with interested stakeholders focused around this issue and options available to both the MPCA and the LGU in question. It is the intention of the MPCA to retain SDS permits for those facilities that meet Minn. R. 7081.0040 subp. 1 C and those facilities that are in jurisdictions that cannot adequately maintain and manage the technologies or intricacies of a nonstandard or performance system. Essentially, the expectation is that any system that would be locally permitted as a new system should be able to be permitted locally if it is going to a local permit from an SDS permit.

No city, or township, in Minnesota is required to operate an SSTS program if they so choose. As such, if a city or township wishes to repeal their SSTS ordinance, and discontinue operating a program, based on the proposed rules and their financial situation, they can choose to do so. Minn. § 115.55 subd. 2 (a) states, "All counties must adopt ordinances that comply with revisions to the subsurface sewage treatment system rules within two years of the final adoption by the agency [MPCA] unless all towns and cities in the county have adopted the ordinances. County ordinances must apply to all areas of the county other than cities or towns that have adopted ordinances that comply with this section and are as strict as the applicable county ordinances." This statute, as promulgated by the MN Legislature, requires a county to implement an SSTS ordinance. There is no requirement in Minn. § 115.55 that the MPCA pay for, or cover the cost of operating an SSTS program at a county level. That said, the MPCA worked in cooperation with counties to secure grant dollars to help offset the costs incurred operating a county SSTS program. The MPCA will continue to provide county SSTS programs with an SSTS base grant (currently $18,600) as long as funding is available for that purpose.

**Comment 23**

"**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?"

**Response:** Minn. R. 7081.0040 subp. 1a B specifies that measurements used for determining flow must be corrected for occupancy or use according to Prescriptive Designs and Design Guidance for Advanced Designers. This design guidance document contains information pertinent to how measured flows should be calculated and corrected. There is also guidance for currently permitted SDS systems that will be shared with all permitees that may be able to utilize the proposed rules.

There is no official approval process for the method of data measurement to occur. The MPCA always suggests that interested parties submit measurement plans prior to implementation to ensure adherence with all applicable rules; however, pre-approval is not a rule requirement with this proposal and as long as measurement occurs in accordance with the proposed rules the results of the measurement should be valid.

The SONAR language indicates that the owner or owners should submit the data to the MPCA as they are ultimately the responsible party for ensuring compliance with all applicable rules for their property. That said, there is no absolute requirement that the data be submitted by the owner or owners. There are many other rule requirements in 7080 -7083 where information must be submitted to either the commissioner or local permitting authority where no individual is specified. This is done on purpose as there are many times when the SSTS professional hired to complete the work, the owner, the owner's agent, or a number of other individuals complete the required submittal on behalf of the owner.

**Comment 24**

"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."

**Response:** There is a potential for an increased workload to the LGU from these proposed rules; however, this increased workload is equivalent to permitting an additional system. There is a potential for a new system to be permitted locally at any time from the construction of a new dwelling or other establishment in the jurisdiction. Therefore, while it is possible the LGU needs to conduct work based on these proposed changes, this increase is not different than the workload from a new system permit being submitted to the LGU. Unless the LGU is currently restricting growth in their jurisdiction it is unclear how this is burdensome to the LGU outside of normal program operation.

As for the level of certification of the local staff, Minn. R. 7082.0040 subp. 4 A states, "All local governments that administer SSTS programs must have:… adequate personnel to properly conduct SSTS technical and administrative functions." LGU programs are already required to have the appropriate personnel, or arrangement in place, to ensure adequate permitting of all systems within the jurisdiction. In the event that the LGU has not adequately staffed, or developed, their program to meet the technical and administrative functions required in Minn. R. 7082, addressing that issue is outside of the scope of this proposed rule modification. All LGU's that do have appropriate staffing, or an agreement with an appropriately licensed business, to review all types of work as allowed in local ordinance and state rule will not need to address staffing certification issues.

The proposed rule contains no language requiring a local unit of government to issue a permit for any system. Local units of government maintain the authority to implement and enforce ordinances that are more restrictive than Minn. R. 7082.0100 subp. 5. As such, if an existing SDS permitted system measures flow and determines that they do not need an SDS permit under Minn. R. 7081.0040 subp. 1 B, but the local unit of government has an ordinance that restricts the permitting of a specific system type that encompasses the system in question (i.e. type 5, type 4), then the MPCA intends to maintain the existing SDS permit under Minn. R. 7081.0040 subp. 1 C.

Discussions during rule development with interested stakeholders focused around this issue and options available to both the MPCA and the LGU in question. It is the intention of the MPCA to retain SDS permits for those facilities that meet Minn. R. 7081.0040 subp. 1 C and those facilities that are in jurisdictions that cannot adequately maintain and manage the technologies or intricacies of a nonstandard or performance system. Essentially, the expectation is that any system that would be locally permitted as a new system should be able to be permitted locally if it is going to a local permit from an SDS permit.

### 3. 7081.0040 Subp. 1a. Flow determination

#### Comment 25

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.

**Response:** This issue was discussed at length with the group of interested parties that was convened to discuss proposed rule changes. This measurement time period and frequency was mutually agreed on by the group as a whole. Part of the reason why the measurement requirements are 90 days of daily measurement and 40 weeks of weekly measurement is related to dwellings being allowed to measure flow. As such, those dwelling owners are unlikely to know when their peak wastewater flow occurs. Additionally, some businesses may be aware of their peak wastewater flow, but this does not guarantee that all businesses are aware of their peak flows. Finally, there are some systems that serve multiple businesses or dwellings. In these instances, the busiest time for one establishment may not coincide with the other businesses' peak flows. Subsequently, it is unlikely that anyone is aware of the time of peak wastewater flow for that system.

Furthermore, the proposed rule does allow for the facility to complete the daily measurement period during their anticipated peak flow time. The goal of the proposed rule is to capture the maximum use. This is likely to occur based on

the system owner's best estimate; however, the inclusion of the 40 weekly measurements will ensure that peak flow is captured, and used, to determine permit applicability. Moreover, this is reasonable to include as the proposed rules are lessening the safety factor on permit determinations by allowing measured flow to potentially determine SDS permit issuance or cancellation. Additionally, the proposed measurements are not required to be used. The option to permit systems based on estimated flows is still available. Finally, failure to adequately capture peak wastewater flows could result in systems with greater than 10,000 gpd of wastewater flow being permitted by the local unit of government, or systems undersized for the facility it serves being installed, neither of which is the intention of this rule change.

**Comment 26**

"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 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."

**Response:** There is a significant difference between average use and peak use. SSTS must be designed to adequately deal with peak daily use or flow as this ensures that the system will always adequately contain and treat the generated sewage while protecting human health and the environment. Traditionally, permit flows have been based on the larger of the measured or estimated peak flow. The proposed rule language will allow permit flows to be based off of measured flows, or estimated flows, affording an additional level of permitting flexibility. The proposal does still require that the peak of the measured flow be used to determine permit applicability for existing SSTS though. Using the peak flow is reasonable as it ensures the potential flow from a facility never exceeds the permitted capacity of that system.

The addition of the proposed language is not appropriate as it does not address the physical capacity of a given existing facility with regards to the SSTS. A local unit of government could restrict facility size by using one of the proposed restriction methods listed in the comment to only allow a facility to build to a certain capacity. In this situation it would then be appropriate to design or permit the system based on the physical capacity that was limited via the local restriction. Trying to retroactively apply a local maximum flow on an existing facility that already maintains a maximum physical capacity and base the facility's SSTS permit on the local maximum is inappropriate as it does not address the potential sewage generation adequately.

Peak wastewater flow remains the most appropriate method to permit SSTS as it allows for appropriate public health and safety and environmental protection. The proposed rules, as agreed upon by the working group and the MPCA, allow additional permitting flexibility while still providing adequate protection. Applying the commenters proposed language would erode the permitting process to a point where inadequate assurances of public health and safety would be possible.

Lastly, it appears from this comment that the commenter is searching for additional flexibility in designing a new SSTS based on average flows more so than searching for a change in permit determination for an existing SSTS. The proposed rule changes in Minn. R. 7081.0130 subp. 1 A (2) do provide additional flexibility in regards to using average flows, and flow measurement, contingent on local unit of government approval. In the event that a new system is being designed, the permit flow can be based off of the flow equalization from Minn. R. 7081.0130 subp. 1 A (2) as allowed under Minn. R. 7081.0040 subp. 1a A.

**Comment 27**

"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.'"

**Response:** The commenters proposed language addition is inappropriate in regards to using measured flows for determining permit flow for an existing SSTS. Peak wastewater flow remains the most appropriate method to permit SSTS as it allows for appropriate public health and safety and environmental protection. The proposed rules, as agreed upon by the working group and the MPCA, allow additional permitting flexibility while still providing adequate protection. Applying the commenters proposed language would erode the permitting process to a point where inadequate assurances of public health and safety would be possible.

Based on the example from the comment it appears that the proposed rule language, specifically the language being expanded for allowing measured flow for permit determination and the language for flow equalization in Minn. R. 7081.0130 subp. 1 A (2), would adequately provide permitting, and design, flexibility for the commenters existing SSTS without any modifications. Further, if the commenter is proposing to construct a new SSTS then Minn. R. 7081.0040 subp. 1a A and Minn. R. 7081.0130 subp. 1 A (2) would be applicable and provide additional flexibility for both the design and permitting of the system.

**Comment 28**

"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."

**Response:** The MPCA does not agree with the commenter that the "half-mile rule" should be eliminated. As greater amounts of wastewater flow are concentrated in a given area the potential for negative impacts to public health and safety and the environment is increased. As such, the MPCA believes it is appropriate to require the language in proposed Minn. R. 7081.0040 subp 1. B; especially the language in Minn. R. 7081.0040 subp. 1 B (2). This proposed rule language expands the options available to property owners in determining when an SDS permit is necessary. The addition of measured flows to determine when an SDS permit is necessary actually solves an issue of unfairness that was treating resort and campground owners differently than the owners of other facilities and properties.

Minn. R. 7081.0040 subp. 1a D allowed campgrounds and resorts existing as of June 14, 2015, open 180 days per year or less to utilize measured flows to determine permit applicability while no other type of other establishment, or dwelling, was allowed to use measured flow. MOWA requested meetings with the MPCA to draft the proposed language here, in order to make the SDS permitting of systems more fair. The proposed language for measuring flows now applies to all types of facilities, including campgrounds and resorts, open more than 180 days per year, thereby creating a more fairly implemented SDS permitting determination.

## 4. 7081.0130

**Comment 29**

"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."

**Response:** As stated in the comment, "correcting measurements for occupancy or use is an ideal objective." The MPCA agrees with that position. Correcting measured flows for occupancy or use is the only way, and hence the minimum standard, to accurately determine a peak flow for a facility or property. SSTS must be designed to adequately deal with peak daily use or flow as this ensures that the system will always adequately contain and treat the generated sewage while protecting human health and the environment. Designing an SSTS on average flows ensures that at some times the system is receiving a greater sewage flow than it can adequately contain and treat. This results in failures, typically imminent threats to public health and safety, as they are specified in Minn. R. 7080.1500 subp. 4 A. The only appropriate methods to determine peak flows for design are through the use of established wastewater flow values in rule, or measuring flow and adjusting for occupancy.

This rule does not require a business to keep detailed records in order to design an SSTS for the facility or property. The requirement to correct for occupancy only needs to be completed if measured flow is intended to be used for system design. It will still be acceptable to use the estimated flow values from the table in Minn. R. 7081.0130 subp 1. A to design SSTS in Minnesota. Also, it is expected that measured flows that are not corrected for use, or occupancy, would be less than estimated design flows. Estimated flows account for all of the possible variation in flow values relative to

the peak flow, while uncorrected measured flows only represent the given flow on a random day and do nothing to address the possible flows that system may encounter.

**Comment 30**

"The term 'similar units' lacks the necessary details 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."

**Response:** Minn. R. 7081.0130 subp. 1 A contains the table of other establishment estimated flows. This table uses the term unit to differentiate between other establishment types. This is the unit that is being referred to in the proposed rule language. Similar units in this part means units, from the table in Minn. R. 7081.0130, which would be assigned the same flow on a new design. Communication and training on implementation of this rule will convey this information as appropriate.

**Comment 31**

"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."

**Response:** Using measured flows for design flow is not a requirement to design a system but a choice. As such, someone could measure flow, correct for occupancy and get a design flow value greater than the estimated flow value from the table in Minn. R. 7081.0130 subp. 1 A. In this instance, using the measured flow value is the only appropriate design decision as using the estimated flow value could result in an imminent threat to public health and safety as they are specified in Minn. R. 7080.1500 subp. 4 A.

Conversely, someone could measure flow, correct for occupancy, and get a design flow value less than estimated flows from Minn. R. 7081.0130 subp. 1 A. In this instance, it would be appropriate to utilize either measured or estimated flows for designing the system. Rules do not typically make approximate statements or use language indicating priority. The MPCA believes that using measured flows when they are higher than estimated design flows is the only acceptable choice and as such the language specifies that those measured flows must be utilized in that situation. Typically, using measured flows takes priority over estimated flows; however, in order to protect human health and the environment it is appropriate to be specific in this situation.

**Comment 32**

"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."

**Response:** The referenced rule parts in the comment do not represent a definition. These rule parts are broadly similar with regards to determining a flow in relation to the rule requirements of the system; however, they are also different. The first referenced rule, Minn. R. 7081.0130 subp. 1 B references how flow must be measured with regards to determining an appropriate design flow. This process, of using measured flow for a design flow value, has been in Minn. R. 7081.0130 subp. 1 B since 2008 and the specifics of how to complete this measurement have been in the referenced "Prescriptive Designs and Design Guidance for Advanced Designers" for the same amount of time.

The second rule reference in the comment, Minn. R. 7081.0040 subp. 1a B (1) refers to the specific measurement process for determining flow relative to an SDS permit determination as stated in Minn. R. 7081.0040 subp. 1a, "The owner or owner's agent must determine flow according to this subpart to establish whether an SDS permit is required under subpart 1, item B." As these two parts refer to separate items they are different. The referenced "Prescriptive

Designs and Design Guidance for Advanced Designers" contains a requirement that 90 days of daily flow measurements, during peak use, corrected for use or occupancy, must be used to determine the measured design flow.

Therefore, these two referenced rules are different for specific reasons. Permit flow measurements require weekly flow measurement for 40 additional, consecutive weeks after the 90 days of daily measurement. Measured design flow requirements from "Prescriptive Designs and Design Guidance for Advanced Designers" contain some additional items to consider specific to water use and adjusting the measured flow value to ensure adequate system performance.

**Comment 33**

"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'.

**Response:** The commenter appears to be missing the other relevant language pertinent to when remeasurement must occur. The full proposed rule text of Minn. R. 7081.0130 subp. 1 C (2) states, "expansion above 25 percent of the total flow is not allowed unless the flow is remeasured or estimated values from table I are used." When taking the full subitem into context it becomes clear that there is no need to remeasure flow unless expansion of the facility over 25 percent of the original measured flow is desired. There is no time component relative to remeasurement, only a use or expansion component. The proposed language currently achieves the intended goal of the MPCA and the workgroup that helped create this proposal.

**Comment 34**

"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."

**Response:** Both the existing and proposed Minn. R. 7081.0130 subp. 1 B allow the use of measured flows for the design of a system. You cannot use measured design flows from one facility to determine what the measured design flow from a different, separate, facility should be though. Measured flows are specific to the facility, or property, that they were measured at for good reason. No two facilities are identical regardless of the ownership or management. For campgrounds and resorts specifically, items such as size of campground, types of hook-ups, lake access, fishing quality, age of facilities, proximity to tourist destinations, and proximity to major urban/suburban areas all impact the specifics of the system use. These items are outside of other less controllable items such as groundwater infiltration and inflow, rainfall, and depth to groundwater that also impact the specifics of a systems measured flow. So, even though the owner may be the same it would not be reasonable to assume that wastewater flows of two different facilities or properties will be the same.

## 5. 7082.0700 Subp. 4 B (1)

**Comment 35**

"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."

**Response:** From the SONAR on this proposed rule change (pg. 25), "Current estimates indicate upwards of 50% of inspections include having the tank pumped before the inspection (anecdotal based off potential rule change discussions

with stakeholders)." Based on this estimate, only 7,462 systems may need to be pumped in order to complete a tank integrity assessment on the tank. Using a more reasonable 1,500 gallons per septic tank this would result in the potential for an additional 11,193,000 gallons of septage per year.

While winter potentially may stretch for six months of the year, most SSTS work is not completed during this time period. The MPCA does not track work completed in a given month but it is well known that the vast majority of SSTS work is put on hold during times of the year when snow and frozen ground is present. As was covered in the response to comment three above, the MPCA does not anticipate licensed maintenance businesses needing to complete more than an additional 5-7 maintenance activities per year. This would result in a small amount of additional septage per licensed business (10,500 gallons) per year. In relation to the amount of septage generated by a maintenance business per year, this is fairly miniscule.

While it is unlikely that there is any significant amount of land spreading of septage in the winter, this activity is regulated under Minn. R. 7080.2450 subp. 6 and subsequently the Code of Federal Regulations (CFR) chapter 40 part 503. CFR 40 part 503.14 (b) states, "[b]ulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other waters of the United States." Additionally, Minn. R. 7050.0210 subp. 2 & subp. 13 both prohibit the pollution of waters of the state. So, in the event that anyone inappropriately land applies septage that results in pollution to waters of the state, the MPCA will take enforcement action on that business or individual.

Finally, there is nothing in the proposed language that requires that the maintainer dispose of the septage after removal from the sewage tank. If an inspection, or tank integrity assessment, was ever required during a period where land application or appropriate disposal of sewage was prohibited, it is possible to complete the assessment and then return the contents of the sewage tank back into the tank. This is obviously not the preferred method of conducting the assessment, but it is possible, and would meet the rule requirement to observe the tank empty while reducing the potential burden of septage disposal.

**Comment 36**

"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?"

**Response:** There is no state rule requirement that an SSTS maintainer submit the results of a maintenance activity, or tank integrity assessment, to the local unit of government. If the LGU wants that information to be submitted, then they would need to amend their local ordinance to include that requirement. This rule gives homeowners the opportunity to request a tank integrity assessment at their normal maintenance visit. The maintainer, if they choose to complete the assessment, would then supply the results to the homeowner. If the homeowner subsequently needs an inspection of their system completed, they can supply the inspector with the tank integrity assessment and potentially avoid the need to have an additional maintenance activity, or pump out, completed.

There is nothing in the proposed rule that requires a homeowner to request a tank integrity assessment, a maintainer to provide an assessment, or an inspector to use the results of a tank integrity assessment. This rule does not require the involvement of two parties to determine tank integrity. This proposed rule only requires the tank to be assessed while empty in order to be compliant. The language that allows a licensed inspection business, maintenance business, installation business, service provider business, or qualified employee to complete the tank integrity assessment has been in rule since 2011.

It is unclear what is meant by the last sentence of the comment. Specifically, it is unclear who SSTS staff are, so comparison to SSTS maintainers is not able to be adequately determined. However, the MPCA does not believe that any of the licensed businesses, or qualified employees, authorized to complete tank integrity assessments in Minn. R. 7082.0700 subp. 4 B (1) are more, or less, qualified to conduct the assessment of tank integrity than any other

authorized group. If the MPCA felt a particular group was incapable, or unable, to adequately determine the integrity of a tank, they would be removed from the authorizing language.

## E. Other Comments

### Comment 37

"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 government 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."

**Response:** The MPCA is not the author of Minn. R. 6120.3400 subp. 3 D. The language in that item does not appear to require a current compliance inspection to issue a permit in shoreland areas regardless of time of year, and only requires "reconstruction of existing nonconforming sewage systems whenever a permit or variance of any type is required for any improvement on, or use of, the property." Again, the MPCA is not responsible for interpretation of Minn. R. 6120, so any question on the specific interpretation of that rule should be directed to the Minnesota Department of Natural Resources shoreland program.

Nonetheless, annually, the MPCA travels the state of Minnesota to meet with local unit of government employees in public meetings known as "talking tours." In the 2019 January meetings, the MPCA asked all meeting attendees if there had ever been instances of tanks freezing, due to pumping, or other reasons that they were aware of. Of the 132 meeting attendees, which represented 81 of the 218 LGUs in Minnesota, including 60 of the 87 counties in the state, no one was aware of any instances, at any time, of a tank freezing due to a pumping activity.

In addition to the lack of evidence that maintaining, or pumping, a sewage tank results in any freezing, there is also no state requirement in place, nor one being proposed, that requires tank pumping during wintertime or colder time periods. While the proposed rules require that a tank integrity assessment be completed on an empty tank, there is no requirement in state rule to empty a sewage tank during winter months. Also, while the MPCA does not track work completed throughout the year it is well known that the vast majority of SSTS work is put on hold during times of the year when snow and frozen ground is present.

Finally, with regards to compliance inspections, an existing tank integrity assessment from the previous three years is allowed to be used to make a determination of system compliance. Prior assessments, coupled with a lack of a state requirement to pump a tank out in the winter, makes it unlikely that a tank would ever truly need to be pumped in the winter months. Moreover, in the event that a tank integrity assessment must be completed during winter months, the rule requirement that the tank integrity assessment be completed on an empty tank does not mean that the tank must remain empty after the assessment has been completed. It is possible to backfill the tank with sewage from the pump truck, or fill the tank with water from the home or a water tank on a vehicle. While wintertime assessments of a tank are likely not the preferred time of assessment, in the event that there is a wintertime assessment and there are concerns over freezing tanks, there are options available to mitigate those freezing concerns.

### Comment 38

"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."

**Response:** As was stated in the SONAR for these proposed rules, "The MPCA expects that, in general, the economic impact of the proposed rule amendments will be favorable to SSTS owners and to all current and future users of Minnesota's surface waters and groundwater."

Specifically, the economic analysis completed for the SONAR for proposed Minn. R. 7081.0040 subp. 1 B stated, "[t]he proposed rule allows greater flexibility in permit determinations for large systems. The economic impact of this change will be to reduce permitting fees, as well as reduce ancillary costs associated with SDS permit monitoring requirements resulting in a positive economic impact to system owners."

Also, the economic analysis completed for the SONAR for proposed Minn. R. 7081.0040 subp. 1a B stated:

"[t]he proposed rule amendment expands the flow measurement portion of the existing rule. There will be some economic impact related to the expanded collection requirements. Additionally, any system that requires an SDS permit, but has not applied for one, will likely need to invest in flow measurement technology and potentially pay for the installation and monitoring of the measurement equipment. It is expected that any economic impacts from this rule amendment will be positive because the reduced cost of permitting will offset the cost of measuring flow. Estimates of costs for these activities are as follows – Cost of an SDS permit with associated engineering and design fees ($100,000 – $1,000,00) versus cost of flow measurement on an existing system ($1,000 – $10,000).

It is possible that a system owner could potentially end up needing a SDS permit based on the results of their flow measurement. However, in this situation the system should have already been permitted and therefore the economic burden from applying for an SDS permit will be offset from not paying SDS permit fees and renewal fees when they were required by rule and paying lower local permit fees in the interim."

Regarding the cost of an SDS permit itself, that is outside of the scope of this proposed rule change as Minn. R. 7081 does not specify the cost of an SDS permit.

**Comment 39**

"**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."

**Response:** There exist multiple, legal, options available to SSTS maintainers to properly dispose of septage. These include disposal at a wastewater treatment plant and land application in accordance with CFR 40 part 503. As of 2020, there are 53 wastewater treatment facilities that accept septage for disposal. These facilities typically do charge a fee for disposal, and depending on the location within the state, there are licensed maintenance businesses that solely dispose

of septage at a wastewater treatment plant and others that never dispose of septage at a wastewater treatment plant. There is also the option to store septage during times of inclement weather when land application may not be possible and there are maintenance business that do this frequently.

Regarding land application, CFR 40 part 503 specifies when land application is allowed and legal. Additionally, licensed maintainers are required to take a multi-day course, and pass a test, in order to demonstrate their knowledge of applicable regulations prior to operating a business. Also, as has been discussed in the response to comment 35, there is a minimal amount of SSTS work completed during winter months; and, as such, the MPCA does not believe there will be much activity, including land application, happening in winter months. Moreover, 15 million gallons is not likely to be generated based on the proposed language. More explanation on the quantity of septage generated can be found in the response to comment 35 above.

Moreover, while it is unlikely that there is any significant amount of land spreading of septage in the winter, this activity is regulated under Minn. R. 7080.2450 subp. 6 and subsequently the Code of Federal Regulations (CFR) chapter 40 part 503. CFR 40 part 503.14 (b) states, "[b]ulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other waters of the United States." Additionally, Minn. R. 7050.0210 subp. 2 & subp. 13 both prohibit the pollution of waters of the state. So, in the event that anyone inappropriately land applies septage that results in pollution to waters of the state, the MPCA will take enforcement action on that business or individual regardless of the time of year.

Lastly, land application of septage is a well understood, and studied, practice that adequately protects human health and the environment when completed in accordance with federal regulations. Leaking septic tanks, however negligible, introduce untreated sewage into the environment in an uncontrolled, and unknown manner. This untreated sewage, being released to the environment with no known information on its fate and transport poses a significantly greater risk to human health and the environment than land application of septage. Further, any tank that is supposed to be watertight, and is leaking below its operating depth, is considered a cesspool (Minn. R. 7080.1100 subp. 15) and hence, a system that is failing to protect groundwater. Finally, the MPCA does not believe that the fear of individuals disregarding environmental rules is a reason to avoid implementation of a rule designed to provide protection to human health and the environment.

**Comment 40**

"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."

**Response:** Regarding land application, CFR 40 part 503 specifies when land application is allowed and legal. Additionally, licensed maintainers are required to take a multi-day course, and pass a test, in order to demonstrate their knowledge of applicable regulations prior to operating a business. While liming is one option to adequately achieve CFR 40 part 503 pathogen reduction requirements, there are other legal options available to a maintainer to dispose of septage properly.

Nonetheless, any SSTS business that violates Minn. Rule or the referenced Code of Federal Regulations is subject to enforcement action by the MPCA under Minn. § 115.56 subd. 3. Further, Minn. R. 7050.0210 subp. 2 & subp. 13 both prohibit the pollution of waters of the state. So, in the event that anyone inappropriately land applies septage that results in pollution to waters of the state, the MPCA will take enforcement action on that business or individual. Finally, the MPCA does not believe that the fear of individuals disregarding environmental rules is a reason to avoid implementation of a rule designed to provide protection to human health and the environment.

## F. Changes to proposed rule based on submitted comments

### Comment 41

"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."

**Response:** The MPCA agrees that facility is not a defined term and may be potentially confusing. As such, we are proposing to modify Minn. R. 7081.0130 subp. 1 C (3) to read, "measured flow values may not be used at any other facility or property." By adding the language "or property" the MPCA believes this rule item and subitem become more clear and reduce the potential for misinterpretation. Finally, training from the MPCA and our training partners will include information specific to what is meant by this rule part, further reducing the potential for issues.