

VIDEO 13: ALTERNATIVE LOCAL STANDARDS -- MPCA SSTS ADMINISTRATIVE TRAINING

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2013

Introduction

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Talk 13 of 13

Alternative Local Standards for SSTS
Programs

Topics for today

What are Alternative Local Standards?

Definition

Two options

When are Alternative Local Standards appropriate?

What elements of the rule can be modified through Alternative Local Standards?

What is the process for Alternative Local Standards adoption?

WHAT ARE ALTERNATIVE LOCAL STANDARDS?

History, options, where appropriate

History of Alternative local standards

1997 – ALS provision included in Minnesota Statutes 115.55 to allow a county to adopt less restrictive standards in areas with low population density and other factors.

This was implemented in only a few counties

2012 – Second amendment to statute to allow counties to use the 2006 version of Minnesota Rule ch 7080 for systems with flow under 2500 gallons per day with residential-strength waste as ALS county-wide.

This is being built into some county ordinances now

Alternative Local Standards are an option for LGUs, but to date, most have chosen to adopt the current state standards into their ordinances.

What are Alternative Local Standards?

Alternative Local Standards are locally-adopted technical standards which are different from the state rule that's in effect today.

There are two options for ALS:

- Less-restrictive standards for areas of low population density (1997); not allowed in Shoreland or for food, beverage or lodging facilities. Counties can adopt ALS for existing systems and/or for new systems.
- Standards based on the 2006 rule instead of the current rule (2012); allowed anywhere in the county for new systems.

Any Local Government can adopt more restrictive requirements – these are not Alternative Local Standards. Only those standards that may be less restrictive are called ALS.

When are alternative local standards appropriate?

ALS provides counties with flexibility in implementation of a SSTS ordinance which is based on local conditions

The choice of developing ALS is determined by the county; cities and towns cannot be less restrictive than the county's ordinance

ALS can be used to adjust technical requirements that are not viewed as essential to meeting public and environmental health outcomes such as observation pipes, cleanouts and longer baffles. Most of these elements are included in the rule to increase system longevity and reliability.

WHICH RULE REQUIREMENTS CAN BE MODIFIED THROUGH ALS?

What ALS can address; limitations; required elements

What can be modified through ALS?

Original ALS for New Systems

- May change any technical element, however...
- All have focused on reducing the required separation to 2 ft.
- Must demonstrate that the new standards protect public health and the environment

2012 ALS

- Based on 2006 rule in all areas except...
- Current rule standards to be used for:
 - Registered tanks
 - Registered treatment products and media
 - Standards for systems over 2500 gpd and systems with high strength waste

Where can ALS apply?

Original ALS for New Systems

- Areas of continued low population density (no growth)
- Must be designated on map
- Not in Shoreland, for systems serving food, beverage or lodging, or in wellhead protection areas

2012 ALS

- Anywhere in county
- Any system under 2,500 gallons with residential-strength waste

Required elements of ALS

Original ALS for New Systems

- Documentation of how the ALS protects public health based on specific criteria
- Map showing where apply
- Counties choosing this option need to think through how these standards will affect compliance inspections, etc. and build in processes to address any differences.

2012 ALS

- No additional documentation
- Must adopt elements of current rule in addition to 2006 rule:
 - Registered tanks
 - Registered products
 - Standards for systems over 2,500 gpd
 - Standards for high-strength waste

PROCESS FOR ALS ADOPTION

Differences from the Ordinance
Adoption procedures in Session 6...

Ordinance adoption

- Please refer to Talk Six in this series for information on ordinance checklists, etc. This describes the procedures for all ordinances, including those with Alternative Local Standards.
- Ordinances with Alternative Local standards have some additional steps, described in the following slides.
- These steps are different for 1997 ALS and 2012 ALS.

Ordinance eligibility

Original ALS for New Systems

- Only in areas of sustained and projected low population density
- Local conditions must make meeting state standards unreasonable
- Cannot conflict with state law (well setbacks, Shoreland rules, etc.)

2012 ALS

- Local option open to any county
- Do not need to prove any conditions required for 1997 ALS
- 2006 rules do not conflict with other state laws so nothing to worry about here

Ordinance submittal

Original ALS for New Systems

- Submit draft standards to county local water planning committee for review
- Submit to MPCA 30 days before adoption for review
- Include documentation of low density and how public health and environment are protected

2012 ALS

- Follow procedure for standard ordinances described in Talk Six

Compliance criteria for existing systems

Original ALS for Existing Systems

- Any county can develop alternate definition of a compliant existing system through ALS – not just low population density
- Must still be protective of human health and environment and not for Shoreland, etc.
- This would be useful in counties that allow 2' of separation for new systems through ALS

2012 ALS

- Compliance criteria were the same in the 2006 and current rules so there is nothing to change here

Can a county do both 1997 and 2012 ALS?

Yes, but their ordinance would be quite complex and people could have a hard time figuring out which standards to use where.

The simplest ordinance just uses the current state standards – this is what is trained at the University and the version that MPCA Information supports.



SUMMARY

Summary

- Alternative Local Standards are referred to as ALS and are less restrictive than the current rules.
- If a local SSTS ordinance has more restrictive standards than the current state rules, these standards are not considered an Alternative Local Standard.
- There are two options for a local unit of government to consider adopting Alternative Local Standards.
- Alternative Local Standards may make local SSTS programs confusing as they are implemented at the local level.
- Our goal has been to have a state-wide code, with some variation in local requirements based on local conditions.

Guidance for Counties that will be using the MPCA 2006 SSTS Code as ALS

The rulemaking that allows the use of the 2006 SSTS Code as ALS in Shoreland areas was effective on October 1, 2012. Following are guidelines to those counties that are interested in pursuing this option. In writing their ordinances, counties may choose to use the 2011 rule as the basis for their technical standards, calling out those specific areas where the 2006 rules would be applied, or can use the 2006 rules as the basis for technical standards for those systems that are less than 2500 gpd that receive residential-strength waste and then also adopt the standards of the 2011 rule for all other systems.

Scope: Counties may choose to use the technical standards of the 2006 SSTS rules as an alternative to the 2011 rules anywhere in their jurisdiction for systems with flows of residential-strength waste less than 2500 gallons per day.

The administrative standards of MR 7082 and 7083 are outside of this scope and cannot be altered by the LGU. The use of registered SSTS treatment and distribution products and the use of registered tanks from the 2011 rule are to be included in any 2006-based ordinance. The requirement for the designer to submit management plans is part of 7082 and is not optional for the county. However, the county can write this element into their ordinance in a manner that suits their planned implementation for this requirement.

Considerations: This language pegs the 2012 county-wide Alternative Local Standards (ALS) to the 2006 SSTS rules (effective April 3, 2006: <https://www.revisor.mn.gov/rules/?id=7080&date=2007>). It also limits these ALS to systems under 2500 gallons per day (gpd) with residential-strength waste. For this reason, counties that want to use the 2006 rules as the basis for the technical standards in their ordinance will also need to adopt the 2011 rules to cover larger systems, registered products and high-strength wastes. The following table shows those elements of the 2006 rule that would be updated to include registered tanks and products, as well as the 15% flexibility in soil separation if counties choose to allow this option. It is important to carefully compare all provisions between the 2006 and 2011 rules to be sure all areas are covered.

| Part from 2006 Rule | Replace with Part from 2011 Rule |
|---|--|
| Tanks | |
| 7080.0130 Sewage Tanks except for 7080.0130 subp 3 A (tank sizing) Note: this rule part included the parts on aerobic tanks, which have been superseded by registered products | 7080.1900-.1920 and .1950-.2020 - get residential tank sizing from 2006's 7080.0130 subp 3 A or use sizing from 2011. |
| Registered Products | |
| 7080.0170 subp 2 B (2), (3), and (4); C 2 b (2) and (3); D (1) (a), (b) and (c); D (3), (8), (12), and (13); and subp 5 B (1) Note: these rule parts included standards for rock, graveless pipe and chambers that was superseded by registered products. | 7080.2150 except for subpart 3E, the soil sizing charts. If the county chooses to use 2011 sizing, this part will need to be included. |
| 15% Flexibility | |
| | 7080.1500 subp 4 D |

Guidance for Counties that will be using the MPCA 2006 SSTS Code as ALS

The names of system types from the 2011 rule should be used in all ordinances to reduce confusion because the training that is offered uses the 2011 terminology. Counties (and all LGUs that have an SSTS program) are required to report data to MPCA based on this terminology, and without making the change there will be no name for systems built using registered treatment products.

| System 'name' in 2006 Rule | System 'type' in 2008/11 Rule |
|-----------------------------|--|
| Standard | Type I – trenches, beds, mounds and at grades with 3' of separation |
| Alternative | Type II – holding tanks, privies, systems on floodplain areas |
| Other | Type III – systems that use 3' of soil for treatment but otherwise do not meet the standards of Type I |
| (New in 2008/11) | Type IV – uses registered treatment products |
| Performance | Type V – now requires a licensed professional engineer to design |
| Alternative Local Standards | ALS systems built to 2006 standards – use Types above ALS systems built to less-restrictive ALS – label as ALS system |

Ordinance Process and Submittal Requirements: MPCA staff are ready to answer questions and review draft ordinances whenever counties have a desire to work with us. The MPCA's rule requires that ordinances that use Alternative Local Standards for new systems be submitted to the MPCA 30 days before adoption, and also submitted to the county's local water plan committee. If the county is not including any Alternative Local Standards that are outside of the 2006 rule, then this submittal would be in the form of a notice of intention; no further information to support the ALS is required.

Counties with areas of low population density where strict adherence to the agency's rules would pose an undue hardship may choose to adopt Alternative Local Standards that are less restrictive than even the 2006 rules. This is the original type of ALS that has been in the SSTS statutes since 1997; these ALS are limited to areas outside of Shoreland and Wellhead Protection areas and for Food, Beverage and Lodging facilities. In these counties, the procedures of 7082.0050 subp 5 D are to be followed.

All ordinance submittals need to include:

- Ordinance language
- Ordinance submittal checklist
- List of differences between the ordinance and the state rule, if any

Please direct ordinance drafts to your regional SSTS contact person with a cc to Gretchen Sabel.

Guidance for Counties that will be using the MPCA 2006 SSTS Code as ALS

The basis for this guidance (MS 115.55 sub 7, underlines show text added in 2012):

(d) Local standards; conflict with state law. Local standards adopted under paragraph (a) or (b) must not conflict with any requirements under other state laws or rules or local ordinances, including, but not limited to, requirements for:

- (1) systems in shoreland areas, regulated under sections 103F.201 to 103F.221;
- (2) well construction and location, regulated under chapter 103I; and
- (3) systems used in connection with food, beverage, and lodging establishments, regulated under chapter 157.

Alternative local standards for new or replacement residential systems with flow of 2,500 gallons per day or less may be applied to systems listed in clause (1), provided the alternative standards are no less stringent than provisions of Minnesota Rules, chapter 7080, that went into effect on April 3, 2006. In addition, alternative local standards for new or replacement systems with flow of 2,500 gallons per day or less may be applied to systems listed in clause (3), provided the alternative standards are no less stringent than provisions of Minnesota Rules, chapter 7080, that went into effect on April 3, 2006, except that the waste strength must meet the standards established in Minnesota Rules, part 7080.2150, subpart 3, item K. If additional treatment of waste is needed to meet this standard, the treatment must be in accordance with Minnesota Rules, part 7080.2150, subpart 3, item A. The local standards must include references to applicable requirements under other state laws or rules or local ordinances. Nothing in this paragraph prevents a local subsurface sewage treatment system ordinance from including provisions of the current rule as part of the alternative local standards.