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November 8, 2019

Legislative Reference Library
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St. Paul, Minnesota 55155

Re: Minnesota Pollution Control Agency's Proposed Amendments to Rules Governing Subsurface Sewage Treatment Systems Inspections and Permit Requirements; Minnesota Rules Chapters 7081 and 7082; Revisor's ID 04478

Dear Librarian:

The Minnesota Pollution Control Agency (MPCA) intends to amend the rules governing subsurface sewage treatment systems inspections and permit requirements. We plan to publish a Dual Notice of Intent to Adopt Rules (Dual Notice) and the proposed rules in the November 12, 2019, *State Register*.

The MPCA has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes sections 14.131 and 14.23, the MPCA is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at katie.izzo@state.mn.us or 651-757-2595.

Yours very truly,

A handwritten signature in black ink that reads 'Katie Izzo'.

Katie Izzo
MPCA Rule Coordinator

Enclosure: Statement of Need and Reasonableness



STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Rules
Governing Subsurface Sewage Treatment Systems
Inspection and Permit Requirements,
Minnesota Rule Chapters 7081 and 7082;
Revisor ID No. 04478

Municipal Division

October 2019

General information:

- 1) Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: <https://www.pca.state.mn.us/public-notices>
- 2) View older rule records at: <https://www.revisor.mn.gov/rules/status/>
- 3) Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Yolanda Letnes, Rulemaking Coordinator, Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, MN 55155-4194; telephone 651-757-2527; 1-800-657-3864; email yolanda.letnes@state.mn.us; or use your preferred telecommunications relay service.
- 4) How to read a sample Minnesota Statutes citation: Minn. Stat. § 116.07, subd. 2(f)(2)(ii)(A) is read as Minnesota Statutes section 116.07, subdivision 2, paragraph (f), clause (2), item (ii), subitem (A).
- 5) How to read a sample Minnesota Rules citation: Minn. R. ch. 7150.0205, subp. 3(B)(3)(b)(i) is read as Minnesota Rules, chapter 7150, part 0205, subpart 3, item B, subitem (3), unit (b), subunit (i).

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Acronyms, abbreviations, and definitions

AELSLAGID – Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design

ch. – Chapter

EPA – United States Environmental Protection Agency

ISTS – Individual subsurface sewage treatment system

LGU – Local government unit

LSTS – Large subsurface sewage treatment system

Minn. R. – Minnesota Rules

Minn. Stat. – Minnesota Statutes

MMB – Minnesota Management and Budget

MPCA or Agency – Minnesota Pollution Control Agency

MSTS – Midsized subsurface sewage treatment system

SDS – State Disposal System

§ – Section

SONAR – Statement of Need and Reasonableness

SSTS or system – Subsurface sewage treatment system

1. Introduction and overview

A. Summary of proposed rule amendments

The Minnesota Pollution Control Agency (MPCA) is proposing amendments to Minnesota Rules governing its Subsurface Sewage Treatment Systems (SSTS) program in Minnesota. The purpose of the SSTS rules is to prevent the improper location, design, installation, use, maintenance, and abandonment of SSTS which could adversely affect water quality and the public health, safety, and general welfare by the discharge of inadequately treated sewage to surface and groundwater of the state of Minnesota. In this rulemaking, the MPCA is proposing amendments to Minn. R. ch. 7081 (Midsized Subsurface Sewage Treatment Systems [MSTS]) and 7082 (Local Individual Sewage Treatment Systems [ISTS] Programs).

Chapter 7081 contains specifications for systems serving multiple dwellings, and other establishments. Specifically, chapter 7081 establishes regulatory requirements for MSTS and includes limited design, construction, inspection, and operational standards that are believed to reasonably protect surface water, groundwater, public health, safety, general welfare, and the environment. Chapter 7081 also establishes requirements to determine which MSTS require a State Disposal System (SDS) permit. Due to the interconnected nature of Minnesota Rules governing SSTS, chapter 7081 is also applicable to smaller systems called ISTS.

Chapter 7082 establishes the requirements for local governmental units (LGUs) that permit SSTS within their jurisdiction, and include the minimum standards for local SSTS ordinances and administrative programs to ensure proper permitting, inspection, and operation of SSTS. Specifically, chapter 7082 contains provisions governing the inspection of SSTS by licensed professionals.

The purpose of the proposed amendments is two-fold: first to clarify when a SDS permit is required rather than a local permit, and second to clarify when tank pumping is required for completion of a compliance inspection on an existing SSTS.

The first part of the proposed amendments would allow existing septic system owners to use measured wastewater flows to determine if a SDS permit is still required. The existing rule structure requires system permit issuance based on the greater of a system's measured flow or estimated flow. This resulted in estimated flows being used to determine whether a SDS permit was required, even when actual measured flow would not otherwise require a permit.

This rule proposal was requested by the Minnesota Onsite Wastewater Association, the professional association for Minnesota septic contractors. The use of measured flow was originally established in the 2015 legislative session law which allowed campgrounds and resorts, open less than 180 days, to use measured flows for state permit determinations.

The second part of the proposed amendments is to require septic tanks be empty of sewage when being inspected for watertightness. The existing rule is silent on minimum requirements for inspecting a tank resulting in poor inspections across the state. The proposal will set a minimum requirement that tanks be empty when inspected to allow visual observations to occur. The proposed amendments will also allow for tanks that are clearly failing to be exempt from being empty while inspected in order to reduce unnecessary costs.

The proposed amendments will most likely affect owners of properties with SSTS and large subsurface sewage treatment systems (LSTS), MPCA-licensed SSTS professionals, LGUs, and related professional associations. The MPCA published a Request for Comments on planned amendments to rules governing SSTS inspections and permit requirements in the *State Register* on December 11, 2017 (Exhibit 1), and received 14 comment letters in response (Exhibit 2). MPCA staff reviewed the comments and made

changes to the preliminary draft based in part on the comments received. The MPCA gained additional input from telephone calls, emails, site visits, training venues, and through the outcome of SSTS enforcement actions.

This document fulfills the requirements of the Minnesota Administrative Procedures Act (Minn. Stat. ch. 14), which requires a statement of need and reasonableness (SONAR) justifying and explaining the need for the proposed rule amendments. It also addresses the statutory requirements associated with proposed administrative rules.

B. Statement of general need

Minnesota's rulemaking process requires the MPCA to explain the facts establishing the need for and reasonableness of the rules as proposed, and to address specific procedural requirements (Minn. Stat. ch. 14). In general terms, this means that the MPCA must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate, "need" has come to mean that a problem exists that requires administrative attention, and "reasonableness" means that the solution proposed by the MPCA is appropriate.

In general, the proposed amendments are needed to ensure that the technical standards applied to SSTS are accurate, reflect the MPCA's regulatory intent, and are responsive to the specific needs of the regulated community as well as the LGUs that implement the standards. Existing Minn. R. ch. 7080 to 7083 have worked well in serving the needs of system owners, regulators (i.e., counties, cities, and townships), and the SSTS industry. However, the MPCA has determined that chapters 7081 and 7082 need to be amended to add flexibility and correct specific issues that the MPCA and the SSTS industry have identified since these chapters were last amended. The proposed amendments to chapters 7081 and 7082 will:

- More closely align the permitting process between ISTS, MSTs, and LSTs. Specifically, the goal is to provide flexibility to septic systems owners so that they can more easily determine when a SDS permit is required.
- Allow SDS permit determinations to be based on measured wastewater flows or estimated wastewater flows for existing SSTS.
- Allow new SSTS permit requirements to be based on flow to the soil absorption area, provided flow equalization is used.
- Require that tank integrity assessments be completed on empty tanks. These assessments must be completed through the maintenance-hole access when available.

The proposed amendments do not significantly change the requirements relating to the location, installation, use, closure, or maintenance of SSTS; technology review; or the licensing of SSTS professionals.

2. Public participation and stakeholder involvement

The MPCA conducted the following outreach activities while developing these rule amendments. This was done in part to comply with the requirements of Minnesota's rulemaking process, but also to notify, engage, and inform potentially interested parties about this rulemaking and solicit their input on amending the SSTS rules. This section describes the MPCA's public outreach efforts and the steps it took to develop and solicit input on the proposed rule amendments.

A. Webpages

The MPCA maintains the following webpages that are publically accessible and relevant to this rulemaking.

- 1) Amendments to Subsurface Sewage Treatment Systems Inspection and Permit Requirements at <https://www.pca.state.mn.us/water/amendments-subsurface-sewage-treatment-systems-inspection-and-permit-requirements>. The MPCA created this rule-specific webpage in order to provide the public with background and other information relevant to this rulemaking. This rule webpage is updated routinely to inform the public of developments related to this rulemaking. The MPCA will continue to update the rule webpage throughout the rulemaking process to include information about the proposed rule amendments and rulemaking documents, including the proposed rule language, a final version of this SONAR, and other supporting documents as applicable. This will ensure that potentially interested parties can continue to participate in the rulemaking process after the MPCA publishes its Notice of Intent to Adopt Rules in the *State Register*.
- 2) Public Notices at <https://www.pca.state.mn.us/public-notices>. The MPCA's public notice webpage hosts all of the MPCA's public notices. The MPCA posted its notice of Request for Comments for this rulemaking on the public notice webpage on December 11, 2017, the same day the notice was published in the *State Register*. The Request for Comments specifically requested comment on possible amendments to rules governing SSTS inspections and permit requirements. Public notices remain posted for the entire term of the comment period. As discussed in Section 8, Notice plan, the MPCA will continue to post official public notices for this rulemaking on the public notice webpage.
- 3) Minnesota Rulemaking at <https://www.pca.state.mn.us/regulations/minnesota-rulemaking>. The MPCA's rulemaking webpage provides the public with centralized information about current rulemaking projects and the rulemaking process. It also explains how the public can receive notice of rule changes. The MPCA's "Public Rulemaking Docket," updated monthly, is located on this webpage and includes information about current rulemaking projects such as the rule webpage, contact person, and timeline.

B. GovDelivery

The MPCA uses a self-subscription service called "GovDelivery" to provide notice electronically (via email) to interested and affected persons of various updates and public notices issued on a wide range of topics, including administrative rulemakings. Any person may visit the GovDelivery subscription page at <http://public.govdelivery.com/accounts/MNPCA/subscriber/new> to subscribe and choose the notifications they want to receive.

The MPCA lists rule projects on the "Public Rulemaking Docket" (see above "Webpages"). Once a rule project becomes active, a GovDelivery self-subscription list for that specific rulemaking is established. GovDelivery alerts individuals who have signed up to receive notice for all rulemakings to notify them of new rule projects.

On December 5, 2017, the MPCA sent a GovDelivery notice to 2,196 subscribers of the list for "New Rulemaking Announcements." This notice encouraged interested parties to visit the GovDelivery subscription page and sign up for the SSTS Inspections and Permit Requirements Rule list to receive information about this rulemaking. Subscribers were added to a rule-specific list that the MPCA used to provide rule-related information to interested and affected parties.

The MPCA also promoted the GovDelivery list for this rulemaking by posting an announcement on the "Amendments to subsurface sewage treatment system inspection and permit requirements" webpage.

There are 1,353 subscribers to the GovDelivery list specific to this rulemaking as of July 2019.

The MPCA will continue to send GovDelivery notice of public notices and other relevant information for this rulemaking as discussed in Section 8, Notice plan.

C. Newsletters

The MPCA also uses GovDelivery to send interested parties electronic newsletters that include updates on rulemaking. Any person may visit the GovDelivery subscription page and sign up for MPCA newsletters that they would like to receive. For this rulemaking, the MPCA included articles in the SSTS Bulletin newsletter which provides regulatory updates, program information, links to technical guidance, and more. The SSTS Bulletin is a quarterly newsletter that goes out to approximately 4,000 subscribers as of June 20, 2019. Subscribers to this newsletter include LGUs, septic system professionals, homeowners and others interested in how Minnesota manages septic waste generated by homes and businesses not served by municipal wastewater treatment plants. The SSTS Bulletin is available at <https://www.pca.state.mn.us/water/ssts-bulletin-newsletter>.

The MPCA published articles about this rulemaking in several issues of the SSTS Bulletin:

- 1) May 16, 2016—general background information on this rulemaking.
- 2) May 25, 2017—general background information on this rulemaking.
- 3) Dec. 7, 2017—article on rulemaking to start soon on SSTS inspection/permit requirements.

The MPCA will continue to publish updates for this rulemaking in the SSTS Bulletin, as discussed in Section 8, Notice plan.

D. Meetings

Stakeholder engagement for this rule amendment extends back to 2015. The MPCA met with the Minnesota On-Site Wastewater Association, which is an organization that represents the SSTS industry and other organizations with interests in the SSTS program, from 2015 to 2017 in order to explore potential amendments to the SSTS rules.

The MPCA sought input on this rulemaking from various organizations associated with the SSTS industry. These included local zoning and planning staff, the University of Minnesota On-site Sewage Treatment Program staff, the MPCA's SSTS Advisory Committee, Hospitality MN, MN Association of Realtors, and various industry representatives. A list of some of the meetings and meeting attendees where the rule amendments were discussed is provided in Exhibit 3. This list is not exhaustive and does not include the many emails, phone conversations, and informal discussions that took place between MPCA staff and individuals working in the SSTS industry throughout the process of developing the rule amendments.

The MPCA released a Request for Comments on the rulemaking on December 11, 2017, with a comment period of 71 days. The MPCA received comments on the potential rule amendments from SSTS professionals, other government entities, and the public.

The MPCA acknowledges that there are concerns among the regulated community and LGUs about revisions to the SSTS rules. These entities are concerned that the process of amending the rules will be disruptive of their businesses and will cause additional burden to LGUs by creating a need for further local ordinance revisions. The MPCA has considered these comments and made efforts to limit the number of amendments and the extent of their effect.

The MPCA has worked to ensure that LGUs were notified that the rules are being amended so that they can plan their ordinance revision process accordingly, if necessary. When the rules were previously

amended, the MPCA encouraged LGUs to adopt the SSTS rules by reference in their ordinance in order to more easily incorporate future rule revisions. As such, many LGUs will not need to modify their ordinance to remain in compliance with their statutory and rule requirements.

Many of the changes being proposed are the result of comments and suggestions by the regulated community. The MPCA believes the regulated community and SSTS regulators have had adequate advance notice of the MPCA's interest in amending the rules and that the MPCA has provided a number of opportunities for interested parties to provide comment to the MPCA regarding their interests and concerns.

Given pre-rulemaking and early rulemaking stakeholder engagement conducted by the agency, no advisory group specific to this rulemaking was proposed. However, input on this rulemaking was sought from the MPCA's SSTS Advisory Committee (Exhibit 3) established under Minn. Stat. § 115.55.

3. Statutory authority

The MPCA's general statutory authority to adopt the proposed amendments is set forth in Minn. Stat. § 115.03, subd. 1(e), as follows:

115.03 POWERS AND DUTIES.

*Subdivision 1. **Generally.** The agency is hereby given and charged with the following powers and duties:*

******(e)** To adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, rules, schedules of compliance, and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate water pollution, or for the installation or operation of disposal systems or parts thereof, or for other equipment and facilities: ****

In addition to the MPCA's general statutory authority to adopt rules and standards to prevent, control, or abate water pollution, the MPCA is specifically charged with the regulation of SSTS under Minn. Stat. § 115.55, subd. 3. In 1994, the Minnesota Legislature enacted the enabling statutory authority that allowed the MPCA to promulgate standards in rules for SSTS. Subsequent revisions to Minn. Stat. § 115.55 have occurred and the standards in the revised statutes have been incorporated into Minnesota Rules; however, these revisions did not impact the underlying rulemaking authority provided under Minn. Stat. § 115.55, subd. 3, as follows:

115.55 SUBSURFACE SEWAGE TREATMENT SYSTEMS.

****Subd. 3. **Rules.** (a) The agency shall adopt rules containing minimum standards and criteria for the design, location, installation, use, maintenance, and closure of subsurface sewage treatment systems. The rules must include:*

- (1) how the agency will ensure compliance under subdivision 2;*
- (2) how local units of government shall enforce ordinances under subdivision 2, including requirements for permits and inspection programs;*
- (3) how the advisory committee will participate in review and implementation of the rules;*
- (4) provisions for nonstandard systems and performance-based systems;*
- (5) provisions for handling and disposal of effluent;*
- (6) provisions for system abandonment; and*
- (7) procedures for variances, including the consideration of variances based on cost and variances that take into account proximity of a system to other systems.*

(b) The agency shall consult with the advisory committee before adopting rules under this subdivision.

(c) The rules required in paragraph (a) must also address the following:

(1) a definition of redoximorphic features and other criteria that can be used by system designers and inspectors;

(2) direction on the interpretation of observed soil features that may be redoximorphic and their relation to zones of periodic saturation; and

(3) procedures on how to resolve professional disagreements on periodically saturated soils.

4. Reasonableness of the amendments

A. General reasonableness

Minn. Stat. ch. 14 requires the MPCA to explain the facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the MPCA must not be arbitrary or capricious in proposing rules. However, to the extent that need and reasonableness are separate, “need” has come to mean that a problem exists that requires administrative attention, and “reasonableness” means that there is a rational basis for the MPCA’s proposed action.

The MPCA believes that the proposed amendments to chapters 7081 and 7082 are reasonable because they continue a process of refining and improving rules that establish standards to protect public health, safety, and the environment from the hazards of improper sewage handling or improper SSTS design. The standards contained in chapters 7081 and 7082 are technical and complex. Therefore, the MPCA expects that as the rules are implemented, specific issues and inconsistencies will be identified and that the understanding of these systems will improve over time to the point that it is reasonable to amend the rules.

The MPCA identified many needed clarifications and revisions that it considered making to the SSTS rules; however, the MPCA was concerned that too many revisions would overly burden the regulated community and LGUs that are charged with implementing the rules. The MPCA deliberately limited the extent of the amendments being proposed in order to minimize the effect of too extensive a rule revision. For this reason, the amendments being proposed in this rulemaking are only those that the MPCA considers to be essential to the correct design and operation of SSTS, and the clear application and implementation of the SSTS rules. Some minor clarifications and corrections are being made; however, these revisions are only where the rule part was already being amended to address an issue the MPCA determined was necessary to address in this rulemaking.

Treatment of sewage through SSTS is very common in Minnesota. An estimated 537,000 Minnesota households rely on SSTS for sewage treatment and disposal. All 87 of Minnesota’s counties, and many other LGUs are involved in the implementation of the SSTS rules. Additionally, more than 3,000 individuals hold SSTS certifications through the MPCA’s programs. This is a very large regulated community and the SSTS rules are the primary means of ensuring consistent regulation of SSTS throughout the State and the effectiveness of the SSTS program in Minnesota.

It is reasonable to amend the rules to keep them current and accurate. The MPCA believes that the benefit derived from properly treating sewage is worth the cost and has justified this cost in previous SSTS rulemakings that established the existing framework of SSTS regulation (for example, see page 7 of the SONAR for the 2008 rule amendments, available at <https://www.leg.state.mn.us/archive/sonar/SONAR-03601.pdf>). In this rulemaking the MPCA is making

what it considers to be minor adjustments to the comprehensive, existing standards that currently apply to SSTS. The economic impact where the adjustments affect the cost of the rule, either as a savings or as an expense, are discussed in Section 9 of this SONAR.

Most of the revisions in this rulemaking are a result of comments the MPCA has received concerning problems faced by SSTS owners, regulators, and the industry as they implement the SSTS rules. In some cases, the amendments being proposed were suggested by those providing comments. The MPCA staff met many times with organizations and individual interested parties on the development of the rule revisions. The MPCA believes that the discussions and collaboration that has occurred has resulted in proposed amendments that are reasonable, cost effective, and can be readily implemented.

B. Specific reasonableness

Minn. Stat. ch. 14 requires the MPCA to explain the facts establishing the reasonableness of the proposed rules. “Reasonableness” means that there is a rational basis for the MPCA’s proposed action. Explained in this section is the specific reasonableness of the proposed rules, together with an explanation of the need for each change. Since this rulemaking affects two chapters of existing SSTS rules, the rule changes are grouped by rule chapter to aid the reader in reviewing this document.

- Amendments to chapter 7081, Midsized Subsurface Sewage Treatment Systems (MSTS).
- Amendments to chapter 7082, Local Individual Sewage Treatment Systems (ISTS) Programs.

The specific reasonableness of each change is discussed below.

Some of the amendments have resulted in the re-numbering or changes to the lettering of items and subitems. Those types of formatting changes are made through the authority of the Office of the Revisor of Statutes and the MPCA does not explain or justify those changes in this SONAR.

Proposed changes to Minnesota Rules Chapter 7081—MSTS:

1. Part 7081.0020 Definitions

Justification

Subpart 7a. SSTS with low impact to potable water. A new subpart 7a defines the term “SSTS with low impact to potable water.” This term is needed to more closely align the SSTS program with those LSTS systems receiving an SDS permit from the MPCA. Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design (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.

The definition of “SSTS with low impact to potable water” is needed to provide adequate protection to groundwater resources by restricting specific areas where no source water for drinking is found. In addition the definition requires land control up to the border of the potential surface water therefore restricting potential future uses to only the property owner or the systems in question.

SSTS have maximum concentrations of biochemical oxygen demand/carbonaceous biochemical oxygen demand, total suspended solids, and oil and grease before soil dispersal. When SSTS are required to have nitrogen limits they are imposed as end-of-pipe 10 mg/L limits, or an end-of-pipe limit based on a desktop model of nitrogen dilution resulting in a 10 mg/L nitrogen concentration at the nearest receptor or property boundary. Because of these pre-final treatment component limits and the conservative nature of SSTS design there is no requirement for down gradient monitoring components.

The definition revises the 10 mg/l property boundary limit in those situations where it can be

demonstrated, by an AELSLAGID licensed professional, that the groundwater plume from the SSTS is not impacting a potable water supply and ultimately discharges to a surface water immediately bordering the property. The SSTS program understands that this revision mirrors the current nitrogen compliance limit of a SDS permitted facility located in a groundwater discharge area. As there would be no property boundary compliance limit for nitrogen on any system using the proposed revision, there is no need for a compliance monitoring point.

It is reasonable to define this term in order to allow for more continuity between the SSTS program and the SDS permitted LSTS systems. Additionally, it is reasonable to define because AELSLAGID professionals conducting this assessment need to understand karst topography and groundwater interactions. This is particularly important as it relates to southeastern Minnesota where karst landforms are concentrated. In these areas, professionals need to deal with a much higher risk potential by conducting exhaustive measurements to track water movement, or by acknowledging the complexity and choosing not to designate those areas as low-impact to potable water. Karst is an efficiently drained landscape that forms on soluble rock and is characterized by caves, sinkholes, a lack of surface drainage and other climatically controlled features, and is mainly formed on limestone.

2. Part 7081.0040 State Regulation

Justification

Subpart 1. Agency regulation. Subpart 1 establishes the requirements for the design, installation, operation, and inspection of all MSTs.

Subpart 1, item B is revised to establish new requirements for when the owner or owners of an SSTS must obtain an SDS permit. The existing requirements for when the owner or owners of a single SSTS or a group of SSTS under common ownership must obtain an SDS permit are deleted. These requirements are being deleted as the requirements for obtaining an SDS permit are being explained further in the subitems below. This change is reasonable because the owner or owners of an SSTS need to know what conditions require an SDS permit, in order to ensure compliance with the SSTS program rules.

Item B, subitem (1) adds the new requirement that any single soil dispersal component receiving 10,000 gallons per day of sewage must obtain a SDS permit from the agency. This is reasonable because larger systems have a higher potential for issues and requiring an SDS permit from the agency introduces additional design and monitoring conditions that help protect against pollution issues.

Item B, subitem (2) contains the previous language from item B pertaining to groups of systems under common ownership receiving an SDS permit when the combined flow within one half mile is greater than 10,000 gallons per day. This subitem also adds the language allowing for system flows within areas with low impact to potable water to be excluded from the 10,000 gpd, half mile calculation. This addition is reasonable because it allows for the new definition in subp. 7a to be used. This part is also reasonable because it creates greater continuity between SDS permitted systems and SSTS that have a low impact to potable water.

A new item D is added to maintain continuity between MSTs and LSTS permits. It is reasonable to ensure that the MPCA is aware of large SSTS that are using these amended rules as they have the potential to transition from local permits to SDS permits. Additionally, due to issues implementing previous flow measurement rules, it will benefit all parties to have the MPCA review flows to ensure accurate measurement occurs. This will ensure that only one measurement period is required instead of many iterations to obtain accurate data. Also, it is reasonable to require the owner or owners submit flow alterations to the MPCA to ensure additional permits are not required due to expansion.

Subp. 1a. Flow determination. Subpart 1a identifies how the owner or owner's agent must determine

flow to establish whether an SDS permit is required.

Subpart 1a, item A is revised to delete “proposed” and add “new SSTS and expansions to existing” SSTS to more accurately reflect the language commonly used in the SSTS industry. Additionally, expansions to SSTS are considered “new” construction for permitting purposes according to Minn. R. ch. 7080.1100 subp. 51. Therefore the same requirements should be applied to both new SSTS and expansions to existing SSTS. This change is reasonable because it reduces confusion in terminology within the industry and replaces an undefined term with rule defined terms.

Subp. 1a, item B is revised to allow greater SSTS permit determination flexibility for existing SSTS by removing the “greater of” language. Existing rule allows for SDS permit determination to be made using estimated flow values from Minn. R. ch. 7081.0110 or using measured flows, whichever is greater. In practice, this almost always results in estimated values being used even when more accurate measured data is available. This revision will allow either method to be used and is reasonable because it creates more accurate permitting determinations by allowing permits to be based on individual sites rather than broad averages.

In item B, subitem (1), new units (a) and (b) establish the measurement structure that must be used in order to determine permit flow from measured flow values. Unit (a) specifies that 90 consecutive daily flow measurements must be used for determining the average of the maximum daily flow. This change is reasonable because using time intervals greater than every day can generate averages that are not representative of the maximum or peak daily flows. This is specifically the case when peak flow periods split measurement periods or when the peak flow values are not representative of the median flow values.

Unit (a) also identifies that flow measurements must be corrected for occupancy or use of the facility. This requirement ensures the measured peak flow accurately accounts for total capacity peak flow. This will allow systems to be permitted based on the largest possible measured flow and minimize the chances that systems are over-used during subsequent peak periods. This is reasonable because peak measured flow does not mean peak flow at maximum capacity, but SSTS must still be sized to handle peak flows at maximum capacity in order to maintain environmental and human health protections. Unit (a) also requires that the correction for flow values occur in accordance with Prescriptive Designs and Design Guidance for Advanced Designers, which is incorporated by reference under part 7080.1550, subpart 2. It is reasonable to require that this Design Guidance document be used because it contains the specifics of flow measurement protocol and is the industry standard to follow.

Unit (b) requires an additional 40 weeks of weekly flow measurement to occur in order for measured flow to be used for permit determination. This is needed to ensure that peak system utilization is captured and used for permit flow determination and is reasonable because it is the only way to verify that peak flow for the year was used in making the permit determination.

3. Part 7081.0130 Flow and Waste Concentration Determination for Other Establishments

Justification

Subpart 1. Method. Subpart 1 establishes the methods for determining design flows for other establishments (e.g. dwelling units such as hotels and motels; commercial/industrial uses such as shopping centers and offices; eating, drinking, and entertainment establishments; transportation related uses such as service stations, bus and rail stations, and airports; and institutional facilities such as hospitals, schools, and churches). Subpart 1 is revised to clarify that measured flow values must be used for design flows when they are higher than the estimated flow values in Table I in this subpart. The design flows in Table I apply to other establishments.

This revision is necessary to ensure that permit flows are not used for design purposes when measured flows indicate a higher flow value. The proposed language is intended to ensure system performance and protection of human health and the environment, because systems that are designed for wastewater flows smaller than the actual flow typically experience massive system failure. This revision to subpart 1 is different than the “greater of” clause under Minn. R. 7081.0040 because it still allows SDS permit determination flows to be based off measured flow when it is less than the flow values in table I of this subpart. It is reasonable to make this change to clarify that system design needs to be based on the highest flow value regardless of the permitting value used because inadequate system capacity can result in negative effects on human health and the environment.

Subpart 1, item A, subitem (1) is revised to change “shall” to “must.” As recommended by the Office of the Revisor of Statutes, when rules are amended, existing language changes are made as a stylistic matter to modernize the rule language where possible, for example, changing “shall” to “must.” The Office of the Revisor of Statutes, “Minnesota Rules Drafting Manual,” also recommends using “must” not “shall” to impose duties.

A new subitem (2) is added to allow system design to be spread out over a one-week period. This change is colloquially known as the “church” rule (though not restricted to use only at churches). This change is reasonable because there are specific facilities that experience large one- or two-day peak flow values weekly but relatively small flow values the remaining days of the week. As a result of this large discrepancy in flow values, it becomes possible to equalize the daily flow to the drain-field by storing the sewage for longer periods of time and dosing it out. In order for system designers to use this amendment, the LGU will need to approve of the use of flow equalization before permitting the system. This change is reasonable because it creates additional design options for SSTS designers while also avoiding situations in which systems are unnecessarily oversized and still allowing for protection of human health and the environment.

A new subitem (3) is added to require that septic tanks are still sized according to maximum daily flow under part 7080.1930 requirements for septic tank capacity. This change is reasonable because it will ensure that adequate retention times are still maintained within the septic tank to provide initial treatment of sewage.

Subpart 1, item B is revised to add language consistent with that found in Minn. R. 7081.0040, subpart 1a, item B. This revision is not intended to change the way measured flows are currently used for design purposes. Item B is also revised to add the requirement that design flow measurements must be corrected for occupancy or use according to Prescriptive Designs and Design Guidance for Advanced Designs, incorporated by reference under part 7080.1550, subpart 2. This requirement does not change the measurement structure. The Design Guidance contains the appropriate information to measure flows and must be used for determination of the existing measured flow. It is reasonable to provide the appropriate Design Guidance for the designer of an SSTS to use to determine measured design flow.

New item C establishes the requirements for SSTS expansion using the flow determination method from part 7081.0040, subpart 1a, item B. Item C also maintains consistency with the language found in Minn. R. 7081.0040 subpart 1a, item D, subitem (5) flow determination requirements for campgrounds and resorts. It is reasonable to restrict the use of measured flows to similar units because the units are expected to have similar use at the same property. Additionally, restrictions on SSTS expansions ensures that too large of an expansion does not occur that either inadvertently requires an SDS permit or the SSTS becomes undersized. Re-measurement or table values are still allowed to be used for the owner or owners of an SSTS that want to conduct larger expansions. Finally, it is not appropriate to use flow measurements from one facility at another facility. Small differences in facilities can result in large

differences in realized wastewater flows. Therefore, it is reasonable to restrict flow measurements to use at the same facility at which the measurement occurred.

Proposed changes to Minnesota Rules Chapter 7082—Local ISTS Programs:

4. Part 7082.0700 Inspection Program for SSTS

Justification

Subp. 4. Compliance inspection; existing systems. Subpart 4 identifies the requirements for compliance inspection of an existing SSTS.

Subpart 4, item B, subitem (1) is revised to create minimum requirements for the inspection of sewage tanks. Though previous rulemaking and SONAR documents explored the possibility of requiring a minimum standard for tank inspection, the MPCA believes these revisions to the compliance inspection requirements in subitem (1) are now needed for several reasons. First, the agency has been notified about an increasing number of tank inspections in the past few years that were deficient; these deficiencies are mostly related to missed observations of cracked or leaking tanks that were identified on subsequent or follow-up tank inspections.

Next, the adoption of property transfer inspection requirements in local ordinance by many LGUs (167 in 2017) has increased the scrutiny being placed on tank inspections. MPCA staff has heard from many of the current inspectors in the field that this rule change will “level the playing field” and also from many individuals that implementing this rule change will help minimize the number of “bad” inspections that occur.

It is important to note that existing subitem (1) allows tank integrity and safety compliance assessments to be used to fulfill the inspection requirement. This means that a homeowner following the recommended tank maintenance schedule in Minn. R. 7080.2450, subpart 2 can request a tank integrity and safety compliance assessment from their maintainer at each visit and may never need an additional pumping of the tank. Additionally, some LGUs currently require tanks to be empty at the time of inspection and those LGUs have reported good success with their programs. Existing subitem (1) also requires that every tank that is certified complaint has had an inspection within the past three years for existing system inspections.

Subitem (1) is revised to add the requirement to inspect the tank through the maintenance hole, when available, to increase visibility of potential tank issues when an inspection occurs. This is reasonable because inspection of a tank through a four inch inspection pipe is extremely difficult and according to professionals frequently results in missed tank issues. The manhole requirement also mirrors the maintenance requirement in Minn. R. 7080.2450, subpart 3, item A, which requires removal of material through a maintenance hole because other removal methods do not adequately remove the contents of a sewage tank. By mirroring this requirement it is likely that inspectors will gather more information that will allow them to adequately assess a sewage tank.

5. Regulatory analysis

This part addresses the requirements of Minn. Stat. § 14.131 (a), which require state agencies to address a number of questions in the SONAR. In some cases, the response will depend on a specific amendment being proposed and specific detail will be provided. However, for most of the questions, the MPCA’s response can be general and will apply across all of the components of this rulemaking, regardless of the specific amendment being proposed.

A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The purpose of the proposed amendments is two-fold: first to clarify when a SDS permit is required rather than a local permit, and second to clarify when tank pumping is required for completion of a compliance inspection on an existing SSTS. Affected parties are SSTS owners and future owners (residential and commercial), LGUs with ordinances that regulate sewage treatment (counties, cities, and townships), SSTS licensed businesses, MPCA-licensed SSTS professionals, the University of Minnesota On-site Sewage Treatment Program, manufacturers of SSTS components, and related professional associations.

SSTS owners and future owners (residential and commercial), LGUs with ordinances that regulate sewage treatment (counties, cities, and townships), and SSTS licensed businesses represent the groups that bear the cost of complying with these rules.

Existing owners and future owners of SSTS, both residential and commercial, are expected to benefit from the proposed rule amendments. The proposed amendments will make the rule clearer, adding flexibility to determine permit requirements, and provide clarity by specifying what is required for compliance inspection of existing SSTS.

All persons who use Minnesota's water resources and the environment could be affected by, and benefit from, the State's SSTS rules. The rules prevent the improper location, design, installation, use, maintenance, and abandonment of SSTS which could adversely affect water quality and the public health, safety, and general welfare by the discharge of inadequately treated sewage to surface and groundwater of the state of Minnesota.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The probable costs to the MPCA are minimal. The expected costs are related to time spent responding to calls from homeowners, realtors, and SSTS related professionals. These tasks fall within the current scope of MPCA staff duties and responsibilities and represent no increase in workload.

The expected implementation and enforcement costs to other state agencies is minimal because the proposed changes do not significantly modify the requirements for SDS permits (i.e., any agency that already has a permit will already need to pay for renewals and amendments and this change will not increase their cost). The potential costs to other state agencies would be borne in the cost of tank maintenance event at the time of a compliance inspection. This cost is highly dependent on the current practices of the agency in relation to compliance inspections and maintenance. Any agency following existing 7082 and 7080 requirements would have no additional costs, whereas there is a potential cost ranging from \$0 to a few hundred dollars every three to five years for those not following existing rules.

There is no expected effect on State revenue due to the limited scope of the SDS permitting rule change and any systems cancelling an SDS permit resulting in less staff time needed for review.

The State will not need to request additional funds to implement and enforce this rulemaking. Any additional staff resources needed on a temporary basis for rule outreach and implementation will be achieved through reassignment of existing staff resources.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There have not been any alternative methods proposed for determining permit flow that would be less

costly than the currently proposed method. This proposal represents a compromise between regulatory expectations and rule flexibility while still allowing for SDS permitting that is protective of human health and the environment. This rule change represents a less costly method than is currently in rule.

The last proposed inspection protocol has been in place for close to 10 years and has resulted in the current rule proposal. The existing rule while potentially less costly has been demonstrated to not have the necessary protections for environmental safety pertaining to tank integrity. For example, existing rule has allowed for inspections to occur that did not identify leaking septic tanks that were easily identified on subsequent inspections through a visual observation in the maintenance hole.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

Alternatives to flow measurement methods were proposed by multiple parties in internal and external meetings and were considered by the MPCA. This proposal is a result of compromise between the agency and affected parties and represents a middle ground between rule flexibility and protection of public health and the environment.

Alternatives to visual tank inspection that were proposed involved pressure and vacuum testing of tanks. These proposals were rejected due to complexity of measuring and cost from implementation.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The probable costs of complying with the rule amendments range significantly from party to party, as well as from system to system. Due to the specificity required at each SSTS location, the differences in existing local permitting requirements, and variations in maintenance practices, these proposed rules could have cost ranges from cost savings to tens of thousands of dollars. Estimated costs should not be approximated without more information on each unique situation. Examples of this include a current SDS permitted facility that can cancel their state permit and move to a local permit. This would result in a cost savings. An example of a large cost would be a currently locally permitted SSTS that needs an SDS permit based on estimated flows. The cost of installing flow measuring devices, monitoring of those devices, and hiring an AELSLAGID professional to assess groundwater characteristics could cost tens of thousands of dollars. The result of this cost may be determining that an SDS permit is not necessary and result in a savings in permit fees over the life of the system.

A summary of the economic factors associated with the proposed amendments to Minn. R. chs. 7081 and 7082 is provided below in Section 9, Consideration of economic factors.

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The cost of not adopting the proposed rule will be zero as existing rules are currently in effect.

The consequences of not adopting the proposed rule involve a constrained permitting process as well as potential negative outcomes for parties involved in property transfers. Examples included systems receiving an SDS permit that may have wastewater flows that do not support that determination and homeowners being forced to bear the costs of system replacement in the future when a system that was already broken is transferred based on inaccurate knowledge.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

Minn. Stat. § 14.131 requires that the MPCA consider the proposed amendments in relation to the corresponding federal requirements. In addition to this requirement to benchmark with the federal program, there is an additional requirement in Minn. Stat. § 116.07, subd. 2(f), that requires the MPCA to benchmark with the federal program and also with other states bordering Minnesota and with other states within EPA Region 5.

Because rules governing septic systems do not fall into the categories of “air quality, solid waste, hazardous waste, or water quality standards” (Minn. Stat. § 116.07, subd. 2(f)) and there are no federal regulations that govern SSTS pertaining to permitting or inspection of septic systems, this requirement does not apply, so no assessment of any differences between the proposed rule and existing federal rule or other states’ standards is provided.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Minn. Stat. § 14.131 defines “cumulative effect” as “the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

The MPCA is proposing these rule amendments to provide clarity and flexibility, and reduce uncertainty in the regulatory process. Because there are no federal regulations that govern SSTS, the proposed amendments do not establish overlapping or cumulative requirements or standards that would apply in addition to federal regulations. The proposed rule amendments will not result in any cumulative effect in association with any other state or federal regulations. The MPCA believes that the rules will benefit owners of SSTS in their understanding of the SSTS rules by providing clear regulatory requirements.

6. Environmental justice policy

The MPCA’s Environmental Justice Framework 2015 – 2018 (EJ Framework), on page 3, describes the MPCAs history with environmental justice (EJ):

“Following action on the national level, the MPCA began formally working on environmental justice in the mid-1990s. Presidential Executive Order 12898, issued in 1994, directed each federal agency to make “achieving environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations.”

The Presidential Executive Order built on Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination based on race, color, or national origin. As a recipient of federal funding, the MPCA is required to comply with Title VI of the Civil Rights Act.

The MPCA developed a policy for environmental justice that closely mirrors the EPA policy. The MPCA’s policy, last revised in 2012, states:

“The Minnesota Pollution Control Agency will, within its authority, strive for the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies.

Meaningful involvement means that:

- *People have an opportunity to participate in decisions about activities that may affect their environment and/or health.*
- *The public's contribution can influence the regulatory agency's decision.*
- *Their concerns will be considered in the decision making process.*
- *The decision-makers seek out and facilitate the involvement of those potentially affected.*

The above concept is embraced as the understanding of environmental justice by the MPCA."

As explained in the EJ Framework on page 11, when undertaking rulemaking the MPCA considers how the impacts of a proposed rule are distributed across Minnesota and works to actively engage all Minnesotans in rule development. This review of the impacts and meaningful involvement are provided in this section of the SONAR for ease of review with the rest of the Regulatory Analysis, though these analyses are not required under the Administrative Procedures Act (Minn. Stat. ch. 14).

Equity analysis

To implement the "fair treatment" aspect of the EJ Framework policy, the MPCA would generally complete an equity analysis considering and documenting how the proposed rule may affect low-income populations and communities of color.

The MPCA does not expect the proposed rules to have any negative environmental consequences. The proposed rules will apply statewide, with no particular effect on any community more than another.

Meaningful involvement

In order to meet the directive to strive for "meaningful involvement," the MPCA works to seek out and facilitate the involvement of those potentially affected by the proposed rule, particularly those populations that have historically not been as engaged in the public process.

As described in Section 2, Public participation and stakeholder involvement, there has been stakeholder involvement during the development of the proposed rules. While there was no specific plan developed to reach out to low-income populations and communities of color, we believe our stakeholder outreach has ensured that most affected communities are aware of the rule. Additionally, during the formal public comment period, all interested and affected parties may submit comments on the proposed rulemaking.

7. Notice plan

Minn. Stat. § 14.131 requires that an agency include in its SONAR a description of its efforts to provide additional notification to people or classes of people who may be affected by the proposed rule, or explain why these efforts were not made.

The MPCA uses a self-subscription service for interested and affected parties to register to receive rule-related notices. Request for US Mail service is available. Rule projects are listed on the Agency's Public Rulemaking docket. Once projects are active (i.e., no longer listed as a future project), a self-subscription list for that specific rule is established and an electronic notice sent to individuals who have self-

subscribed to receive notice for all rulemakings. The Agency also purchases the League of Minnesota Cities' email address list on a yearly basis. The list is used to reach out to new government officials who may not be familiar with the electronic delivery system used by the MPCA to send rule notices, public notices, and other information. Examples of the government officials are MN Cities, County Chairs, Zoning and Planning, Commissioners, and Solid Waste Officers. An electronic message is sent inviting individuals to subscribe to topics that interest them. The MPCA sent an electronic message to the government officials on March 9, 2018.

A. Required notice

On December 11, 2017, the MPCA published notice in the *State Register* requesting comments on planned rule amendments to Minnesota Rules Chapters 7081 and 7082. The notice was also placed on the MPCA's Public Notice webpage and the rule-specific webpage at <https://www.pca.state.mn.us/water/amendments-subsurface-sewage-treatment-systems-inspection-and-permit-requirements>. On the same day, the MPCA sent a bulletin to notify interested parties who subscribed to the SSTS Inspections and Permit Requirements Rule GovDelivery list (1,353 recipients).

- 1) The MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments to all parties who have registered with the MPCA for the purpose of receiving notice of rule proceedings, as required by Minn. Stat. § 14.14, subd. 1a, at least 33 days before the end of the comment period (as required by Minn. R. 1400.2080, subp. 6). Any parties within this group that have requested non-electronic notice will receive copies of the Notice and the proposed rule amendments in hard copy via US Mail.
- 2) The MPCA intends to send a cover letter with a link to electronic copies of the Notice, SONAR, and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments, and to the Legislative Coordinating Commission, as required by Minn. Stat § 14.116. Again, this notice will occur at least 33 days before the end of the comment period. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the Agency authority to adopt the proposed rules, the Agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting house and senate legislators who were chief authors of the bill granting the rulemaking. This does not apply because no bill was authored within the past two years granting rulemaking authority.
- 3) The MPCA intends to send a copy of the SONAR to the Legislative Reference Library in accordance with Minn. Stat. § 14.131 at least 33 days before the end of the comment period, when the Notice is mailed under Minn. Stat. § 14.14, subd. 1a.
- 4) Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than 30 days before publication of the proposed rule in the *State Register*, if the rule has an impact on agricultural land. The MPCA does not believe the proposed amendments will have any direct impact on agricultural land or farming operations so this requirement does not apply.
- 5) Minn. Stat. § 116.07, subd. 7, requires notification of specific legislators of the adoption of rules applying to feedlots and fees. The proposed amendments do not relate to feedlots or fees so this requirement does not apply.

In addition, a copy of the Notice, proposed rule amendments and SONAR will be posted on the MPCA's Public Notice webpage: <https://www.pca.state.mn.us/public-notices>.

B. Additional notice

Minn. Stat. § 14.14 requires that in addition to its required notices,

“each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.”

The MPCA considered these statutory requirements governing additional notification and as detailed in this section, intends to fully comply with them. In addition, as described in Section 2, Public participation and stakeholder involvement, the MPCA has made reasonable efforts, thus far, to notify and involve the public and stakeholders in the rule process, including various meetings and publishing the RFC.

The MPCA intends to request that the Office of Administrative Hearings review and approve the Additional Notice Plan, pursuant to Minn. R. ch. 1400.2060. The MPCA’s plan to notify additional parties is as follows:

- 1) Provide specific notice to tribal authorities. The MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and the proposed rule amendments to the 11 federally recognized tribes in Minnesota. The list of air and water tribal contacts is maintained by the MPCA and is edited quarterly. This Notice will be sent at least 33 days before the end of the comment period.
- 2) Provide specific notice to associations, environmental groups, and other entities. The MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and the proposed rule amendments to the following entities on or near the day the proposed rule amendments are published in the State Register (Note: some members of these entities may already subscribe to receive GovDelivery notices):
 - Association of MN Counties
 - Association of Metropolitan Municipalities
 - League of Minnesota Cities
 - Minnesota Association of Townships
 - Minnesota City/County Management Association
 - Minnesota Center for Environmental Advocacy
 - Clean Water MN Isaak Walton League (MN Division)
 - MN Chamber of Commerce
 - MN Wastewater Operators Association
 - MN On-Site Wastewater Association
 - Metropolitan Council
- 3) Provide notice in electronic newsletter. The MPCA uses electronic newsletters to provide updates and information about rulemakings, as explained above in Section 2. The MPCA will provide notice in the SSTS Bulletin newsletter with a hyperlink to the webpage where electronic copies of the Notice, SONAR, and proposed rule amendments can be viewed.
- 4) Post the Notice, SONAR, and proposed rule amendments on the subsurface sewage treatment systems inspection and permit requirements rule webpage at

<https://www.pca.state.mn.us/water/amendments-subsurface-sewage-treatment-systems-inspection-and-permit-requirements>.

Pursuant to Minn. Stat. § 14.14, subd. 1a, the MPCA believes that following the steps of this Additional Notice Plan and its regular means of public notice, including publication in the *State Register* and posting on the MPCA's Public Notice and rulemaking webpages, will provide adequate notice of this rulemaking to parties interested in or regulated by these rules.

8. Performance-based rules

Minnesota Stat. § 14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the MPCA's regulatory objectives while allowing maximum flexibility to regulated parties and to the MPCA in meeting those objectives.

The MPCA believes the proposed rule amendments achieve the policy outlined in Minn. Stat. § 14.002 because they clarify the purpose of the rules and regulatory requirements of the rules. The proposed rule amendments should help remove confusing language in the existing rules, and increasing the effectiveness of the regulatory program and the ease of following its requirements.

When the SSTS rules were revised in 1996, they addressed the need for regulatory flexibility by allowing local permitting authorities to adopt environmental performance ordinances that used standards other than the established standards in state rules to achieve specific environmental outcomes. To date no counties have adopted any performance-based ordinances.

Currently, less than one percent of the systems in Minnesota are classified as performance-based systems, now called Type V systems. The MPCA believes that disinterest in the use of performance-based designs is due to the fact that these types of systems are more expensive, require more maintenance, and have unknown reliability for wastewater treatment and performance. They also require an assessment of local conditions to evaluate environmental sensitivity. The MPCA's acknowledgement that these types of performance-based decisions can be made by the LGU as well as by the MPCA resulted in rule amendments, adopted in 2008, that gave LGUs the authority to determine site specific sensitivities. Therefore, the MPCA finds it is appropriate to continue to provide the option of regulatory flexibility for specific regional and administrative reasons, and is not proposing to revise the existing rules that give LGUs authority to determine site specific sensitivities in this rulemaking.

Although the local authority to implement the performance-based outcomes continues to be an element of the SSTS rules, one of the proposed amendments revises a performance-based outcome. The revision to Minn. R. 7082.0700, subpart 4, Item B, subitem (1) introduces minimum requirements for the inspection of a sewage tank. However, this revision does not remove the flexibility of the inspector to use any other tools in the inspection of a tank; it only creates minimum requirements for tank inspection.

9. Consideration of economic factors

In exercising its powers, the MPCA is required by identical provisions in Minn. Stat. § 116.07, subd. 6, and Minn. Stat. § 115.43, subd. 1, to give due consideration to:

...the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result there from, and shall take or

provide for such action as may be reasonable, feasible, and practical under the circumstances...

This section summarizes the economic factors associated with the proposed amendments to Minn. R. chs. 7081 and 7082.

A. Summary of the general economic impact of the proposed rule amendments

The MPCA does not expect that the proposed rule amendments will significantly increase the cost of operating an SSTS business in Minnesota, nor will they significantly increase the cost of owning an SSTS in Minnesota. The proposed amendments will not impact the design and operation of septic systems across the state because the technical specifications and major components of system design have been established in previous rulemakings. The MPCA believes that there will be an economic benefit to large system owners relating to permitting fees, and an environmental benefit to the citizens of Minnesota provided through specific compliance inspection requirements.

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. A formal cost-benefit analysis is not possible for this rulemaking because of the difficulties in estimating environmental benefits without specific studies. Examples of difficulties range from quantification of the impacted resources (gallons of water, cubic feet of soil, etc.) to determinations of exact economic impacts. For example, placing an economic value on avoiding or abating pollution of one gallon of water changes drastically based on whether the gallon recharges an aquifer, or a surface water the method of transport, time of transport, likelihood of negative impact on the destination water and whether human health is impacted and at what severity.

B. Summary of the economic impact of the specific proposed rule amendments

The MPCA believes that it is of the greatest interest to the regulated community to identify and evaluate the expected costs of each of the proposed rules. The following summary of the economic impact focuses on the costs associated with those rule amendments that the MPCA has determined will have an economic impact. The summary also addresses the economic benefits from the proposed amendments, because a thorough evaluation of economic impact should not focus solely on costs.

Part 7081.0020, Subpart 7a. The proposed rule allows for systems to be evaluated for potential impacts to down gradient water supplies. This work will need to be completed by an appropriately licensed AELSLAGID professional. Traditionally, this type of assessment can cost \$3,000 to \$50,000 to complete. This cost will be borne by the system owner. This assessment is currently required to be completed by all state permitted systems. Therefore, if the cost of completing this assessment pre-state permitting allows for a lower permit fee for the system, then there will be a cost savings. In the event that the work is completed and a state SDS permit is still required, then the information from the assessment will be relevant to the state permitting process.

Part 7081.0040, Subpart 1, Item B. The 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. Additionally, this change will increase the potential business pool for Minnesota licensed Advanced Design businesses; therefore, increasing potential revenue by generating more work for the business.

Part 7081.0040, Subpart 1, Item D. The proposed rule amendment requires submittal of flow data to the MPCA. This requirement should have no economic impact. Currently permitted systems are required to submit this information already, and any owners that do not need a permit should spend minimal time digitally submitting the results of their required monitoring to the MPCA.

Part 7081.0040, Subpart 1a, Item A. The proposed rule amendment is a language change only and will have no impact to any economic factors.

Part 7081.0040, Subpart 1a, Item B. The 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.

Part 7081.0130, Subpart 1. The proposed rule amendment ensures that measured flow value is used for design flow when higher than estimated flow value. This language is similar to the “greater of” language deleted from Minn. R. 7081.0040, Subpart 1a, item B. However, it still allows more flexibility than currently allowed under existing rule because it allows for reduced permitting fees based on measured flows while still requiring system sizing to be appropriate for the flow being generated. Therefore, it is not expected to add any cost because under existing rule an owner would need to have the same system design but would have a different permit at a higher cost.

Part 7081.0130, Subpart 1, Item A, Subitem (2). The proposed rule allows flow equalization for new facilities not at maximum capacity. This rule is added for flexibility in design and will reduce costs for some systems by reducing overall system size. Systems that do not meet the rule requirements will not notice an increase in cost from implementation of this rule because they will have the same system with or without implementation of this rule.

Part 7081.0130, Subpart 1, Item A, Subitem (3). The proposed rule amendment ensures septic tank sizing is adequate for system performance. This change does not result in a cost from implementation because it assures that septic tank sizing remains consistent with existing sizing requirements.

Part 7081.0130, Subpart 1, Item B. The rule amendment incorporates the Prescriptive Designs and Design Guidance for Advanced Designers document into rule when measuring flows. This document is currently required to be followed for flow measurement so adding the reference for clarification will not change the cost of flow measurement.

Part 7081.0130, Subpart 1, Item C. The proposed rule introduces expansion criteria into the rule. This rule limits expansion to 25% of existing flow and only allows extrapolation on specific units at the same facility. This rule adds flexibility for owners and designers because the existing rule would require table value flows for expansions. There is a potential cost to owners for measurement and re-measurement; however, it is expected that the cost of measurement offsets the cost of an SDS permit when expansion

is desired. Analysis above has already discussed proposed costs for flow measurement.

Part 7082.0700, Subpart 4, Item B, Subitem (1). The proposed rule amendment requires septic tanks be empty of sewage when being inspected for watertightness. The existing rule is silent on minimum requirements for inspecting a tank resulting in poor inspections across the state. The proposed rule sets a minimum requirement that tanks be empty when inspected to allow visual observations to occur. The proposed rule will also allow for tanks that are clearly failing to be exempt from being empty while inspected in order to reduce unnecessary costs.

Existing Minn. R. ch. 7082.0700 subp. 2, Item A, subitem (2) and Minn. Stat. § 115.55 subd. 5 item B only requires septic system compliance inspections for bedroom additions on properties where the LGU issues permits for the addition of a bedroom. This means that only those homeowners adding bedrooms would need to pay for the removal of septage when having the tank inspected; and would likely impact a fairly small number of homeowners each year.

The larger cost concern with this rule amendment involves conformance with a LGU ordinance that requires inspections for more conditions than in state SSTS rules. The largest cost of these “other” required inspections occurs at property transfer; 165 of 222 LGUs have this requirement in their local ordinance. Other required inspection triggers include land use permit requests, or set timeframes for inspection (three years typically). In those local jurisdictions that have additional optional inspection requirements, the increased costs from this proposed rule are difficult to accurately quantify because there is no standard method of tank inspection. Currently, septic system inspectors are not required to have a tank pumped in order to inspect it for watertightness. However, because many inspectors optionally chose to have the tank pumped for inspection, and there is no standard method of inspection, it is hard to place an accurate figure on the cost to system owners.

In 2016, 15,250 existing system compliance inspections were completed on the 537,354 septic systems statewide. Assuming that none of these inspections included pumping of the tank, and that this rule amendment would have required all of them to be pumped, the estimated economic impact would be: $15,250 \times \$200$ (average tank pumping cost) = \$3,050,000 statewide.

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). Using this inspection percentage, the estimated economic impact would be: $7,625 \times \$200$ (average tank pumping cost) = \$1,525,000 statewide.

Because compliance inspections of existing septic systems are valid for three years, compliance inspections are not a yearly cost for system owners. Additionally, as the majority of compliance inspections occur as the result of property transfer, and because the average homeowner moves approximately every seven years (U.S. Census Bureau, Minnesota Realtors Association), this cost would not be repeated frequently for most homeowners. However, an additional consideration is that the cost of this rule amendment would be disproportionately borne by rural Minnesotans because they make up the majority of homeowners who rely on septic systems for wastewater treatment.

It is also important to understand that Minn. R. 7080.2450 subp. 2 requires all homeowners to have their systems assessed every three years, which typically results in tank pumping. When this maintenance activity occurs, the certified professionals are allowed to complete a tank certification that can be used when an inspection occurs in lieu of pumping the tank at inspection. Because of this flexibility, the MPCA believes the above estimates are likely conservative. Homeowners following the required maintenance schedule would potentially see no increased cost over what they are currently paying for tank pumping and inspections.

Based on these factors, the estimated cost per homeowner would range from \$0 for those currently having pumping completed to \$67 per year for those homeowners who never had their tank pumped and had an inspection every three years.

Lastly are the costs that are borne by homebuyers. One of the reasons for amending these rules is to address inspections that were conducted indicating a compliant septic tank during a property transfer and then the tank subsequently failing when the new owner takes ownership. This ends up costing the buyer twice in that they are paying for a complaint system in the price of the property and then paying for it again when they have to replace system components. Replacement costs for septic tanks range from \$2,000 – \$4,000, and replacement costs for full systems range from \$6,000 - \$20,000. Additionally, the cost of lost time is passed on to all parties involved in the property transfer from realtors, to inspectors, to homeowners. There is no estimate of the number of systems/transfers this occurs at annually; however, the MPCA continues to see a few every year. The MPCA views this rule change as a net positive for home buyers in that it protects them from unnecessary costs while providing additional prescription to SSTS inspectors while conducting septic system inspections.

10. Consultation with MMB on local government impact

As required by Minn. Stat. § 14.131, the MPCA will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor's office for review and approval on the same day we send them to the Governor's office. We will do this before publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The MPCA will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearing (OAH) at the hearing or with the documents it submits for Administrative Law Judge (ALJ) review.

11. Impact on local government ordinances and rules

Minn. Stat. § 14.128, subd. 1, requires an agency to determine whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The MPCA has determined that the proposed amendments will have an effect on local ordinances or regulations.

The SSTS rules, including these proposed amendments, are required by Minn. Stat. § 115.55 to be implemented through LGUs. Minn. Stat. § 155.55 subd. 2 states:

“(a) 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. 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.

(b) A copy of each ordinance adopted under this subdivision must be submitted to the commissioner upon adoption. A local unit of government must make available to the public upon request a written list of any differences between its ordinances and rules adopted under this section.”

Under Minn. Stat. § 155.55, subd. 2, every county is required to incorporate the requirements of the state SSTS rules into ordinance, except where the statute authorizes the adoption of alternative local standards (Minn. R. 7082.0050). Minn. R. 7082.0050, subpart 1, item B provides a 24-month period for county ordinances to be updated after rule adoption, and up to an additional 12 months from the date of adoption of the county ordinance to update the city or township ordinance. The MPCA believes that

this additional time which allows for local response to rule amendments, if necessary, exceeds the requirements of Minn. Stat. § 14.128, subd. 2, and that no further modification to Minn. R. 7082.0050 is necessary to meet the intent of this statute.

Additionally, the manner in which LGUs have crafted their SSTS ordinance will dictate whether modification of their ordinance is necessary. In some LGU ordinances, the adopted SSTS rules found in Minn. R. chs. 7080 – 7083 are incorporated by reference, while other LGUs adopt the SSTS rule language directly into ordinance. LGUs in the former group are unlikely to need to modify their ordinance, while those in the latter group may have to update their ordinance depending on specific language in their existing ordinance.

12. Costs of complying for small business or city

Minn. Stat. § 14.127, subds. 1 and 2, require an agency to

“determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.”

The MPCA does not expect that the rule amendments will result in a cost to a business in excess of the \$25,000 threshold, due to the flexibility allowed by the existing rule and proposed rule language.

Most of the proposed amendments will not involve any new costs or increase in existing costs and in some cases, will create a savings by reducing permit fees for system owners who do not need an SDS permit based on Minn. R. 708.0040. The proposed amendment that the MPCA believes will increase the cost of compliance with the SSTS rule is in the requirement that tanks must be empty in order to certify tank integrity (Minn. R. 7082.0700, subpart 4).

The MPCA has estimated the economic impact of these amendments on the 83 reported cities that administer an SSTS program, either statutory or home rule charter cities. The amendments to chapter 7081 have the potential to increase the number of permits that need to be maintained by the city; however, due to the small number of large flow systems distributed across the state, and current implementation strategy it is not anticipated that more than a few cities would have any increase in permitted systems. Additionally, cities are not required to administer SSTS programs and may either decline to adopt an ordinance, or incorporate into an existing ordinance, a city could allow the responsibility for SSTS regulation to revert to the county. This has been occurring across Minnesota in the past decade.

13. Differences with federal and other state standards

Minn. Stat. § 116.07 subd. 2 requires that for proposed rules adopting air quality, solid waste, hazardous waste, or water quality standards, the SONAR must include an assessment of any differences between the proposed rule and existing federal standards adopted under the Clean Air Act, title 42, section 7412(b)(2); Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1); similar standards in states bordering Minnesota; and similar standards in states within the US Environmental Protection Agency (EPA) Region 5; and a specific analysis of the need and reasonableness of each difference.

Because rules governing septic systems do not fall into the categories of “air quality, solid waste, hazardous waste, or water quality standards” and there are no federal regulations that govern SSTS

pertaining to permitting or inspection of septic systems, this requirement does not apply, so no assessment of any differences between the proposed rule and existing federal rule or other states' standards is provided.

14. Authors, staff, and SONAR exhibits

A. Author

- 1) Brandon Montgomery, MPCA Environmental Specialist.

B. Other potential staff witnesses

- 1) The agency expects that the proposed amendments will be noncontroversial. In the event that a hearing is necessary, the agency anticipates having the listed author testify as witnesses in support of the need for and reasonableness of the rules.
- 2) Aaron Jensen, SSTS Policy and Planning and Compliance & Enforcement Unit Supervisor.
- 3) Jean Coleman, MPCA Staff Attorney.
- 4) Katie Izzo, MPCA Rule Coordinator.

C. SONAR exhibits

- 1) Exhibit 1: the Request for Comments as published in the December 11, 2017, issue of the *State Register*.
- 2) Exhibit 2: comment letters received in response to the Request for Comments.
- 3) Exhibit 3: list of meetings at which the proposed rule changes were discussed.

15. Conclusion

In this SONAR, the MPCA has established the need for and the reasonableness of each of the proposed amendments to Minn. R. chs. 7081 and 7082. The agency has provided the necessary notifications and documented in this SONAR its compliance with all applicable administrative rulemaking requirements of Minnesota statutes and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.



Laura Bishop, Commissioner
Minnesota Pollution Control Agency
8/19/19
Date

Official Notices

Minnesota Pollution Control Agency (MPCA) Request for Comments on Planned Amendments to Rules Governing Subsurface Sewage Treatment Systems Inspections and Permit Requirements, Minnesota Rules chapters 7081 and 7082; Revisor's ID Number 04478

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is requesting comments on planned amendments to water rules in *Minnesota Rules* chapters 7081 and 7082. This rulemaking is referred to as the Subsurface Sewage Treatment Systems (SSTS) Inspections and Permit Requirements Rule. The MPCA is considering amendments to *Minnesota Rules* parts 7081.0020, 7081.0040, 7081.0130, 7082.0700, and possibly other parts of chapters 7081 and 7082 appropriate to the scope of this rulemaking effort, and requests comments on the potential amendments from affected or interested parties. Comments should be submitted in writing in accordance with the provisions of this notice under the Public Comment section below.

Subject of Rules. The MPCA requests comments on its possible amendments to rules governing SSTS inspections and permit requirements. The MPCA is considering rule amendments that clarify when a State Disposal System (SDS) permit is required rather than a local permit, and when tank pumping is required for completion of a compliance inspection on an existing SSTS.

Under existing rules, a facility can measure its actual wastewater flows or use “table values”—values stated in rule for various types and sizes of facilities—to design a new SSTS. However, in circumstances where the measurements taken show a flow less than the 10,000-gallon-per-day (gpd) permit threshold but table values indicate a flow greater than 10,000 gpd, an SDS permit would still be required. The revisions the MPCA is considering would modify the rules to allow an existing facility to use measured values to determine permit requirements, as well as a few other modifications that capture the actual wastewater flows introduced to the environment more accurately.

The MPCA is also considering changes to wording in the SSTS rules to require that a septic tank be pumped empty before an official inspection determining its integrity. The revisions under consideration will require the tank to be inspected through a maintenance hole while empty, with the following exceptions:

1. If an inspector knows ahead of time that a particular septic tank is not going to pass inspection for any reason, then pumping the tank is not required. However, a tank can only pass an inspection if it was inspected while empty; or
2. A tank may pass inspection without first being pumped if there is a tank integrity inspection report available that shows the tank has passed inspection (with the tank empty) within the past 3 years.

Plain-Language Summary of Where We Are in the Rulemaking Process. This request for comments is the MPCA's legal notice of its intention to begin rulemaking. This is the first of several opportunities for public comment and input on this project. At this stage, we do not have a draft rule; we want your feedback to inform us about the ideas described under the Subject of Rules section above. If you have other ideas related to this rulemaking that we need to consider, please submit them in writing. For example, we recognize that costs to regulated parties can be a concern with rulemaking, so if you have cost information or data related to this rulemaking that you wish to share with us to inform our decisions, please submit that information. Submitting your ideas and data at this early stage in rulemaking allows us more time to address issues that may come up, and helps to ensure informed decision-making on our part.

Parties Affected. These amendments to the rules would be most likely to affect owners of properties with SSTS and large subsurface sewage treatment systems (LSTS), MPCA-licensed SSTS professionals, local units of government, and related professional associations.

Statutory Authority. *Minnesota Statute* § 115.55, subd. 3 authorizes the MPCA to adopt rules “containing minimum standards and criteria for the design, location, installation, use, maintenance, and closure of subsurface sewage treatment systems.”

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing until **4:30 p.m. on February 20, 2018**. The MPCA will not publish a notice of intent to adopt the rules until more

than 60 days have elapsed from the date of this request for comments. The MPCA does not plan to appoint an advisory committee for this rulemaking project.

In accordance with *Minnesota Statutes* § 14.128, the MPCA does anticipate that the rule amendments will require a local government to adopt or amend an ordinance or other regulation. Because of differences in local SSTS ordinances, it is possible that some county ordinances will require amendment under *Minnesota Statutes* § 115.55, subd. 2, which requires all counties to adopt ordinances that comply with revisions to the subsurface sewage treatment system rules within two years of the final adoption by the agency unless all towns and cities in the county have adopted the ordinances. Local governments may submit written information to the contrary.

The MPCA requests any information pertaining to the cumulative effect of the rule amendments with other federal and state regulations related to the specific purpose of the rule. *Cumulative effect* means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

Rules Drafts. The MPCA does not anticipate that a draft of the rule amendments will be available before the publication of the proposed rules. Parties interested in being notified when the rule proposal is published and of other activities relating to this (or other MPCA rulemakings) are encouraged to register for email bulletins at <http://public.govdelivery.com/accounts/MNPCA/subscriber/new>.

Agency Contact Person. Written comments, questions, and requests for more information on these possible rule amendments should be directed to Katie Izzo, Rule Coordinator—Minnesota Pollution Control Agency, 520 Lafayette Rd. N, St. Paul, MN 55155-4194; Telephone: 651-757-2595; Toll-free: 1-800-657-3864; or email: katie.izzo@state.mn.us.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge (ALJ) if and when a proceeding to adopt rules is started. The agency is required to submit to the ALJ only those written comments received in response to the draft rules after they are proposed. If you submit comments during the development of the rules and want to ensure that the ALJ reviews your comments, you should resubmit the comments after the rules are formally proposed.

Date: 11/22/2017

John Linc Stine, Commissioner
Minnesota Pollution Control Agency

From: [Troy J. Johnson](#)
To: [Izzo, Katie \(MPCA\)](#)
Subject: request for comments - revisors ID# 04478 - SSTS inspections and permit req's
Date: Tuesday, December 12, 2017 3:20:43 PM

Dear Katie,

Following are my comments in regards to the possible amendments to rules governing SSTS inspections and permit requirements.

- 1) In regards to amendments that clarify when an SDS permit is required rather than a local permit, the general premise is valid and the SSTS industry needs this issue to be updated to more realistic procedures. However the devil is in the details and this is a very complicated issue of which further comments can not be stated until further details have been decided by the agency.
- 2) In regards to changes in the wording of SSTS rules to require a septic tank to be pumped during inspection, this too is a worthy cause.

In the Request for Comments bulletin in regards to this item the agency states as the 2nd exception to the proposed requirement - *“a tank may pass inspection without first being pumped if there is a “tank integrity inspection report” available that shows the tank has passed inspection(tank empty) within the last 3 years”*.

A few comments on this statement:

- a) I would reword it to say “a tank may pass inspection without first being pumped if there is proof the tank was already pumped within the last 3 years, but the tank must still be certified compliant”. In this situation you would use the other methods to determine tank integrity.
Not all pumpers fill out the optional “sewage tank compliance certification” form during a maintenance event, it is not currently required, and should never be required.
If the owner just had their tank pumped for maintenance purposes and did not get a tank certification, we don’t want to make them spend money to pump it again.
In this exception the inspector just reverts back to the old methods we have used for 30 years to determine if the tank is compliant.
Locally we have had this wording in our ordinance for the past 7 years and it has worked out well. It is reasonable and the local professionals consider it common sense.
And this exception happens so rarely that I would guess in 7 years it has maybe happened twice.
- b) I am not familiar with a “tank integrity inspection report”, perhaps you are referring to the “sewage tank compliance certification” form included with the “sewage tank maintenance reporting form”?
- c) If the “tank integrity inspection report” is referring to the tank integrity section of the compliance inspection report, then if the tank was previously certified compliant, it should not matter if it was pumped or not – it has simply been determined compliant and has a legal status of such valid for 3 years.

So for multiple reasons, I would recommend NOT including a “tank integrity inspection

report of an empty tank” in the 2nd exception.

Thank you,
Troy Johnson
Wright county Environmental Health Officer

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From: [Vankeulen Don](#)
To: [Izzo, Katie \(MPCA\)](#)
Subject: SSTS Comment on Compliance Inspections
Date: Wednesday, December 13, 2017 12:57:45 PM

- Tank pumping is required for completing a compliance inspection on an existing SSTS

The MPCA is also considering rule changes to require that a septic tank be pumped empty before an official inspection to determine its integrity. The revisions under consideration will require the tank to be inspected through a maintenance hole while empty, with the following exceptions:

1. If an inspector already knows a particular septic tank will not pass inspection for any reason, pumping the tank won't be required. However, a tank can only pass inspection if it was inspected while empty.
2. A tank integrity inspection report shows the tank has passed inspection (with the tank empty) within the past three years.

A tank integrity report completed 2 years and 11 months prior to the Compliance Inspection would allow a tank inspection to be almost 6 years old. When 6 month's time can cause a baffle to be dislodged and cause drainfield failure or someone to drive over their tank and crack it. Allowing the 3 year integrity is blatant dishonesty. A compliance Inspection should require the tank to be pumped in the presents of the Inspector signing for the inspection. I have worked too many pumpers, who are not the inspector, not even look in a tank through all the covers when pumping for compliance and approve the tank only to find out that someone else had already noted the tank was bad in a previous compliance.

Don VanKeulen, PG
Environmental Safety Supervisor -Wetland, Well, Septic Inspector
Rochester-Olmsted Planning Department - Suite 100
2122 Campus Drive S.E.
Rochester, MN 55904
507-328-7118
vankeulen.don@co.olmsted.mn.us

From: [Carol Ashley](#)
To: [Izzo, Katie \(MPCA\)](#)
Subject: septic tank pumping compliance rule
Date: Thursday, December 28, 2017 8:59:32 AM

Just noticed in the Park Rapids Enterprise information about a new rule regarding compliance inspections.

I do agree with one of my county Commissioners that timing of emptying a tank is critical in any cold area. I personally, prefer to do it in the spring when there is adequate time to have enough in the tank to keep it from freezing. I made the mistake once in having mine pumped in the fall and would never want to do that again. It meant being without a working system through most of the winter. Please consider this climate issue as you refine this rule.

Carol Ashley
24639 County 25
Akeley, MN 56433

From: [Scott Robinson](#)
To: [Izzo, Katie \(MPCA\)](#)
Subject: comment - tank inspection
Date: Friday, January 5, 2018 2:55:45 PM

Hi Ka5tie,

I think the requirement should be a bit more strict regarding tank inspection. This item seems to be related to the conditions found in tanks, across the state, and the fact that they are deteriorating. Since this condition is related to time in service, I would suggest that the initial inspection, conducted at time of install, should be considered the start-time for allowing the tank to pass. As this condition results over time, deterioration could occur the longer the tank is in service, so I would abide by the existing 5-year, if new, or 3-year on subsequent inspection period(s).

To editorialize, I think the above time periods are *too* restrictive, as we are designing systems with 20+ year, expected, life-spans. That said, I would be commenting on easing those periods, if comment was elicited, but that's for another discussion.

Thanks,
Scott E. Robinson
MPCA #1110 - SSTS License

Terra Firma
www.terrafirma-mn.com

218-353-7669
218-220-2047

terra.firma.mn@gmail.com

6769 Leskinen Rd.
Finland MN 55603

From: [Jason Remiger](#)
To: [Izzo, Katie \(MPCA\)](#)
Subject: MPCA Proposed Septic Pumping Rule Changes
Date: Friday, January 12, 2018 8:39:38 AM

Katie,

I am writing as a property owner in northern Minnesota with a septic system. I have concerns regarding the septic tank pumping rule changes proposed by MPCA. Not only is it expensive to pump septic tanks, it also can be impractical depending on the time of year the pumping is done. As cold as it gets where my property is (not uncommon to see -30 to -40 F at some points in the winter) the last thing that I want is my septic to freeze. If the timing of the required inspection & subsequent mandatory pumping is in the fall, this is likely to cause issues due to lack of bacteria in the system generating enough heat to keep from freezing in such extreme cold (even when winterizing the system with additional insulation). The current law is sufficient, namely that I need my inspection done every 3 years by a licensed inspector who will be able to determine whether or not the septic needs to be pumped out to pass an inspection. Additionally, I do not use my septic tank enough to require it to be pumped every 3 years. I don't understand the point of requiring an inspector to be "licensed" if the inspector lacks good judgement needed to determine if the septic needs to be pumped in order to be properly inspected. Thank you for considering keeping the current law as is, and your confidence in the local contractors and citizens ability to manage our environment responsibly.

Best Regards,
Jason Remiger

From: [Mark Remiger](#)
To: [Izzo, Katie \(MPCA\)](#)
Subject: Proposed Rule Changes
Date: Monday, January 15, 2018 6:46:52 PM

Katie,

As a property owner, and resident of a northern Minnesota community with a septic system, I am writing this as the proposed changes bother me.

I have concerns regarding the septic tank pumping rule changes proposed by MPCA. I would like to see information from you as to what is the reason for the proposed change and what are you basing this change on (research data & documentation supporting the real need for change). Not only is it an added expense to pump septic tanks, it also can be impractical depending on the time of year the pumping is done. It is not uncommon to see -30 F to -40 F in the winter at my home for weeks at a time. The last thing that I want is my septic to freeze or to back up into my house. Believe me it would not a pleasant experience. If the timing of the required inspection & subsequent mandatory pumping is in the fall, this is likely to cause issues due to lack of bacteria in the system generating enough heat to

keep from freezing in such extreme cold (even when winterizing the system with additional insulation). The current law is sufficient, namely that I need my inspection done every 3 years by a licensed inspector who will be able to determine whether or not the septic needs to be pumped out to pass an inspection. Additionally, I do not use my septic tank enough to require it to be pumped every 3 years. I don't understand the point of requiring an inspector to be "licensed" if the inspector lacks good judgement needed to determine if the septic needs to be pumped in order to be properly inspected. Hubbard county has a good staff that is opposed to these changes and I support them. Thank you for considering keeping the current law as is, and your confidence in the local contractors and citizens ability to manage our environment responsibly.

Best Regards,
Mark Remiger



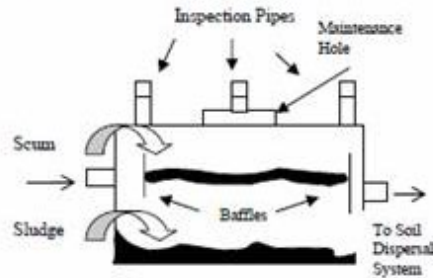
Septic Tank Maintenance

Water Quality/Wastewater #4.35 • July 2008

The purpose of this fact sheet is to discuss Subsurface Sewage Treatment System (SSTS) tank maintenance requirements.

Why is proper septic tank maintenance necessary?

Periodic removal of solids in septic tanks will ensure long-term and cost-effective service of the SSTS. Without proper maintenance the sludge layer at the bottom of the tank, and the floating scum layer, will accumulate and begin to flow from the tank into the soil dispersal system, commonly called the drainfield, leading to premature failure. Repair of a failed drainfield can be costly. Also, lack of proper maintenance can result in a sewage backup into the home.



When is proper maintenance required?

Minn. R. 7080.2450 requires a SSTS maintenance assessment at least once every three years. A local government's SSTS ordinance may contain stricter or additional

requirements, therefore, it is important to know and follow the local requirements.

Who is responsible for proper maintenance?

It is the system owner or the owner's agent's responsibility to assure maintenance is accomplished.

What is proper maintenance?

Minn. R. 7080.2450 requires the owner or owner's agent to regularly, but in no case less frequently than every three years.

- assess whether the sewage tank leaks below the designed operating depth
- assess whether sewage tank tops, riser joints, and riser connections leak
- measure accumulations of scum and sludge depths
- remove all tank contents when necessary

Also, local governments are required to have a management plan for all new or replacement SSTS within their jurisdiction. This management plan must include a maintenance component.

When must the solids and liquids be removed from the tank?

All solids and liquids must be removed when the top of sludge layer is less than 12 inches below the bottom of the outlet baffle, or the bottom of the scum layer is less than three inches above the bottom of the outlet baffle.

From: winterberger@arvig.net
To: [Izzo, Katie \(MPCA\)](#)
Subject: Emailing: MPCA Letter RE Rule Change
Date: Thursday, February 15, 2018 3:50:36 PM
Attachments: [MPCA Letter RE Rule Change.pdf](#)
Importance: High

Katie,

Here are my comments on the proposed rule change. Please forward this to responsible parties.

Note: Hard copies will be sent via US Mail as well.

Thank you,

Al Winterberger

Your message is ready to be sent with the following file or link attachments:

MPCA Letter RE Rule Change

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

WINTERBERGER INSPECTIONS

Al Winterberger-SSTS Inspector/Designer
Subsurface Sewage Treatment Systems
State License #1565

24685 Washington Drive
Osage, MN 56570
Office: (218) 573-2275
Cell: (218) 255-1722
E-mail: winterberger@arvig.net

February 13, 2018

Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155
Attn: Rule Committee

RE: Proposed Rule; Tank Pumping for Existing SSTS Compliance Inspections.

To Whom It May Concern:

As an inspector with over 20 years of experience, I feel the need for this proposed rule does not exist. We did not have it when 7080 was written so why would we need it now? There are other methods available for the inspector to determine the status of a septic tank. If and when a tank needs to be pumped should be the decision of the inspector on a case by case basis.

If a system that has been idle for some period of time and the liquid level in the tank is at the invert of the outlet pipe, why pump the tank? It is not leaking. Also keep in mind, a camera inspection of an empty tank will not always reveal a crack. I've enclosed photos of a tank that I believed was leaking, but my video camera showed nothing obvious after the tank was pumped. The property owner was irate and wanted proof his tank was no good so the maintainer went into the tank with a power washer to remove the black stain off the tank walls and finally found the crack. I would hate to see someone hurt or killed doing this because they don't have the gear or training for confined space entry.

I knew of this proposed rule last year and put it to the test. What I found was most pumpers were booked two to four weeks out and most of my inspections needed to be completed within 10 days of the order. (I have enclosed testimonials from area pumpers.) So, I would visit the site and observe the tank at its operating level, inspect the other system components and then have to make a second trip back when the tank was pumped. This adds extra cost to the homeowner.

Another big issue is this proposed rule will give an unfair advantage to inspectors that own and operate pumper trucks. I do not want to be in the position to have to call one of my competitors to pump a tank. They will most likely tell me they can't make it for weeks, then go behind my back and make a separate deal and I lose the job! And if this rule is adopted, it will put me out of work for five months out of the year. No one in their right mind should pump a tank just before winter. And why just the tank? 7080.2050 Subp.3 Item B, (1) also requires drop boxes be water tight. Should we also require that all drop boxes be pumped as well? Seems to me this is more of a political rule, not a practical one.

Sincerely,



Al Winterberger

Enclosures



2017 Crack in tank

12.21.2017

Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Mn 55155-4194

To Whom It May Concern,

I was considering the new rule being made that would require that a septic tank would need to be pumped at the time a Compliance Inspection on an SSTS was conducted. If this rule is put into place, I foresee the following problems:

- 1) It will be difficult to align the schedules of the inspector & the maintainer to be at the site at the same time unless ample notice is provided. Our pump truck is typically scheduled two to four weeks out with appointments. It is almost impossible to accommodate pumping requests made at the last minute & many times, requests for compliance inspections are made within 2-4 days of a deadline. We do take into consideration the homeowner who has a septic emergency but it would be difficult to categorize a compliance inspection needed at the last minute as an emergency.
- 2) My company employs two inspectors with 25 years of combined experience. Both inspectors are of the opinion that a compliance inspection should be done when a tank is full because it is easier to determine if cracks, and therefore, leaks in the tank exist.
- 3) There are potential increased or unnecessary costs to the homeowner:
 - a) Tanks should be pumped every two – three years. A diligent homeowner will have had their tank pumped regularly, and this could, quite possibly fall within a year or two prior to the needed compliance inspection. If an empty tank is needed for an inspection and a homeowner had their tank pumped within that

Thelen's Excavating Inc.

32996 County Rd 135
Park Rapids, MN 56470

Phone: 218-732-0015
Fax: 218-732-4089

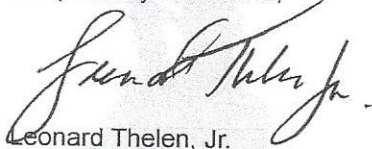
thelensexavating@gmail.com



- year or two prior, they will have to pay an additional \$125-\$200 for another tank pumping.
- b) Multiple trips to the site may be required by the inspector and/or the maintainer requiring additional charges for their time.
- 4) We land apply all waste that we pump. Requiring that tanks be pumped at the time of an inspection will result in an increase in the amount of sewage land applied. We have limited space approved for land application. Additional pumpings resulting in additional, unanticipated, disposal/application could limit the ability for us to pump tanks because we would have run out of available, approved land on which to apply until a new window of application opens up.

Please give consideration to dynamics of this new rule before it is approved by "the powers that be".

Respectfully Submitted,



Leonard Thelen, Jr.
Thelen's Excavating & Septic, Inc.
Park Rapids, MN 56470
218.732.0015

BOB'S ECONO PUMP, INC.
P.O. BOX 1402
BEMIDJI, MN 56619
218-751-6410

December 19, 2017

Minnesota Pollution Control Agency
520 Lafayette Rd.
St. Paul, MN 55155-4194

To Whom It May Concern:

It was brought to my attention that a new rule was being made that in order for a Compliance Inspection on a SSTS System that the septic tank needs to be pumped at the time of inspection. This ruling is not a very thought out rule. As a Pumper/Maintainer it is impossible for us to schedule these inspections on "spur of the moment" scheduling. If this rule goes into effect, it would be a hardship not only on Septic Pumpers but on the Compliance Inspectors also because they would have to make multiple trips to the site.

We as Pumper/Maintainers book customers two weeks to a month in advance in the summer and fall of the year. It becomes impossible to schedule these inspections in a timely manner.

As a Maintainer, I have to treat the Inspector's the same as my other customers so no one gets treated unfairly. In order for me to make this new rule effective, I would have to purchase another truck and hire another employee and there is not enough Compliance Inspections to make this financially possible.

This new rule needs to be thought out more before the MPCA makes it a rule.

Sincerely,
BOB'S ECONO PUMP, INC.

Jeff Delaney
Owner



From: [Ryan Hamilton](#)
To: [Izzo, Katie \(MPCA\)](#)
Subject: Comment Letter on planned amendments to water rules in Minnesota Rules chapters 7081 and 7082
Date: Friday, February 16, 2018 3:28:07 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[MN Realtors Septic Pumping Rulemaking Comment Letter.pdf](#)

Katie-

Minnesota Realtors respectfully submits the attached comment letter regarding the planned amendments to water rules in Minnesota Rules chapters 7081 and 7082.

Best regards,

Ryan Hamilton

Associate Legal Counsel



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5750 Lincoln Dr
Edina, MN 55436

February 12, 2018

Ms. Katie Izzo, Rule Coordinator
Minnesota Pollution Control Agency
520 Lafayette Rd. N, St. Paul, MN 55155-4194

[VIA E-MAIL & US MAIL](#)

RE: Subsurface Sewage Treatment System (SSTS) Inspections and Permit Requirements Rulemaking

Dear Ms. Izzo:

I am writing to you on behalf of the Minnesota Association of REALTORS® (MN REALTORS®) in response to the Minnesota Pollution Control Agency's (MPCA) request for comments on planned amendments to SSTS-related rules regarding when tank pumping is required for completion of a compliance inspection.

[Statement of Interest](#)

MN REALTORS® is the largest professional trade association in Minnesota. We have over 18,000 members who are involved in all aspects of the real estate industry and work closely with home buyers and home sellers every day. Last year, our members were involved in over 85,000 real estate closings across the state. As such, MN REALTORS® members have a unique relationship with homeowners and first-hand experience with how government regulations can impact both individual homeowners as well as the housing market.

[Comments](#)

While individual member reactions to this rulemaking proposal will vary due to differences in local SSTS ordinances, MN REALTORS® comments can be categorized into the following major points of concern and factors for consideration:

Existing Rules and Ordinances are Adequate

Many REALTORS® believe that the current SSTS ordinances in their particular areas are acceptable and effective. They believe that local units of government are in the best position to create SSTS ordinances that makes sense for their jurisdiction.

Phone: 952.935.8313
Toll Free: 800.862.6097
Fax: 952.935.3815

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



5750 Lincoln Dr
Edina, MN 55436

Many REALTORS® also believe that the inspectors themselves are in the best position to determine if a tank should be pumped empty during a integrity inspection. The MPCA should defer to inspectors, rather than creating a one-size-fits-all mandate.

Increased Cost for Consumers

MPCA should be aware that requiring septic tanks to be pumped empty before an integrity inspection has the potential to add a significant cost to each real estate transaction in which an SSTS inspection is required.

Tank Freezing Risk

MN REALTORS® urges the MPCA to consider the potential risks involved with pumping tanks empty in the Fall and Winter (cold weather) months. The concern is that tanks pumped in the Fall will not have time to accumulate the amount of material required to keep the tanks warm enough to prevent cracking. This concern is enhanced for vacant and seasonal homes. MN REALTORS® is also concerned that the freezing risk would have an adverse market impact, as homeowners would only be comfortable selling their properties during limited portions of the year.

Delayed Transactions

MPCA should be aware that requiring septic tanks to be pumped empty before an integrity inspection will likely cause real estate transactions to be delayed. The MPCA should consider that pumpers may not have the capacity to handle the increased volume of work orders in a timely manner if this new pumping requirement is enacted.

We respectfully request that the Minnesota Pollution Control Agency maintain the ability of local units of government and inspectors to use their best judgment with respect to when a tank needs to be pumped empty and forego creating a one-size-fits-all requirement. If amendments are truly necessary, they should be crafted in a manner that does not adversely affect the housing market, increase the potential for having tanks freeze, or unnecessarily delay transactions.

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Email: info@mnrealtor.com



5750 Lincoln Dr
Edina, MN 55436

Please contact me with any questions regarding MN REALTORS® comments or to schedule a meeting to discuss the concerns outlined in this letter. I can be reached at (651)262-5972 or rhamilton@mnrealtor.com

Thank you for your consideration of our comments, concerns and proposed alternatives.

Sincerely,

A handwritten signature in black ink that reads "Ryan Hamilton". The signature is fluid and cursive, with the first name "Ryan" and last name "Hamilton" clearly distinguishable.

Ryan Hamilton
Associate Legal Counsel
Minnesota REALTORS®

Phone: 952.935.8313
Toll Free: 800.862.6097
Fax: 952.935.3815

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

From: winterberger@arvig.net
To: [Izzo, Katie \(MPCA\)](#)
Subject: SSTS Proposed Rule Comments
Date: Tuesday, February 20, 2018 8:24:48 AM
Attachments: [MPCA Letter RE Rule Change.pdf](#)
Importance: High

Katie,

Here are my comments on the proposed rule change. Please send me a e-mail conformation that you received this.

Thank you,

Al winterberger

WINTERBERGER INSPECTIONS

Al Winterberger-SSTS Inspector/Designer
Subsurface Sewage Treatment Systems
State License #1565

24685 Washington Drive
Osage, MN 56570
Office: (218) 573-2275
Cell: (218) 255-1722
E-mail: winterberger@arvig.net

February 13, 2018

Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155
Attn: Rule Committee

RE: Proposed Rule; Tank Pumping for Existing SSTS Compliance Inspections.

To Whom It May Concern:

As an inspector with over 20 years of experience, I feel the need for this proposed rule does not exist. We did not have it when 7080 was written so why would we need it now? There are other methods available for the inspector to determine the status of a septic tank. If and when a tank needs to be pumped should be the decision of the inspector on a case by case basis.

If a system that has been idle for some period of time and the liquid level in the tank is at the invert of the outlet pipe, why pump the tank? It is not leaking. Also keep in mind, a camera inspection of an empty tank will not always reveal a crack. I've enclosed photos of a tank that I believed was leaking, but my video camera showed nothing obvious after the tank was pumped. The property owner was irate and wanted proof his tank was no good so the maintainer went into the tank with a power washer to remove the black stain off the tank walls and finally found the crack. I would hate to see someone hurt or killed doing this because they don't have the gear or training for confined space entry.

I knew of this proposed rule last year and put it to the test. What I found was most pumpers were booked two to four weeks out and most of my inspections needed to be completed within 10 days of the order. (I have enclosed testimonials from area pumpers.) So, I would visit the site and observe the tank at its operating level, inspect the other system components and then have to make a second trip back when the tank was pumped. This adds extra cost to the homeowner.

Another big issue is this proposed rule will give an unfair advantage to inspectors that own and operate pumper trucks. I do not want to be in the position to have to call one of my competitors to pump a tank. They will most likely tell me they can't make it for weeks, then go behind my back and make a separate deal and I lose the job! And if this rule is adopted, it will put me out of work for five months out of the year. No one in their right mind should pump a tank just before winter. And why just the tank? 7080.2050 Subp.3 Item B, (1) also requires drop boxes be water tight. Should we also require that all drop boxes be pumped as well? Seems to me this is more of a political rule, not a practical one.

Sincerely,



Al Winterberger

Enclosures



2017 Crack in tank

12.21.2017

Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Mn 55155-4194

To Whom It May Concern,

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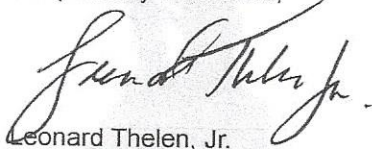
thelensexavating@gmail.com



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Respectfully Submitted,



Leonard Thelen, Jr.
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Park Rapids, MN 56470
218.732.0015

BOB'S ECONO PUMP, INC.
P.O. BOX 1402
BEMIDJI, MN 56619
218-751-6410

December 19, 2017

Minnesota Pollution Control Agency
520 Lafayette Rd.
St. Paul, MN 55155-4194

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Sincerely,
BOB'S ECONO PUMP, INC.

Jeff Delaney
Owner



From: [Kyle P. Vareberg](#)
To: [Izzo, Katie \(MPCA\)](#)
Cc: [Larry A. Knutson](#)
Subject: Proposed Amendment Comment-Tank Pumping Req. For Compliance Insp. On Existing SSTS
Date: Tuesday, February 20, 2018 9:27:47 AM
Attachments: [MPCA Tank-Pumping Comment.pdf](#)

Good Morning Katie,

Please find the attached pdf for Becker County's comment on the proposed tank pumping requirement for compliance inspections on existing SSTS.

Thank you,

Kyle Vareberg

Becker County Zoning Director

218-846-7314

kpvarab@co.becker.mn.us



COUNTY OF BECKER

Planning and Zoning

915 Lake Ave, Detroit Lakes, MN 56501
Phone: 218-846-7314 ~ Fax: 218-846-7266

02/20/2018

To Whom It May Concern:

This letter is written in **opposition** to the proposed MPCA rule, requiring tank pumping for a compliance inspection on an existing SSTS. Becker County has numerous concerns as followed:

- It is impossible to identify any crack with the thick black layer of sludge inside of a septic tank. The inside of the tank would require pressure washing, which in turn poses a health/safety threat to the individual performing the task. The cost estimate to perform this job is also very expensive.
- Identifying whether or not a crack is a structural crack or a stress crack is objectionable and would create more havoc on discretion with professionals in the field.
- Determining if a crack is leaking while the tank is empty is not only impractical, it's impossible. The tank would need to be excavated from the outside and examined while the tank is operating at its operating depth.
- Manhole covers do not exist on all existing systems. Examining the inside of a tank through a four or six inch inspection pipe is not effective.
- Attempting to have Maintainers and Inspectors coordinate with one another's schedule to be able to meet on-site is neither practical. The tank would have to be immediately inspected after a pump, due to the home owner's water usage.

This proposed rule is not feasible. Fulfilling this requirement would create more cost than the average new system and leave a huge burden on the homeowner. Again, Becker County is in huge opposition of the proposed tank pumping requirement for compliance inspections on existing SSTS.

Thank you,

Kyle Vareberg

A handwritten signature in black ink, appearing to read "Kyle Vareberg".

Becker County Zoning Director

From: [Edward Aletto](#)
To: [Izzo, Katie \(MPCA\)](#)
Subject: Opposal letter of the proposed pumping rule
Date: Tuesday, February 20, 2018 1:17:07 PM
Attachments: [mpcasewagedoc.pdf](#)

Here you go

Thanks , Ed

Aletto Onsite Design

D-1 / MPCA #808

Licensed Bonded Insured

2-19-18,

MPCA Staff to whom this may concern
C/O Katie Izzo

From: Edward C. Aletto
D-1 / MPCA # 808
Walker MN (218) 839-9919
Licensed originally in 1993.
Yes, been doing this for a while

Reasons I am absolutely opposed to the pumping of septic tanks on every compliance conducted.

- 1) It's simply not necessary. I have cameras and angles mirrors I used to inspect the tanks above to scum layer to identify levels and any large cracks in the sidewalls and lids of the tanks. If levels are not correct Than perhaps a pumping may be required.

It is another unnecessary expense for the homeowner as 90 % of them already pumped their tanks on a regular basis. On-Site education is key here.

We don't need more sewage on the ground in the State of Minnesota. The pumpers I know up here are already finding It difficult to find places to land apply raw sewage.

Let's pump another 1-2 million gallons on the ground every year And it's likely to cause a health epidemic. E.coli H7-0157, Salmonella, Hepatitis, Cryptosporidium are just a few of the nasty bugs found in all sewage, and that's just the beginning.

What about drugs in septic tanks from normal pharmaceutical use, this is toxic waste were talking about.

Mostly importantly is a safety issue at hand. When a tank is pumped and back flushed the only thing you can see is dark black walls , a person will be required to power wash from the inside of the tank , do we want employees crawling down manholes into used septic tanks ! I certainly hope not!

From a structurally standpoint, it's the sewage that's inside the tanks that keep them from cracking in the winter months. If tanks are pumped and left empty until spring they will crack-no doubt.

Lastly, I understand this law is being pushed by a lawmaker who had a bad experience at his own property regarding roots inside a septic tank. If that's the case than that inspector did not do a thorough job of inspection. That's why we have insurance for errors and omissions. Thank GOD I have never had to use mine.

Creating a knee jerk law in the ISTS industry because and inspector Did not perform his due diligence – should not be translated into a law that will not protect the environment-but make it worse. Not to mention the State will create a bigger problem with cracked tanks and the illegal dumping of raw sewage in non-approved land areas.

Through the leadership of the MPCA and the education provided to ISTS professionals across the State by the Minnesota Extension Service (Dave Gustafson)- there are a lot of great things that have happened to the program that have happened in the last 25 years. But this proposed law is not one of them.

Feel free to contact me
at the number below anytime.
Thanks for you time + considered.

Sincerely,



Edward C. Aletto
8312 Sautbine Road NW
Walker, MN 56484
218-839-9919

alettoonsite1@hotmail.com

"Setting the standard in wastewater design"

Katie Izzo,
Rule Coordinator
Minnesota Pollution Control Agency
520 Lafayette Rd. N, St. Paul, MN 55155-4194
katie.izzo@state.mn.us

February 20, 2019

Dear Ms. Izzo,

The University of Minnesota Onsite Sewage Treatment Program (OSTP) has reviewed the Rules Governing Subsurface Sewage Treatment Systems Inspections and Permit Requirements, Minnesota Rules chapters 7081 and 7082; Revisor's ID Number 04478 and are providing comments for consideration.

It appears the change for using the weekly average flow for design has a number of unintended impacts to system administration, design and performance. OSTP is not concerned about the overall goal of having state permits for facilities with actual design flows over 10,000 gpd. Applying this to the 10,000 gpd permit decision is not at all what I am commenting about here.

The unintended impacts fall into two categories:

1. Licensing - who can do the work? Designers, inspectors, and service providers

- These license categories are applied based on system "design flow". This choice was made with the understanding that flow calculation would be consistent statewide and consistent application across MN. The building of flexibility into these flow determinations creates a confusing and inconsistent application of these standards.
- This confusion came out of multiple levels of applications of a "design flow" value: component sizing, flow equalization, rule chapter application, permitting levels, proper application of licenses.
- The use of larger flows has built into the System a longer design life and minimal application of management requirements.
- The other background design/code thought: "larger systems allow for less critical management involvement". This is clear in the lack of operating permits for these systems and the lack of required management oversight in 7080.

2. Technical concerns - Sizing of septic tanks and pump tanks.

The change to allowing the weekly average flow versus "design flow" [higher value] is a significant change to the design process and creates a change in the 7080 method in the current rule. In earlier 7080's two flows were used for system design and the design guidance still applies these two flows in collection system design. Prior to 2008 the two flows were in the table listed as; average and maximum flows. In 2008, the "Other establishment" flow estimate table was amended and adopted in Chapter 7081 using the average flow for the "design flow" and removing the peak flow values. To address this change the sizing for tanks changed from

the equation [75% of the Peak flow + 1125 gallons] to 3 times the design flow [average flow]. This lack of understanding has created problems and complaints that come from a lack of application of the "FLOW" values. When looking at weekly averages as a factor of average flow to peak flow the tank sizing for the new code application causes tank sizing to not meet the older code sizing as soon as the factor is greater than 2. This means that the typical designs would undersize tanks relating to the 'Old 7080' standards. [See attached spreadsheet]

UMN OSTP recommends that piping and tank sizing use the peak flow, current design flow values for the sizing. Using Flow equalization to average out the flows significantly reduces the tank sizing and requires a higher level of management of the system creating the need for a stronger relationship to regulatory authority than a system that is designed for peak flows. After flow equalization the soil treatment area sizing can then be based on an average flow value [this is allowed in the current code with no changes]

The other big 7080 rule void is the proper application in design for 'Flow equalization'. Currently this is identified in the Design Guidance which is not required reading for the professionals [designers and inspector] that are potential doing the work. With these down sized systems, the design of the pump tank and timer settings in relationship to the component sizing is critical for the system operating properly. These changes and these directives directly affect the application of a proper/recommended design concept and guidance surrounding 70% of the component design flow for operation a philosophy discussed and defined in the Design Guidance that should be followed, clarified and furthered in the rule process.

Other major Rule Issues:

- Black to Gray Soils
- Soil observation locations for "New Systems"
 - % of System meeting separation
- Identified liability length for Soil separation
- Mound roughening requirements
- Mound sand specification [weight or volume]
- Operating permit use for Type III systems
- Type III system categories
 - Soil
 - Natural
 - 12" of separation
 - Perc > 120 mpi
 - Sizing
 - Type IV Systems
- Operating permit reporting to State
 - Form and information
 - Performance data
- Soil dispute outcome reporting to the State
 - Involved parties
 - Outcome of the dispute

- Identified soil identification problem
- Flow measurement for all Systems
 - Compliance application
- Supply piping specifications
- Minimum design pump pressure requirements
 - Clarification of 2' requirement

We at the U of MN are interested in any questions or discussion around these or other issues raised in the comment period. We are willing to meet around the issues around these issues.

Flow	Factors	Peak Flow [Tank sizing]	Tank Sizing [old] 1.5 times Peak flow	Tank Sizing [old] 75% of peak Flow + 1 D Flow x 3	Tank Sizing
500	1.3	650	975	1612.5	1500
	2	1000	1500	1875	
	3	1500	2250	2250	
	4	2000	3000	2625	
	5	2500	3750	3000	
	6	3000	4500	3375	
750	1.3	975	1462.5	1856.25	2250
	2	1500	2250	2250	
	3	2250	3375	2812.5	
	4	3000	4500	3375	
	5	3750	5625	3937.5	
	6	4500	6750	4500	
1000	1.3	1300	1950	2100	3000
	2	2000	3000	2625	
	3	3000	4500	3375	
	4	4000	6000	4125	
	5	5000	7500	4875	
	6	6000	9000	5625	
1500	1.3	1950	2925	2587.5	4500
	2	3000	4500	3375	
	3	4500	6750	4500	
	4	6000	9000	5625	
	5	7500	11250	6750	
	6	9000	13500	7875	
1750	1.3	2275		2831.25	5250
	2	3500		3750	
	3	5250		5062.5	
	4	7000		6375	
	5	8750		7687.5	
	6	10500		9000	
2000	1.3	2600		3075	6000
	2	4000		4125	
	3	6000		5625	
	4	8000		7125	
	5	10000		8625	
	6	12000		10125	
2500	1.3	3250		3562.5	7500
	2	5000		4875	
	3	7500		6750	

	4	10000		8625	
	5	12500		10500	
	6	15000		12375	
3000	1.3	3900		4050	9000
	2	6000		5625	
	3	9000		7875	
	4	12000		10125	
	5	15000		12375	
	6	18000		14625	

The education recommended th

[new Gravity]	Tank sizing [new Press] D flow x 4	Current Sizing Peak Flow x 3
;	2000	1950
		3000
		4500
		6000
		7500
		9000
	3000	2925
		4500
		6750
		9000
		11250
		13500
	4000	3900
		6000
		9000
		12000
		15000
		18000
	6000	5850
		9000
		13500
		18000
		22500
		27000
	7000	6825
		10500
		15750
		21000
		26250
		31500
	8000	7800
		12000
		18000
		24000
		30000
		36000
	10000	9750
		15000
		22500

	30000
	37500
	45000
12000	11700
	18000
	27000
	36000
	45000
	54000

ese values beign doubled for Commeriacal Kitchens and Laundries

List of Meetings Containing discussion on 2018 proposed SSTS Amendments

Date	Subject/Title	Attendees
3/19/2015	Meeting with MOWA on Legislative Proposal	MPCA, MOWA
5/14/2015	MOWA/PCA SSTS Campground & SDS Permit	Minnesota Pollution Control Agency (MPCA), Minnesota On-Site Wastewater Association (MOWA), Hospitality MN, Association of Minnesota Counties (AMC), MN Association of Realtors
7/9/2015	MOWA/MPCA SDS Permit Meeting	MPCA, MOWA, AMC, Hospitality MN, MN Association of Realtors
12/9/2015	Statewide Implementation and Enforcement Task Force (SIETF)	MPCA, LGU's, Minnesota Association of Planning & Zoning Administrators (MACPZA), AMC, MN Association of Realtors
1/6/2016	MOWA/MPCA SDS Permit Meeting	MPCA, MOWA, AMC, Hospitality MN, MN Association of Realtors
2/17/2016	SSTS - Proposed SDS Permit Changes	MPCA, MOWA, AMC, MN Association of Realtors
3/9/2016	Review of 2nd draft of Proposed 7081 changes to address MOWA's SDS permit suggestions	MPCA, MOWA, AMC, MN Association of Realtors
3/10/2016	Subsurface Sewage Treatment System (SSTS) Advisory Committee	MPCA, University of Minnesota Onsite Sewage Treatment Program (U of M OSTP), MOWA, LGU's, Citizens, MACPZA, Elected Official, Minnesota Environmental Health Association (MEHA), Minnesota Department of Labor and Industry (DLI), SSTS Supplier, Metropolitan Council, AMC, Minnesota Department of Health (MDH), MN Association of Realtors,
3/24/2016	SIETF	MPCA, LGU's MACPZA, AMC MN Association of Realtors
6/9/2016	SSTS Advisory Committee	MPCA, U of M OSTP, MOWA, LGU's, Citizens, MACPZA, Elected Official, MEHA, DLI,

		SSTS Supplier, Metropolitan Council, AMC, MDH, MN Association of Realtors
9/29/2016	SSTS Advisory Committee	MPCA, U of M OSTP, MOWA, LGU's, Citizens, MACPZA, Elected Official, MEHA, DLI, SSTS Supplier, Metropolitan Council, AMC, MDH, MN Association of Realtors
11/29/2016	SSTS Advisory Committee	MPCA, U of M OSTP, MOWA, LGU's, Citizens, MACPZA, Elected Official, MEHA, DLI, SSTS Supplier, Metropolitan Council, AMC, MDH, MN Association of Realtors
12/8/2016	SIETF	MPCA, LGU's MACPZA, AMC MN Association of Realtors
1/4/2017	Detroit Lakes and Grand Rapids Talking tour	MPCA, Local Units of Government (LGU) employees
1/5/2017	Duluth and Thief River Falls Talking Tour	MPCA, LGU's
1/6/2017	Pine City and Bagley Talking tour	MPCA, LGU's
1/10/2017	Marshall and St. Cloud Talking tour	MPCA, LGU's
1/11/2017	Benson and Brainerd Talking tour	MPCA, LGU's
1/12/2017	St. Paul Talking tour	MPCA, LGU's
1/17/2017	Mankato Talking Tour	MPCA, LGU's
1/18/2017	Rochester Talking tour	MPCA, LGU's
1/30/2017	MOWA Rule Meeting in Duluth	MPCA, MOWA
3/23/2017	SIETF	MPCA, LGU's MACPZA, AMC MN Association of Realtors
12/7/2017	SIETF	MPCA, LGU's MACPZA, AMC MN Association of Realtors
1/3/2018	St. Cloud and Marshall Talking tour	MPCA, LGU's
1/4/2018	Brainerd and Benson Talking tour	MPCA, LGU's
1/9/2018	Detroit Lakes and Grand Rapids Talking tour	MPCA, LGU's, Contractors
1/10/2018	Duluth and Thief River Falls Talking Tour	MPCA, LGU's
1/11/2018	Pine City and Bagley Talking tour	MPCA, LGU's
1/16/2018	Mankato Talking Tour	MPCA, LGU's
1/17/2018	Rochester Talking tour	MPCA, LGU's

1/23/2018	St. Paul Talking tour	MPCA, LGU's
3/22/2018	SIETF	MPCA, LGU's MACPZA, AMC MN Association of Realtors
3/6/2017	SSTS Advisory Committee	MPCA, U of M OSTP, MOWA, LGU's, Citizens, MACPZA, Elected Official, MEHA, DLI, SSTS Supplier, Metropolitan Council, AMC, MDH, MN Association of Realtors
6/8/2017	SSTS Advisory Committee	MPCA, U of M OSTP, MOWA, LGU's, Citizens, MACPZA, Elected Official, MEHA, DLI, SSTS Supplier, Metropolitan Council, AMC, MDH, MN Association of Realtors
9/14/2017	SSTS Advisory Committee	MPCA, U of M OSTP, MOWA, LGU's, Citizens, MACPZA, Elected Official, MEHA, DLI, SSTS Supplier, Metropolitan Council, AMC, MDH, MN Association of Realtors
12/14/2017	SSTS Advisory Committee	MPCA, U of M OSTP, MOWA, LGU's, Citizens, MACPZA, Elected Official, MEHA, DLI, SSTS Supplier, Metropolitan Council, AMC, MDH, MN Association of Realtors
3/8/2018	SSTS Advisory Committee	MPCA, U of M OSTP, MOWA, LGU's, Citizens, MACPZA, Elected Official, MEHA, DLI, SSTS Supplier, Metropolitan Council, AMC, MDH, MN Association of Realtors