

Chapter 11 POINT-OF-SALE EVALUATION OF ON-SITE WATER AND SEWAGE DISPOSAL SYSTEMS

1.0 General Provisions

Section 1.1

Manistee and Kalkaska County adopts this chapter which states the procedures, standards and enforcement that shall be used by District Health Department #10, under the authority of the Health Officer, to manage and maintain any residential premises within their jurisdiction containing an on-site water and/or sewage disposal system in order to promote the safety, health and general welfare of the community as follows:

- a) Ensure a safe supply of drinking water for those homes served by an on-site water supply system; and/or
- b) Ensure the adequate disposal of sewage from homes served by an on-site sewage disposal system; and
- c) It is not the intention of this regulation to cause any existing well or septic system that are currently functioning but do not meet existing construction standards to be brought into compliance with such standards unless a public health nuisance exists. Only those that are failing or do not meet the approval criteria established by District Health Department #10 will require corrective action.

Section 1.2

This regulation contains minimum standards and supplements the rules and regulations enacted by the Michigan Department of Environmental Quality (DEQ) and District Health Department #10. In addition, this regulation supplements Michigan law as it relates to public health and environmental quality and shall supersede all local minimum standards previously enacted that are inconsistent with this regulation.

Section 1.3

This regulation is enacted pursuant to Michigan Compiled Laws Annotated (MCLA) 333.1101 et.seq., as amended, and authorized by MCLA 46.11, which allows county board of commissioners to adopt ordinances to protect the public health, safety and welfare of the county citizens.

Section 1.4

The Health Officer shall have jurisdiction to administer and enforce the provisions of this regulation. Nothing in this regulation, however, shall be construed to restrict or abrogate the authority of the state, any municipality, or incorporated city, village or township to adopt standards that are more restrictive. However, whenever an inspection relating to health or sanitation is required, no municipality shall issue an approval without first

having obtained confirmation from the Health Officer indicating that the water and/or sewage disposal system complied with the minimum requirements of this regulation.

Section 1.5

The regulation shall become effective in the involved jurisdictions after approval of its adoption by the jurisdiction's Board of Commissioners, approval by all other county Board of Commissioners within District Health Department #10 and at least 45 days after approval by the District Health Department #10, or at a time specified by the District Health Department #10's Board of Health.

2.0 Definitions

Section 2.1

The following "rules of language" shall apply to the text of this regulation. The word "shall" is mandatory. The word "may" is permissive. When not inconsistent with the context, words in the present tense shall include the future and words designating singular numbers shall include the plural.

Section 2.2

The following words and terms used in this regulation, unless otherwise expressly stated, shall have the following meaning:

- a) "Municipality" shall mean any incorporated city, village or township within Manistee and Kalkaska County.
- b) "Authorized Agent" shall mean any individual or corporation authorized, in writing, to act as the legal representative in all matters authorized by the seller or purchaser.
- c) "OSDS" shall mean an on-site sewage disposal system.
- d) "OWSS" shall mean an on-site water supply system.
- e) "OWSDS" shall mean an on-site water and sewage disposal system.
- f) "Septage Hauler" shall mean a firm licensed by the DEQ for the purpose of removing septic tank wastes and properly disposing of it.
- g) "Evaluation" shall consist of a determination if the OSDS and/or the OWSS meet approval of the standards of the District Health Department #10 Sanitary Code and its regulations. District Health Department #10 is responsible for developing criteria to rate systems as "Satisfactory" or "Unsatisfactory".
- h) "Satisfactory" shall mean that there shall not be more than a minimal likelihood for degradation of groundwater and/or surface water or risk to public health caused by improper construction, location or function of an OWSDS.
- i) "Unsatisfactory" is defined as not meeting approval of standards of the District Health Department #10 Sanitary Code and its regulations.

3.0 Limitations on the Sale of Property

Section 3.1

There shall be no sale of a parcel containing an OWSS, OSWS or OWSDS in Kalkaska and Manistee County until the following conditions are met:

- a) The seller files an evaluation report with the District Health Department #10 that was completed by either District Health Department #10 or a private inspector that is certified by District Health Department #10; and,
- b) The District Health Department #10 determines, based upon such report, that the OWSDS is satisfactory or that any necessary corrections are completed or assured and accepted.

Persons certified to perform evaluations of an OWSDS shall meet the minimum standards in Section 3.7 of this chapter.

Section 3.2

Each OWSDS in Manistee and Kalkaska County shall be inspected and evaluated prior to the sale of the property upon which the OWSDS is located if an inspection or evaluation has not been done within twenty-four (24) months preceding the date of property sale.

Section 3.3

Property conveyances that are exempt from inspections include:

- a) Transfer from a spouse to immediate family members.
- b) Change in ownership solely to exclude a spouse.
- c) Transfer subject to life lease or life estate (until the life lease or life estate expires).
- d) Transfer to effect foreclosure or forfeiture of real property.
- e) Transfer by redemption from a tax sale.
- f) Transfer creating or ending joint ownership if at least one person is an original owner of the property or his or her spouse.
- g) Transfer to establish or release a security interest.
- h) Premises built with the previous twenty-four (24) months prior to the date of property transfer.
- i) Premises that shall be demolished and shall not be occupied after the property transfer.
- j) New homes that have not been occupied.
- k) A public sanitary sewer will be available within six (6) months and the system is not failing. An affidavit or letter from the water or sewer authority will be required.

If records cannot be provided that indicates that the septic tank has been pumped within the past twenty-four (24) months, serving will be required. A licensed septage hauler shall provide proof of service and an evaluation report to the owner and District Health Department #10. After the evaluation is complete, District Health Department #10 shall send a letter to the owner or the owner's designated representative and any prospective purchaser describing the functional status of the OWSDS and whether it is in conformance with the District Health Department #10 Sanitary Code governing the supply of groundwater and the disposal of sewage and human excreta.

Section 3.4

Reports of evaluations shall include, but are not limited to:

- a) The address of the site;
- b) The parcel identification number;
- c) The name of the owner or owner's agent;
- d) The location of the system(s);
- e) A description of the current operational or functional status of the system(s);
- f) Identification of any necessary repairs or replacement of all or portions of the system(s);
- g) The results of a bacteria and nitrate drinking water test, as well as other water quality parameters as required by District Health Department #10;
- h) Other relevant or unusual observations related to the system(s);
- i) Recommendations to extend the life of the system(s) and to prevent the premature failure of the sewage disposal system(s);
- j) Educational material about system maintenance that have been approved by District Health Department #10; and
- k) Completed forms approved by District Health Department #10.

Section 3.5

All evaluation reports shall be freely available to the public through the Freedom of Information Act, MCLA 15.231 et.seq.

Section 3.6

The evaluation shall determine whether the system(s) adversely affects the public health and environment or violates any other applicable rules or regulations. In addition, the evaluation shall determine whether the OSDS structure and its operational status are in substantial conformance with the standards of this regulation.

The OWSS shall be evaluated for:

- a) Their proximity to sources of contamination;
- b) Substantial compliance with State of Michigan construction standards; and

- c) Compliance with bacteria and nitrate water quality standards as a minimum with other quality standards in areas of known water quality concerns. Water samples shall be analyzed at a laboratory certified by the Michigan Department of Environmental Quality.

Section 3.7

All inspectors performing evaluations under this regulation must be registered with District Health Department #10 and certified before undertaking any evaluations. All qualified inspector applicants must file an application with District Health Department #10, pay the registration fee annually and satisfactorily complete a training course approved by the agency. Prospective inspectors must demonstrate knowledge of construction practices, operational standards as well as the causes and indications of OWSDS failures. Inspectors shall provide proof of general liability insurance. No evaluation reports shall be accepted from individuals not certified by District Health Department #10.

Section 3.8

An individual shall not be permitted to install or replace an OWSS and/or OSDS without prior approval of District Health Department #10. This section does not preclude the requirements for permits where necessary.

Section 3.9

The Health Officer may de-certify any inspector under one or more of the following circumstances:

- a) The individual fails to comply with the regulations;
- b) The individual is unable to properly perform an evaluation of an OWSDS;
- c) The individual is negligent in the discharge of his/her duties as outlined in the certification requirements;
- d) The individual submits false or misleading information;
- e) Significant information is missing from the evaluation report and/or is not provided with three (3) business days after being requested by District Health Department #10; or
- f) The inspector does not maintain the required certification as required by this regulation.

Section 3.10

District Health Department #10 shall give written notice to an inspector before he/she is de-certified by the Health Officer. The inspector shall be given an opportunity at an informal hearing with the Health Officer to demonstrate why he/she should not be de-certified. Any inspector who is de-certified may appeal that decision by following the procedures in Section 11 of this regulation.

Section 3.11

If an inspector is de-certified, re-certification shall be contingent upon completing the requirements established by District Health Department #10.

4.0 Responsibilities of Various Parties

Section 4.1

Owners are responsible for hiring certified inspectors and licensed septage haulers to perform inspections under this regulation prior to the sale or any premises that he/she owns. The owner must also secure documentation from District Health Department #10 indicating the OWSDS complies with this regulation before the sale or conveyance of any premises that he/she owns. Owners are responsible for maintaining the OWSDS on their property and shall notify District Health Department #10 if the inspector's evaluation report or septic tank cleaner's report indicates a failure of the system or the owner observes a failure of the system.

Section 4.2

The responsibilities of District Health Department #10 are as follows:

- a) Administer and enforce this regulation;
- b) Maintain the most current OWSDS evaluation report as long as the property is served by an OWSDS and for three (3) years thereafter;
- c) Maintain a list of certified inspectors to perform inspections under this regulation;
- d) Require correction where there is evidence of a system failure;
- e) Create and maintain a database of system inspected and evaluated as well as newly installed systems; and
- f) Establish criteria for the inspection of OWSDS and the certification of inspectors and make such criteria and related forms available to the public.

5.0 Fees

Section 5.1

Fees to cover expenses, included but not limited to overhead, processing, labor, storage, training, etc., by District Health Department #10 may be adopted as provided in the Public Health Code (Act 368 of 1978, as amended). The Board of Health for District Health Department #10 is responsible for establishing those fees.

Section 5.2

Private inspectors that are certified by District Health Department #10 are responsible for establishing their own fees for inspections.

6.0 Failure

Section 6.1

When an OWSDS fails, the owner, agent or other responsible party shall contact District Health Department #10 and shall complete all repairs as required by District Health Department #10.

7.0 Inspection Notification

Section 7.1

If, after reviewing the inspection, District Health Department #10 determines that the OWSDS is unsatisfactory as defined, then the property owner shall be subject to enforcement as provided in this regulation. District Health Department #10 shall notify the owner and/or purchaser or other person with a legally recognizable interest in the property. This written notice shall be sent no later than five (5) business days after the determination is made or from the date that the inspection report of the premises is filed and reviewed by District Health Department #10. Any party is considered notified if the notice is sent to that party's last known mailing address or to the property address if the party occupies the premises with the non-conforming OWSDS.

8.0 Corrective Action

Section 8.1

Upon receiving written notice from District Health Department #10 on non-compliance with this regulation, the owner, buyer or authorized agent shall, within thirty (30) days, submit a proposed corrective action in order to bring the affected system into compliance with applicable laws. District Health Department #10 shall review the proposed corrective action and amend it as required to conform to federal, state and local laws, rules and regulations. All necessary corrective action shall be completed with one hundred and eighty (180) days following District Health Department #10 approval of the proposed corrective action plan, unless weather prohibits the corrective action. Once District Health Department #10 gives final approval of the completed corrective action, the system shall be deemed to be in substantial conformance with this regulation. If an OWSDS presents an immediate health hazard, the owner or other responsible party shall take such measures, in cooperation with District Health Department #10, which will immediately reduce or eliminate the impact of such failure until the full corrective plan can be implemented.

Section 8.2

A person who disputes any District Health Department #10 decision concerning the violation of this regulation shall have the right to a hearing and appeal using the appeals process in Section 11. Any appeal shall not stay an owner's, buyer's or authorized agent's obligation to take measures to reduce or eliminate the impact of a failure until a full corrective plan can be determined and implemented.

9.0 Enforcement and Compliance

Section 9.1

If, after investigation, District Health Department #10 believes that a person is violating these regulations, District Health Department #10 shall attempt to enter a voluntary agreement with the property owner to resolve the violation. If a voluntary agreement cannot be reached, District Health Department #10 may issue a violation notice to the owner. A statement of facts upon which the notice is based shall accompany the violation notice.

Section 9.2

As stated in the Michigan Public Health Code and the District Health Department #10 Sanitary Code, District Health Department #10 may, after presenting proper credentials and other documents as may be required by law, and upon stating the authority and purpose for the investigation, enter and inspect any property at reasonable times to ascertain compliance or non-compliance with this regulation. This may include:

- a) Inspection at reasonable times of any parcel containing an OWSDS and related systems; and
- b) Collection of evidence and information for the purpose of determining compliance with this regulation.

Section 9.3

If an owner or purchaser does not comply with the requirements of this regulation, the Health Officer may record an affidavit that details the non-compliance with the jurisdiction's County Register of Deeds.

10.0 Violation of the Regulations

Section 10.1

After learning that the regulation has been violated, the Health Officer may:

- a) Issue a cease and desist order and/or suspend any permit, certificate or other approval issued pursuant to this regulation to the owner or other party

violating this regulation, and afford the owner or other interested party notice and opportunity for a hearing.

- b) Request that the county Prosecutor's Office file a legal action to enjoin the violation. In addition, the Health Officer may seek to recover any and all costs related to correcting, removing or abating the violation.

Section 10.2

If the Health Officer believes that a person is violating a provision of this regulation or an order issued pursuant to this regulation, the Health Officer may issue a citation within ninety (90) days after the alleged violation is discovered. The citation shall state with particularity the nature of the violation, including reference to the section of the regulation alleged to have been violated and a right to appeal the citation pursuant to MCLA 333.2461 and Section 11 of this regulation. The citation shall be delivered or sent by registered mail to the alleged violator.

- a) Any party issued a citation may, within ten (10) days from the date the citation is issued, request an informal hearing at which time the person may indicate why he/she believes that he/she has not violated this regulation.
- b) Any party issued a citation may appeal the citation to District Health Department #10 with thirty (30) days after the citation is issued. The appeal shall be conducted in accordance with Section 11 of this regulation.
- c) A person aggrieved by a final decision of the Health Officer may petition the Circuit Court of the county where the premises is located for review. The time period for appeal shall begin to run the day after the date of such final decision.

Section 10.3

Any person who violates this regulation is guilty of a misdemeanor, punishable by imprisonment for not more than one hundred and eighty (180) days or a fine of not more than five hundred (\$500) or both. Conviction by jury, court or voluntary plea and acceptance by court under this provision shall not waive any other claim for fines, costs, injunction or other relief authorized by this regulation. Each day that a violation of this regulation exists shall constitute a separate offense.

Section 10.4

If the owner does not have his/her property evaluated as specified by this regulation, District Health Department #10 shall cause an inspection to be performed and may charge all costs and fees for the evaluation to the owner of the premises.

Section 10.5

If the owner or party violating this regulation refuses on demand to pay such expenses incurred by the agency to abate, correct or remove the violation, unsanitary condition or

nuisance, the sum shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the general tax laws of this state.

Section 10.6

As stipulated in the Michigan Public Health Code, an inspection under Section 9.2 shall include the right to obtain samples where the Health Officer has reason to believe that there is a likelihood of contamination of surface water, ground water, water supply or other unsanitary conditions. Upon written notice, an owner or occupant of the premises from which such inspection is sought shall co-operate with the Health Officer or his/her designated representative.

11.0 Appeals

Section 11.1

In order to provide for reasonable and equitable interpretations and applications of the provisions of this regulation, an owner or interested party may request an appeal per the process described in the District Health Department #10 Sanitary Code.

12.0 Miscellaneous Provisions

Section 12.1

Each provision of this regulation must be interpreted in a way that is valid under Michigan law. If any provision is held invalid, the rest of the regulation shall remain in full effect.

Section 12.2

All amendments to this regulation shall be approved by the Board of Commissioners of all counties within the jurisdiction of District Health Department #10 and by the District Health Department #10 Board of Health. A public hearing required by Section 2442 of Act 368 of the Public Acts of 1978, as amended, must be held in any jurisdiction adopting these regulations. All amendments shall become effective 45 days after final approval.