

# TOWN OF EUREKA, DAKOTA COUNTY, MINNESOTA

## ORDINANCE NO. 2010-3

### AN ORDINANCE ADOPTING REVISED STANDARDS AND PERMIT REQUIREMENTS GOVERNING THE INSTALLATION, MAINTENANCE AND MANAGEMENT OF SUBSURFACE SEWAGE TREATMENT SYSTEMS (SSTS) IN EUREKA TOWNSHIP

#### SECTION 1.00 PURPOSE, INTENT, AND AUTHORITY

##### 1.01 PURPOSE.

The purpose of this ordinance is to establish minimum requirements for regulation of SSTS for the treatment and dispersal of sewage within the applicable jurisdiction of the Township to protect public health and safety, groundwater quality, and to prevent or eliminate the development of public nuisances. It is intended to serve the best interest of the Township's citizens by protecting its health, safety, general welfare and natural resources.

##### 1.02 INTENT.

- A. The protection of lakes, rivers and streams, wetlands, and groundwater in the township essential to the promotion of public health, safety, welfare, socioeconomic growth and development of the township in perpetuity.
- B. The regulation of proper SSTS construction, reconstruction, repair and maintenance to prevent the entry and migration of contaminants, thereby protecting the degradation of surface water and groundwater quality.
- C. The establishment of minimum standards for SSTS placement, design, construction, reconstruction, repair and maintenance to prevent contamination and, if contamination is discovered, the identification and control of its consequences and the abatement of its source and migration.
- D. The appropriate utilization of privy vaults and other non-water carried sewage collection and storage facilities.
- E. The provision of technical assistance and education, plan review, inspections, SSTS surveys and complaint investigations to prevent and control water-borne diseases, lake degradation, groundwater related hazards, and public nuisance conditions.

##### 1.03 AUTHORITY.

This ordinance is adopted pursuant to Minn. Stat. chs. 115, 145A, 375, or successor statutes, and Minn. R. chs. 7080, 7081, and 7082, or successor rules.

#### SECTION 2.00 DEFINITIONS

Unless the context clearly indicates otherwise, the following words and phrases shall have the meanings ascribed to them in this section. Unless specifically defined herein, terms used in this ordinance shall have the definition provided in Minn. Stat. § 115.55 and Minn. R. chs. 7080, 7081, 7082, and 7083 and if not defined there, shall have common usage meaning. For purposes of this ordinance, the words "must" and "shall" are mandatory and not permissive unless a different definition appears in this ordinance.

- 2.01 "AS BUILTS"** means "record drawings" as defined below.
- 2.02 "CLASS V INJECTION WELL"** means a shallow well used to place a variety of fluids directly below the land surface, which includes a domestic SSTS serving more than 20 people. The United States Environmental Protection Agency and delegated state groundwater programs permit these wells to inject wastes below the ground surface provided they meet certain requirements and do not endanger underground sources of drinking water. Class V motor vehicle waste disposal wells and large capacity cesspools are specifically prohibited (See 40 CFR Parts 144 and 146).
- 2.03 "CLUSTER SYSTEM"** means a wastewater collection and treatment system under some form of common ownership that collects wastewater from two or more dwellings or buildings and conveys it to a treatment and dispersal system located on an acceptable site near the dwellings or buildings.
- 2.04 "DESIGN FLOW"** means the daily volume of wastewater for which an onsite/cluster system is deigned to treat and discharge.
- 2.05 "FAILURE TO PROTECT GROUNDWATER"** means a SSTS that does not protect groundwater such as a seepage pit, cesspool, drywell, leaching pit, or other pit; a SSTS with less than the required vertical separation distance described in Minn. R. 7080.1500, subps. 4(D) and 4(E); and a system not abandoned in accordance with Minn. R. 7080.2500. The determination of the threat to groundwater for other conditions must be made by a qualified employee or a licensed inspection business.
- 2.06 "IMMINENT THREAT TO PUBLIC HEALTH AND SAFETY"** means a SSTS with a discharge of sewage or sewage effluent to the ground surface, drainage systems, ditches, or storm water drains or directly to surface water; SSTS that cause a reoccurring sewage backup into a dwelling or other establishment; SSTS with electrical hazards; sewage tanks with unsecured, damaged, or weak maintenance access covers; or any other situation with the potential to immediately and adversely affect or threaten public health or safety. The determination of protectiveness for other conditions must be made by a qualified employee inspector or a licensed inspection business.
- 2.07 "ISTS"** means an individual sewage treatment system as defined in Minn. R. 7080.1100, subp. 41.
- 2.08 "MINOR REPAIR"** means the repair or replacement of an existing damaged or faulty component/part of an SSTS that will return the SSTS to its operable condition. The repair shall not alter the original area, dimensions, design, specifications or concepts of the SSTS.
- 2.09 "MPCA"** means the Minnesota Pollution Control Agency.
- 2.10 "MSTS"** means a midsized subsurface sewage treatment system as defined in Minn. R. 7081.0020, subp. 4.
- 2.11 "PERSON"** means any human being, any municipality or other governmental or political subdivision, or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity.
- 2.12 "RECORD DRAWINGS"** means a set of drawings which reasonably document the final in-place location, size, and type of all SSTS components including the results of any materials testing performed and a description of conditions during construction of the system. Record drawings were previously known as "as built."

- 2.13** "SEPTIC INSPECTOR" means the qualified and licensed individual or company appointed by the Town Board to conduct SSTS inspections and enforce the MPCA rules incorporated by this Ordinance, and its staff and designated agents.
- 2.14** "SSTS" means a subsurface sewage treatment system as defined in Minn. R. 7080.1100, subp. 82.
- 2.15** "SHORELAND/FLOODPLAIN AREA" means those areas covered by Dakota County Ordinance 50, Shoreland and Floodplain Management.
- 2.16** "STATE" means the State of Minnesota.
- 2.17** "TOWN" or "TOWNSHIP" means Eureka Township, Minnesota.
- 2.18** "TOWN BOARD" means the Eureka Township Board of Supervisors.
- 2.19** "TREATMENT LEVEL" means treatment system performance levels as defined in Minn. R. 7083.4030, Table III for testing of proprietary treatment products.
- 2.20** "TYPE I SYSTEM" means an ISTS designed according to Minn. R. 7080.2200 through Minn. R. 7080.2240, as may be amended.
- 2.21** "TYPE II SYSTEM" means an ISTS designed according to Minn. R. parts 7080.2250 to 7080.2290, as may be amended.
- 2.22** "TYPE III SYSTEM" means an ISTS designed according to Minn. R. 7080.2300, as may be amended.
- 2.23** "TYPE IV SYSTEM" means an ISTS designed according to Minn. R. 7080.2350, as may be amended.
- 2.24** "TYPE V SYSTEM" means an ISTS an ISTS designed according to Minn. R. 7080.2400, as may be amended.

## **SECTION 3.00 GENERAL PROVISIONS**

### **3.01 SCOPE.**

This ordinance regulates the siting, design, installation, alterations, operation, maintenance, monitoring, and management of all SSTS within the Township's applicable jurisdiction including but not limited to individual SSTS and cluster or community SSTS, privy vaults, and other non-water carried SSTS. All sewage generated in unsewered areas of the Township shall be treated and dispersed by an approved SSTS that is sited, designed, installed, operated, and maintained in accordance with the provisions of this ordinance or by a system that has been permitted by the MPCA.

### **3.02 JURISDICTION.**

This ordinance applies to all land within the Township.

## **SECTION 4.00 ADMINISTRATION**

### **4.01 TOWNSHIP.**

The Septic Inspector shall administer the SSTS program and all provisions of this ordinance. At appropriate times, the Town Board shall review, revise, and update this ordinance as necessary. The Septic Inspector

shall employ or retain under contract qualified and appropriately licensed professionals to administer and operate the SSTS program.

#### **4.02 STATE OF MINNESOTA.**

When a single SSTS or group of SSTS under single ownership within one-half mile of each other have a design flow greater than 10,000 gallons per day, the owner or owners shall make application for and obtain a state disposal system permit from the MPCA in accordance with Minn. R. ch. 7001. If the measured daily flows for a consecutive seven-day period exceed 10,000 gallons per day, a state disposal system permit is required.

A state disposal system permit is also required for any SSTS or group of SSTS that the commissioner determines has the potential or an increased potential to cause adverse public health or environmental impacts if not regulated under a state permit. Conditions for these permits include systems in environmentally sensitive areas, unsubstantiated or unexpected flow volumes, and systems requiring exceptional operation, monitoring, and management.

### **SECTION 5.00 GENERAL REQUIREMENTS**

#### **5.01 RETROACTIVITY.**

- A. ALL SSTS. Except as provided in section 5.01(B), all provisions of this ordinance shall apply to any SSTS regardless of the date it was originally permitted.
- B. EXISTING PERMITS. Unexpired permits, which were issued prior to the effective date of this ordinance, shall remain valid under the terms and conditions of the original permit until the original expiration date or until a change in system ownership.
- C. SSTS ON LOTS CREATED AFTER JANUARY 23, 1996. All lots created after January 23, 1996, must have a minimum of two soil treatment and dispersal areas that can support systems as described in Minn. R. parts 7080.2200 through 7080.2230 or site conditions described in Minn. R. 7081.0270, subps. 3 through 7.

#### **5.02 UPGRADE, REPAIR, REPLACEMENT, AND ABANDONMENT.**

- A. FAILURE TO PROTECT GROUNDWATER. An SSTS that is determined not be protective of groundwater in accordance with Minn. R. 7080.1500, subp. 4(B) shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this ordinance within 10 months of receipt of notice of noncompliance from the Septic Inspector.
- B. IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY. An SSTS that is determined to be an imminent threat to public health or safety shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this ordinance within 30 days of receipt of notice of noncompliance from the Septic Inspector.
- C. ABANDONMENT. Any SSTS, or any component thereof, which is no longer intended to be used, must be abandoned in accordance with section 8.00 of this ordinance and Minn. R. 7080.2500.

#### **5.03 SSTS IN FLOODPLAINS.**

SSTS shall not be located in a floodway and wherever possible, location within any part of a floodplain should be avoided. If no option exists to locate a SSTS outside of a floodplain, location within the flood fringe is allowed if the requirements of Minn. R. 7080.2270 and all relevant local requirements are met.

#### **5.04 CLASS V INJECTION WELLS.**

All owners of new or replacement SSTS that are considered to be Class V injection wells as defined in the Code of Federal Regulations, title 40, part 144, are required to submit SSTS inventory information to the United States Environmental Protection Agency and the MPCA. Owners are also required to identify all Class V injection wells in property transfer disclosures.

#### **5.05 SSTS LICENSE REQUIRED.**

All design, installation, alteration, repair, maintenance, operation, pumping, and inspection activities for SSTS located in the township must be completed by a business licensed by the state under Minn. R. ch. 7083, an appropriately certified qualified employee, or a person exempted under Minn. R. 7083.0700, subps. 1(A), (C), (D), (F), (G), (H) and (I). Individuals exempt from a state SSTS license under Minn. R. 7083.0700, subps. 1(A), (C), (D), (F), (G), (H) and (I) must follow all applicable local, state, and federal requirements. Property owners that employ a business to perform this work must hire a business that is licensed in accordance with Minn. R. ch. 7083.

No person shall engage in site evaluation, inspection, design, installation, construction, alteration, extension, repair, maintenance, or pumping of SSTS without an appropriate and valid license issued by the MPCA in accordance with Minn. R. ch. 7083, except as exempted in Minn. R. 7083.0700, subps. 1(A), (C), (D), (F), (G), (H) and (I).

#### **5.06 PROHIBITIONS.**

- A. OCCUPANCY OR USE OF BUILDING WITHOUT A COMPLIANT SSTS. It is unlawful for any person to maintain, occupy, or use any building intended for habitation to dispose of wastewater in a manner that does not comply with the provisions of this ordinance.
- B. SEWAGE DISCHARGE TO GROUND SURFACE OR SURFACE WATER. It is unlawful for any person to construct, maintain, or use any wastewater treatment system regulated under this ordinance that results in raw or partially treated wastewater seeping to the ground surface or flowing into any surface water. Any surface discharging system must be permitted by the MPCA under the National Pollutant Discharge Elimination System program.
- C. SEWAGE DISCHARGE TO A WELL OR BORING. It is unlawful for any person to discharge raw or treated wastewater into any well or boring as described in Minn. R. 4725.2050, or any other excavation in the ground that is not in compliance with this ordinance.
- D. DISCHARGE OF HAZARDOUS OR DELETERIOUS MATERIALS. It is unlawful for any person to discharge into any treatment system regulated under this ordinance any hazardous or deleterious material that adversely affects the treatment or dispersal performance of the system or groundwater quality.

#### **5.07 REQUIRED SUBMISSION OF MAINTENANCE REPORTS.**

Licensed maintenance businesses must abide by the requirements described in Minn. R. 7083.0770, subp. 2. All written reports required by Minn. R. 7083.0770, subp. 2 must be provided to the homeowner and the Septic Inspector within 30 days after any maintenance work is performed.

## **SECTION 6.00 SSTS STANDARDS**

### **6.01 STANDARDS ADOPTED BY REFERENCE.**

Minn. Stat. § 115.55 and Minn. R. chs. 7080 and 7081 and all other referenced laws and rules, as may be amended, are adopted by reference and made a part of this ordinance.

### **6.02 AMENDMENTS TO THE ADOPTED STANDARDS.**

- A. DETERMINATION OF HYDRAULIC LOADING RATE AND SSTS SIZING. Table IX from Minn. R. 7080.2150, subp. 3(E) entitled *Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Detail Soil Descriptions* and Table IXa from Minn. R. ch. 7080.2150, subp. 3(E) entitled *Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Percolation Tests* and herein adopted by reference shall both be used to size SSTS infiltration areas using the larger sizing factor of the two for SSTS design.
- B. HOLDING TANKS. Holding tanks may be used for the following applications only after it can be shown conclusively by the property owner that a SSTS permitted under this ordinance cannot be feasibly installed:
  - 1. As a replacement for an existing failing SSTS;
  - 2. For an SSTS that poses an imminent threat to public health or safety; or
  - 3. For use with buildings with limited water use.

### **6.03 COMPLIANCE CRITERIA FOR EXISTING SSTS.**

- A. SSTS built before April 1, 1996, outside of areas designated as shoreland areas, wellhead protection areas, or SSTS providing sewage treatment for food, beverage, or lodging establishments must have at least two feet of vertical separation between the bottom of the dispersal system and seasonal saturation or bedrock. The vertical separation measurement shall be made outside the area of system influence in an area of similar soil.
- B. SSTS built after March 31, 1996, or SSTS located in a shoreland area, wellhead protection area, or serving a food, beverage, or lodging establishment as defined under Minn. R. 7080.1100, subp. 84 must have a three-foot vertical separation between the bottom soil infiltrative surface and the periodically saturated soil and/or bedrock. Unless otherwise determined by the Septic Inspector, existing systems that have no more than a 15 percent reduction to the minimum required 36 inch separation distance are considered compliant. (i.e., a separation distance no less than 30.6 inches). This reduction is to account for settling of sand or soil, normal variation of separation distance measurements and interpretation of limiting layer characteristics. The vertical separation measurement shall be made outside the area of system influence in an area of similar soil.

### **6.04 HIGHEST STANDARDS PREVAIL.**

Where the conditions imposed by a provision of this ordinance are either more restrictive or less restrictive than comparable conditions imposed by a provision of this ordinance or any other applicable law, ordinance, rule, or regulation, the provision that establishes the higher standard for the promotion and protection of the public health, safety, and general welfare shall prevail.

## **SECTION 7.00 SSTS PERMITTING**

### **7.01 PERMITS REQUIRED.**

- A. **PERMIT REQUIRED.** It is unlawful for any person to construct, install, modify, or replace a SSTS in the township without the appropriate permit from the Septic Inspector.
- B. **PERMITTING NOT EXCLUSIVE.** The obtaining of a permit shall not be deemed to exclude the necessity of obtaining other appropriate permits or approvals. Compliance with the provisions of this ordinance shall not relieve any person of the need to comply with any and all other applicable rules, regulations, and laws.

### **7.02 CONSTRUCTION PERMIT.**

- A. **ACTIVITIES REQUIRING A CONSTRUCTION PERMIT.** A construction permit is required for installation of a new SSTS, for replacement of an existing SSTS, or for any repair or replacement of components that will alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout, or function.
- B. **ACTIVITIES NOT REQUIRING A CONSTRUCTION PERMIT.** A construction permit is not required for minor repairs or replacements of system components that do not alter the original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout, or function.
- C. **APPLICATION FOR PERMIT.** Permit applications shall be submitted to the Septic Inspector on forms provided by the Town. Applicants shall provide all information as required for the administration of this ordinance.
- D. **CONTENTS OF PERMIT APPLICATION.** The permit application shall include the following:
  - 1. The names, addresses, and telephone numbers of the applicant and permittee;
  - 2. The property identification number and address or other description of the real property on which the system will be located;
  - 3. A site evaluation report as described in Minn. R. 7080.1730;
  - 4. A design report as described in Minn. R. 7080.2430;
  - 5. The infield verification as described in Minn. R. 7082.0500, subp. 3(A);
  - 6. A management plan as described in Minn. R. 7082.0600 and section 7.03 of this ordinance;  
and
  - 7. Copies of any required municipal, county, state, or federal permits or approvals.
- E. **APPLICATION FEE.** The application fee shall accompany the permit application.
- F. **APPLICATION REVIEW.** The Septic Inspector shall review a permit application and supporting documents to determine whether the application is complete. Upon satisfaction that the proposed work will conform to the provisions of this ordinance, the Septic Inspector shall issue a written permit authorizing construction of the SSTS as designed. If the applicant changes the proposed work to be conducted under an approved permit application, the applicant must file an amended

application with the Septic Inspector detailing the changed conditions prior to initiating or continuing construction, modification, or operation. The Septic Inspector shall review the amended application and either approve or deny the application.

- G. APPROVAL OF PERMIT REQUIRED. The Septic Inspector must review and approve the permit application and management plan before issuing a permit. Construction must not be initiated until the Septic Inspector grants a construction permit.
- H. PERMIT EXPIRATION. The construction permit is valid for a period of no more than one year from its date of issue, unless it is extended in accordance with this section or construction has been completed satisfactorily, whichever is shorter. Satisfactory completion of construction shall be determined by receipt of final record drawings and a signed certification that the construction or installation of the system was completed in substantial conformance to the approved design documents by the Septic Inspector or a licensed inspection business, which is authorized by the Septic Inspector and independent of the owner and the SSTS installer.
- I. EXTENSIONS AND RENEWALS. The Septic Inspector may grant an extension of the construction permit if the construction has commenced prior to the original expiration date of the permit. The permit may be extended for a period of no more than six months.
- J. PERMIT NOT TRANSFERABLE. A construction permit shall not be transferable to a new owner. The new owner must apply for a new construction permit in accordance with this section.
- K. POSTING. The construction permit shall be posted on the property in such a location and manner so that the permit is visible and available for inspection until construction is completed and certified.
- L. CONFLICT OF INTEREST.
  - 1. A licensed inspection business that inspects an existing SSTS is allowed to subsequently design and install a new SSTS for that property provided the inspection business is also licensed to design and install.
  - 2. A licensed inspection business working on behalf of the Septic Inspector must not design or install systems that the business will be responsible for permitting or inspecting as part of its contract with the township.
- M. DENIAL AND RIGHT TO APPEAL. If the Septic Inspector denies a permit to an applicant, the applicant shall be notified of such denial in writing. The Septic Inspector shall serve the denial by personal service or by certified mail to the address designated in the permit application. Service by certified mail shall be deemed to be complete upon mailing. The applicant may appeal the permit denial by filing a request for a hearing. The hearing request shall be in writing stating the grounds for the appeal and delivered to the Town by giving the Town Clerk said writing in person or sending the writing by certified mail within 10 township working days of the service of the permit denial, exclusive of the day of service. Following timely service of a request for a hearing, the Town Board shall set a time and place for the hearing pursuant to section 13.00.

### **7.03 MANAGEMENT PLAN.**

- A. PURPOSE. The purpose of management plans is to describe how a particular SSTS is intended to be operated and maintained to sustain the performance required. The plan is to be provided by the certified designer to the system owner when the treatment system is commissioned.



- B. **SSTS REQUIRING MANAGEMENT PLANS.**  
Management plans are required for all new or replacement SSTS. The management plan shall be submitted to the Septic Inspector with the construction permit application for review and approval. The Septic Inspector shall be notified of any system modifications made during construction and the management plan revised and resubmitted at the time of final construction certification.
- C. **REQUIRED CONTENTS.** Management plans shall include:
1. Operating requirements describing tasks that the owner can perform and tasks that a licensed service provider or maintainer must perform;
  2. Monitoring requirements;
  3. Maintenance requirements including maintenance procedures and a schedule for routine maintenance;
  4. Statement that the owner is required to notify the Septic Inspector when the management plan requirements are not being met;
  5. Disclosure of the location and condition of the additional soil treatment and dispersal area on the owner's property or a property serving the owner's residence; and
  6. Other requirements as determined by the Septic Inspector.

#### **7.04 OPERATING PERMIT.**

- A. **PERMIT REQUIRED.** An operating permit is required for all treatment systems installed under Minn. R. 7080.2290 (holding tanks), Minn. R. 7080.2350 (Type IV System), Minn. R. 7080.2400 (Type V System) and Minn. R. ch. 7081 (MSTS). Sewage shall not be discharged to a treatment system requiring an operating permit until the Septic Inspector certifies that the treatment system was installed in substantial conformance with the approved plans, receives the final records drawings of the treatment system, and a valid operating permit is issued to the owner.
- B. **APPLICATION FOR PERMIT.** Permit applications shall be submitted to the Septic Inspector on forms provided by the Town. Applicants shall provide all information as required for the administration of this ordinance.
- C. **CONTENTS OF PERMIT APPLICATION.** The permit application shall include the following:
1. The names, addresses, and telephone numbers of the applicant and permittee;
  2. The construction permit reference number and date of issue;
  3. The final record drawings of the treatment system; and
  4. Owners of holding tanks must submit a copy of a valid executed monitoring and disposal contract with a licensed maintenance business.
- D. **APPLICATION FEE.** The application fee shall accompany the permit application.
- E. **MONITORING AND DISPOSAL CONTRACT.** Owners of holding tanks shall provide to the Septic Inspector a copy of a valid monitoring and disposal contract executed between the owner and a licensed maintenance business that guarantees the removal of the holding tank contents in a timely manner that prevents an illegal discharge in accordance with Minn. R. 7082.011, subp. 3(G). The

owner must hold a valid contract with a licensed maintenance business at all times until such time the holding tank is abandoned or the property sold. This contract requirement is waived if the owner is a farmer who is exempt from licensing under Minn. Stat. §115.56, subd. 3(b)(3).

F. APPLICATION REVIEW. The Septic Inspector shall review the application, the record drawings, operation and maintenance manual, management plan, maintenance and servicing contract, and any other pertinent documents as appropriate for accuracy and completeness. If any deficiencies are identified, the operating permit shall be denied until the deficiencies are corrected to the satisfaction of the Septic Inspector. If the submitted application and documents fulfill the requirements, the Septic Inspector shall issue an operating permit within 10 working days of receipt of the permit application.

G. PERMIT TERMS AND CONDITIONS. The operating permit shall include the following:

1. System performance requirements;
2. System operating requirements;
3. Monitoring locations, procedures and recording requirements;
4. Maintenance requirements and schedules;
5. Compliance limits and boundaries;
6. Reporting requirements;
7. Septic Inspector notification requirements for noncompliant conditions;
8. Valid contract between the owner and a licensed maintenance business;
9. Disclosure, location, and condition of acceptable soil treatment and dispersal system site;  
and
10. Descriptions of acceptable and prohibited discharges.

H. PERMIT EXPIRATION AND RENEWAL.

1. Operating permits shall be valid for a specific term stated on the permit as determined by the Septic Inspector.
2. An operating permit must be renewed prior to its expiration. If not renewed, the Septic Inspector may require the system to be removed from service or operated as a holding tank until which time the permit is renewed. If not renewed within 60 calendar days of the expiration date, the Septic Inspector may require that the system be abandoned.
3. The Septic Inspector shall notify the holder of an operating permit of the permit renewal requirement at least 90 calendar days prior to expiration of the permit. The owner must apply for renewal at least 30 calendar days before the permit expiration date.
4. Application for permit renewal shall be made on a form provided by the Town including:
  - a. The names, addresses, and telephone numbers of the applicant and permittee;
  - b. Reference number of previous operating permit;
  - c. Any outstanding compliance monitoring reports as required by the operating permit;

- d. Certified treatment system inspection signed and/or sealed by a certified designer, maintenance contractor, or operator at the discretion of the Septic Inspector;
  - e. Any revisions made to the operation and maintenance manual; and
  - f. Any applicable fees.
- I. **PERMIT NOT TRANSFERABLE.** The operating permit may not be transferred. A new owner shall apply for an operating permit in accordance with section 7.04 of this ordinance. The Septic Inspector shall not terminate the current permit until 60 calendar days after the date of sale unless an imminent threat to public health and safety exists. To consider the new owner's application, the Septic Inspector may require a performance inspection of the treatment system certified by a licensed inspector or qualified employee.
- J. **COMPLIANCE MONITORING.**
- 1. Performance monitoring of a SSTS shall be performed by a licensed inspection business or licensed service provider hired by the holder of the operating permit in accordance with the monitoring frequency and parameters stipulated in the permit.
  - 2. A monitoring report shall be prepared and certified by the licensed inspection business or licensed service provider. The report shall be submitted to the Septic Inspector on or before the compliance reporting date stipulated in the operating permit. The report shall contain a description of the maintenance and servicing activities performed since the last compliance monitoring report as described below:
    - a. Owner name and address;
    - b. Operating permit number;
    - c. Average daily flow since last compliance monitoring report;
    - d. Description of type of maintenance and date performed;
    - e. Description of sample taken (if required), analytical laboratory used, and results of analyses;
    - f. Problems noted with the system and actions proposed or taken to correct them;  
and
    - g. Name, signature, license and license number of the licensed professional who performed the work.

#### **7.05 DUTY TO COMPLY WITH PERMIT CONDITIONS.**

The permittee shall comply with all conditions stated in any permit issued by the Septic Inspector under this ordinance. Failure of the permittee to do so is a violation of this ordinance and is subject to the penalties provided herein.

#### **7.06 SYSTEMS NOT OPERATED UNDER MANAGEMENT PLAN.**

Owners of SSTS that are not operated under a management plan or operating permit must inspect treatment tanks and remove solids if needed every three years. Solids must be removed when their accumulation meets the limit described in Minn. R. 7080.2450.

## **SECTION 8.00 ABANDONMENT CERTIFICATION**

### **8.01 PURPOSE.**

The purpose of the system abandonment certification is to ensure that a treatment system no longer in service is abandoned following decommissioning and in a manner that protects public health, safety, and water quality. It also terminates all permits associated with the system.

### **8.02 ABANDONMENT REQUIREMENTS.**

- A. Whenever the use of a SSTS or any system component is discontinued as the result of a system repair, modification, replacement or decommissioning following connection to a municipal or private sanitary sewer, or condemnation or demolition of a building served by the system, further use of the system or any system component for any purpose is prohibited.
- B. Abandonment shall be completed in accordance with Minn. R. 7080.2500.
- C. An abandonment certificate shall be submitted to the Septic Inspector. The report shall include:
  - 1. Owner's name and contact information;
  - 2. Property address;
  - 3. System construction permit and operating permit;
  - 4. The reason(s) for abandonment; and
  - 5. A brief description of the abandonment methods used, description of the system components removed or abandoned in place, and disposition of any materials or residuals.

## **SECTION 9.00 COMPLIANCE MANAGEMENT**

### **9.01 COMPLIANCE INSPECTION PROGRAM.**

- A. **INSPECTOR RESPONSIBILITY.** It is the responsibility of the Septic Inspector, or its agent, to perform various SSTS compliance inspections periodically to assure that the requirements of this ordinance are met.
  - 1. SSTS compliance inspections must be performed:
    - a. To ensure compliance with applicable requirements;
    - b. For all new SSTS construction or replacement; and
    - c. For an evaluation, investigation, inspection, recommendation, or other process used to prepare a disclosure statement if conducted by a party who is not the SSTS owner. Such an inspection constitutes a compliance inspection and shall be conducted in accordance with Minn. R. 7082.0700 using the SSTS inspection report forms provided by the MPCA.
  - 2. All compliance inspections must be performed and signed by licensed inspection businesses or qualified employees certified as inspectors.

3. The Septic Inspector shall be given access to enter a property at any reasonable time to inspect and/or monitor the SSTS system. As used in this paragraph, "property" does not include a residence or private building.
4. No person shall hinder or otherwise interfere with the Septic Inspector's employees or agents in the performance of their duties and responsibilities pursuant to this ordinance. Refusal to allow reasonable access to the property by the Septic Inspector or its agent shall be deemed a violation of this ordinance.

B. NEW CONSTRUCTION OR REPLACEMENT.

1. Compliance inspections must be performed on new or replacement SSTS to determine compliance with Minn. R. chs. 7080 or 7081. SSTS found not to be in compliance with Minn. R. 7080.1500, supb. 4(A) or Minn. R. 7081.0080, subp. 3 must be repaired or replaced within 10 months or as directed under Minn. Stat. ch. 145A. SSTS that are determined to have operation or monitoring deficiencies must immediately be maintained, monitored or otherwise managed according to the operating permit. SSTS found to be noncompliant with other applicable requirements must be repaired or replaced according to the Septic Inspector's requirements.
2. It is the responsibility of the SSTS owner or the owner's agent to notify the Septic Inspector at least one working day prior to any permitted work on the SSTS.
3. A certificate of compliance for new SSTS construction or replacement shall be issued by the Septic Inspector if the Septic Inspector has reasonable assurance that the system was built in accordance with the applicable requirements as specified in the construction permit.
4. The certificate of compliance must include a certified statement by the certified inspector or qualified employee who conducted the inspection that the SSTS is or is not in compliance with the ordinance requirements. If the SSTS is determined not to be in compliance with the applicable requirements, a notice of noncompliance must be issued to the owner that includes a statement specifying those ordinance provisions with which the SSTS does not comply.
5. The certificate of compliance or notice of noncompliance must be submitted to the Septic Inspector no later than 15 calendar days after the date the inspection was performed. The Septic Inspector shall deliver the certificate of compliance or notice of noncompliance to the owner or the owner's agent within 15 calendar days of receipt from the certified inspector. No SSTS shall be placed into operation until a valid certificate of compliance has been issued.
6. Certificates of compliance for new construction or replacement shall remain valid for five years from the date of issue unless the Septic Inspector finds evidence of an imminent threat to public health or safety requiring removal and abatement under Minn. Stat. §145A.04, subd. 8.

C. EXISTING SYSTEMS.

1. Compliance inspections shall be required when any of the following conditions occur:
  - a. When a construction permit is required to repair, modify, or upgrade an existing system;
  - b. Anytime there is an expansion of use of the building being served by an existing SSTS which may impact the performance of the system;

- c. Anytime there is a change in the use of the property being served by an existing SSTS which may impact the performance of the system;
  - d. When an operating permit is to be renewed;
  - e. Prior to the sale or transfer of real property served by an existing SSTS if required by section 9.02(D)(1)(a) below;
  - f. During systematic shoreland or area-wide SSTS surveys by the Septic Inspector; and
  - g. At anytime as required by this ordinance or as the Septic Inspector deems appropriate such as upon receipt of a complaint or other notice of system malfunction.
2. Compliance inspections of existing SSTS shall be reported on the inspection report forms provided by the MPCA. An inspection for existing SSTS must verify the conditions in subitems (a) to (c).
- a. Sewage tanks must be assessed for leakage below the operating depth. A leakage report must be completed that includes the method(s) used to make the assessment. The assessment must be made by either a licensed SSTS business (except a design business) or a qualified employee with an SSTS certification (except as a designer). A passing report is valid for three years unless the certified individual has reason to believe that a new inspection is to be conducted and the tank is found not to be watertight.
  - b. The vertical separation distance from the bottom of the soil treatment and dispersal system and the periodically saturated soil or bedrock. This verification must be achieved by either conducting soil borings or by prior verifications by two independent parties. The soil borings used for system design or previous inspections qualifies as a verification. A vertical separation distance report must be completed that includes the method(s) used to make the assessment and includes any previous soil borings. The assessment must be made by either a licensed inspection business or a qualified employee of the Septic Inspector. If the verification separation report consists of verifications by two independent parties, a subsequent verification is not required unless the inspector has reason to believe a noncompliant condition exists.  
  
If a documented discrepancy arises on the depth of the periodically saturated soil between licensed businesses for SSTS design or compliance purposes, all disputing parties must follow the dispute resolution procedure described in Minn. R. 7082.0700, subp. 5.
  - c. Sewage backup, surface seeping or surface discharge from the system must be determined. A hydraulic function report must be completed that includes the method(s) used to make the assessment. The assessment must be made by either a licensed inspection business or a qualified employee with an inspector certification. A passing report is valid until a new inspection is requested or if the hydraulic performance is believed to have changed.
3. A certificate of compliance shall be based on the results of the verifications in section 9.02(C)(2). The certificate of compliance must include a certified statement by a qualified employee or a licensed inspection business, authorized by the Septic Inspector, whether the SSTS is in compliance with the ordinance requirements. If the SSTS is determined not to be in compliance with the applicable requirements, a notice of noncompliance must

include a statement specifying those ordinance provisions with which the SSTS does not comply. A construction permit application must be submitted to the Septic Inspector if the required corrective action is not a minor repair.

4. The certificate of compliance or notice of noncompliance must be submitted to the Septic Inspector no later than 15 calendar days after the date the inspection was performed. The Septic Inspector shall deliver the certificate of compliance or notice of noncompliance to the owner or the owner's agent within 15 calendar days of receipt from the licensed inspection business.
5. Certificates of compliance for existing SSTS shall remain valid for three years from the date of issue unless the Septic Inspector finds evidence of an imminent threat to public safety requiring removal and abatement under Minn. Stat. § 145A.04, subd. 8.
6. The Septic Inspector may waive a compliance inspection required by section 9.02(C)(1) if:
  - a. The owner of the real property served by an existing SSTS acknowledges in writing to the Septic Inspector that the existing SSTS is failing and shall be upgraded, repaired, replaced or abandoned in accordance with this ordinance within 10 months; or
  - b. The owner of the real property served by an existing SSTS acknowledges in writing to the Septic Inspector that the existing SSTS is an imminent threat to public health or safety and shall be upgraded, repaired, replaced or abandoned in accordance with this ordinance within 30 days.

#### D. PROPERTY TRANSFER/SALE REQUIREMENTS.

1.No owner or other person acting with legal authority on behalf of an owner of real property served by an existing SSTS shall sell or transfer to another party said real property unless the following requirements are met:

- a. A compliance inspection has been performed and a certificate of compliance has been issued for the SSTS within three years if the SSTS is older than five years or within five years if the SSTS is less than five years old prior to the intended date of sale or transfer of the real property, unless evidence is found identifying an imminent threat to public health and safety. If this requirement cannot be met, a compliance inspection must be conducted in accordance with section 9.02(C) above.
- b. The compliance inspection must have been performed by a qualified employee of the Septic Inspector or a licensed inspection business following the procedures described in section 9.02(C) above.
- c. The seller/transferor of the real property must provide the disclosure required by Minn. Stat. § 115.55, subd. 6.
- d. If the seller/transferor fails to provide a certificate of compliance, the seller/transferor shall provide the buyer/transferee sufficient security in the form of an escrow agreement to assure the installation of a complying SSTS. The security shall be placed in an escrow with a licensed real estate closer, licensed attorney, or federal or state chartered financial institution. The amount escrowed shall be equal to 125% of a written estimate to install a complying SSTS provided by a licensed and certified installer, or the amount escrowed shall be equal to 110% of the written contract price for the installation of a complying SSTS provided by a licensed and certified installer. After a complying SSTS has been installed and a certificate of compliance issued, the seller/transferor or the buyer/transferee shall provide the escrow agent a copy of the certificate of compliance.

2. The compliance portion of the certificate of compliance need not be completed if the sale or transfer involves the following circumstances:

a. The affected real property is without buildings or contains no dwellings or other buildings with plumbing fixtures.

b. The transfer is a tax forfeiture.

c. The sale or transfer completes a contract for deed or purchase agreement entered into prior to the effective date of this ordinance. This subsection applies only to the original vendor and vendee on such contract.

3. All real property sales or transfers subject to this ordinance occurring during the period between November 15<sup>th</sup> and April 15<sup>th</sup> when SSTS compliance cannot be determined due to frozen soil conditions shall require a winter agreement, which includes an application for an SSTS permit and an agreement to complete a compliance inspection by the following June 1<sup>st</sup> by a licensed inspection business. If upon inspection the SSTS is found to be in compliance, the permit fee will be refunded. If upon inspection the system is found to be noncompliant, an escrow agreement must be established in accordance with section 9.02(D)(1)(d) above and the system upgraded.

4. The responsibility for filing the completed compliance portion of the certificate of compliance under section 9.02(D)(1) above or for upgrading a system found to be noncompliant shall be determined by the seller/transferor and the buyer/transferee. The seller/transferor and the buyer/transferee shall provide the Septic Inspector with a signed statement indicating responsibility for completing the compliance portion of the certificate of compliance and for upgrading a system found to be noncompliant.

5. The issuance of permits, certificates of compliance or notices of noncompliance as requested or issued shall not be construed to represent a guarantee or warranty of the system's operation or effectiveness. Such certificates signify that the system in question is or has been designed and installed in compliance or noncompliance with the provisions of this ordinance.

E. CONFLICT OF INTEREST. A licensed inspection business that inspects an existing SSTS is allowed to subsequently design and install a new SSTS for that property provided the inspection business is also licensed to design and install. A licensed inspection business working on behalf of the Septic Inspector must not design or install a system if there is likelihood that the inspector or business will be responsible for permitting or inspecting the system or system site. A person working for or on behalf of a municipality shall not use the person's position to solicit for private business gain.

## **SECTION 10.00 VARIANCES**

### **10.01 VARIANCES ALLOWED.**

With the exception of section 10.02 below, in any case where it appears that, by reason of exceptional circumstances, the strict enforcement of any provision of the standards would be unreasonable, impractical or not feasible under the circumstances in order to promote the effective and reasonable application and enforcement of the provisions of this ordinance, the Town Board may permit a variance upon such conditions as it may prescribe consistent with the general purposes of this ordinance and the intent of this and all other applicable state and local regulations.

### **10.02 PROHIBITED VARIANCES.**

The Town Board may not grant variances from the following standards:



- A. Minn. R. 7080.2150, subp. 2.
- B. Minn. R. 7081.0080, subps. 2 to 5; however, variances may be granted to Minn. R. 7081.0080, subp. 4(D)(1) for the replacement of MSTs serving existing dwellings or other establishments.
- C. Flow determinations under Minn. R. 7081.0110 if the deviation reduces the average daily flow from more than 10,000 gallons to 10,000 gallons per day or less.

### **10.03 PROCEDURE FOR REQUESTING VARIANCE.**

- A. **APPLICATION FOR VARIANCE.** A variance application shall be submitted by the property owner to the Septic Inspector on forms provided by the Town. Applicants shall provide all information as required for the administration of this ordinance.
- B. **CONTENTS OF VARIANCE APPLICATION.** The variance application shall include development plans and specifications and such other information as may be required by other sections of this ordinance or by the Septic Inspector. The application shall also include:
  - 1. The legal description of the real property on which the system will be located;
  - 2. The names, addresses and telephone numbers of the owners of the property or any person having a legal interest therein;
  - 3. A site plan showing all pertinent dimensions, buildings, structures and significant natural features having an influence on the variance;
  - 4. Copies of any required municipal, county, state, or federal permits or approvals;
  - 5. A statement identifying the specific provision(s) in the ordinance from which the variance is requested;
  - 6. The reasons why compliance with the provision(s) is difficult or inappropriate;
  - 7. The alternative measures that will be taken to ensure a comparable degree of compliance with the intention of the applicable provision(s);
  - 8. The length of time for which the variance is requested;
  - 9. Cost considerations; and
  - 10. Other relevant information requested by the Septic Inspector as necessary to properly evaluate the variance request.
- C. **APPLICATION FEE.** The application fee shall accompany the initial application for a variance request.
- D. **SITE INVESTIGATION.** Upon receipt of the variance application, the Septic Inspector shall decide if a site investigation is necessary. After the necessary information has been gathered, the Septic Inspector shall make a written recommendation to approve or deny the variance to the Town Board.
- E. **NOTIFICATION.** Written notice of the variance application shall be sent to property owners of record within 500 feet of the affected property. The written notice shall be given not less than 14 days prior to the date of the meeting at which the variance application will be considered by the

Town Board. The failure of any person to receive such notification shall not invalidate the proceedings.

- F. **FACTORS REQUIRED FOR APPROVAL.** The variance may be granted provided that:
1. The circumstances alleged to create the need for a variance are unique to the property and were not caused by the action of the applicant;
  2. The granting of the variance will not be contrary to the public interest or damaging to the rights of another person or to property values in the vicinity;
  3. The granting of the variance would not allow a prohibited use; and
  4. The granting of the variance would be in accordance with the intent and purpose of this Ordinance and Minn. R. chs. 7080, 7081, and 7082.
- G. **CONDITIONS.** The Town Board may impose conditions in granting the variance to ensure compliance and to protect the public health, safety, or welfare. Each violation of any condition set forth in the variance shall be a separate violation of this ordinance subject to enforcement and shall be sufficient grounds for terminating the variance.
- H. **DENIAL OF VARIANCE.** No application for a variance which has been denied wholly or in part shall be resubmitted for a period of six months from the date of said denial, except on the grounds of relevant new evidence or proof of a significant change of conditions.
- I. **APPEAL.** Any person aggrieved by the decision of the Town Board may appeal the decision to any court with appropriate jurisdiction.

## **SECTION 11.00 ORDINANCE VIOLATIONS**

For violations of this ordinance, the Town may take the following actions: issuance of a warning notice; issuance of a notice of violation, issuance of a citation or complaint; issuance of a cease and desist order; abatement; suspension, summary suspension or revocation of a permit issued under this ordinance; execution of a stipulation agreement; and/or commencement of other civil proceedings.

### **11.01 WARNING NOTICE.**

The Septic Inspector may issue a warning notice to any person alleged to have committed a violation of this ordinance. A warning notice shall serve to place the person on notice that compliance with specified ordinance requirements must occur to avoid additional enforcement actions. Service of the warning notice shall be made by first class mail or by personal service. The warning notice shall contain:

- A. A list of violations, including the ordinance section(s), rule(s), or statute(s) violated, the factual basis for the violations and the date(s) of the violations.
- B. The specific actions required to be taken by the person to correct the violations and the timeframes within which the corrections are required to be made.
- C. A general description of the additional administrative and judicial enforcement actions that could be pursued by the Town if the alleged violations are not satisfactorily corrected.

## 11.02 NOTICE OF VIOLATION (NOV).

The Septic Inspector may issue a notice of violation (NOV) to any person alleged to have committed a violation of this ordinance. A NOV shall serve to place the person on notice that compliance with specified ordinance requirements must occur to avoid additional enforcement actions. Service of the NOV shall be made by certified mail or by personal service. The notice of violation shall contain:

- A. Findings of fact with corresponding conclusions of law, which describe the alleged violations and the corresponding ordinance section(s), statute(s), and/or rule(s) which are allegedly violated.
- B. Orders for corrective actions, which describe specifically how each alleged violation must be corrected and the timeframes within which the corrections are required to be made.
- C. Notice of further action, which describes in general terms, the additional administrative and judicial enforcement actions that could be pursued by the Town if the alleged violations are not satisfactorily corrected.

## 11.03 CITATIONS.

Any person who fails to comply with the provisions of this ordinance is guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

An authorized representative of the Septic Inspector shall have the power to issue citations for violations of this ordinance, but shall not be permitted to physically arrest or take into custody any violator.

- A. Issuance of the Citation. Citations shall be issued to the person alleged to have committed the violation (alleged violator) either by personal service or by certified mail. In the case of a public, private, or municipal corporation, the citation shall be issued to any officer or agent with express or implied authorization to accept such issuance.
- B. Notice of Citation. Citations shall be made out in quadruplicate (4). One copy shall be issued to the alleged violator; one copy shall be filed with the Septic Inspector; one copy shall be filed with the Town Clerk; and one copy shall be filed with the Dakota County District Court.
- C. Form of Citation. Citations shall be on such form(s) as approved by the Town and shall contain at least the following:
  - 1. The name and address of the alleged violator and when known, the owner or person in charge of the premises at which the violation occurred;
  - 2. The date, time (if known) and place of violation;
  - 3. A short description of the violation followed by reference to the section of this ordinance violated;
  - 4. The name of the person issuing the citation;
  - 5. The date, time, and place at which the alleged violator shall appear in court and notice that if such person does not appear a warrant may be issued for such person's arrest; and
  - 6. Such other information as the court may specify.

## 11.04 ABATEMENT.

If a SSTS constitutes a public health nuisance, the Town may enter the property and abate the nuisance and recover the costs of the same from the property owner through the following procedures:

- A. ABATEMENT NOTICE. The Septic Inspector shall serve an abatement notice on the property owner or occupant.
  1. Contents of Abatement Notice. An abatement notice shall include the following:
    - a. Notice that there is a SSTS located on the property and that it constitutes a public health nuisance.
    - b. Notice that the property owner must abate the public health nuisance within a specified time period not to exceed 10 calendar days in order to avoid any liability for the costs of inspection and abatement that the Town may incur.
    - c. Notice that if the property owner fails to abate the public health nuisance within the specified timeframe, the Town or its agent intends to enter the property and commence abatement of the public health nuisance and assess the costs of inspection and abatement against the real property on which the nuisance is located.
  2. Service. The abatement notice must be served on a property owner by certified mail or personal service. Service by certified mail shall be deemed complete upon mailing. If the property owner is unknown or absent and has no known representative upon whom notice can be served, the Septic Inspector shall post a written or printed notice on the property stating that, unless the public health nuisance is abated within a period not longer than 10 days, the Town Board will have the nuisance abated at the expense of the owner.
- B. ABATEMENT BY THE TOWN. In the event a property owner does not abate the public health nuisance, the Town Board may authorize the expenditure of funds necessary to abate the nuisance.
- C. ASSESSMENT OF ABATEMENT COSTS.
  1. The costs of an enforcement action under this section may be assessed and charged against the real property on which the public health nuisance was located.
  2. The Town Clerk shall keep a record of the enforcement and abatement costs and report all work done for which assessments are to be made, stating and certifying the description of the real property, lots or parcels involved and the amount assessable to each. Prior to the annual deadline specified by the County Auditor for the certification of unpaid special charges, the Town Clerk shall prepare an assessment roll of such charges for consideration and adoption by the Town Board in accordance with Minn. Stat. § 429.061, 429.071, 429.081, and 429.101.
  3. The assessment roll adopted and levied by the Town Board shall be submitted to the County Auditor, who shall extend the cost so assessed and charged on the tax roll of the Town against the real property on which the enforcement action was taken.

### **11.05 CEASE AND DESIST ORDERS.**

Cease and desist orders may be issued when the Septic Inspector has probable cause that an activity regulated by this or any other Township Ordinance is being or has been conducted without a permit or in violation of a permit. When work has been stopped by a cease and desist order, it shall not be resumed until the reason for the work stoppage has been completely satisfied, any administrative fees paid, and the cease and desist order lifted.

### **11.06 STIPULATION AGREEMENT.**

The Septic Inspector and a person alleged to have violated provisions of this ordinance may voluntarily enter into a stipulation agreement whereby the parties to the agreement: a) identify conditions on the property that require corrective action; b) agree on the corrective actions that must be performed by the person; and c) agree on the timeframes in which the corrective actions must be completed. If the person fails to fulfill the requirements of the agreement, the Town Board may seek compliance with the terms of the agreement through a court of competent jurisdiction or pursue other enforcement action allowed by this ordinance.

### **11.07 SUSPENSION AND REVOCATION OF PERMIT.**

The Septic Inspector may suspend or revoke a permit for violations of this ordinance in accordance with section 12.00 below. The Septic Inspector may issue a summary suspension of a permit for violations of this ordinance in accordance with section 12.02 below.

### **11.08 COMMENCEMENT OF CIVIL COURT ACTION.**

In the event of a violation or threat of violation of this ordinance, the Town Board may institute appropriate civil actions or proceedings in any court of competent jurisdiction requesting injunctive relief to prevent, restrain, correct or abate such violations or threatened violations. The Town may recover all costs, including reasonable attorney's fees, incurred for enforcement of this ordinance.

## **SECTION 12.00 PERMIT SUSPENSION AND REVOCATION**

### **12.01 SUSPENSION.**

- A. Any permit required under this ordinance may be suspended by the Septic Inspector for violation of any provision of this ordinance. Upon written notice to the permittee, said permit may be suspended by the Septic Inspector for a period not longer than 60 days or until the violation is corrected, whichever is shorter.
- B. Such suspension shall not occur earlier than 10 working days after written notice of suspension has been served on the permittee, or if a hearing is requested, until written notice of the Town Board action has been served on the permittee. Notice to the permittee shall be made by personal service or by certified mail to the address designated in the permit application. Service by certified mail shall be deemed complete upon mailing. Such written notice of suspension shall contain the effective date of the suspension, the nature of the violation(s) constituting the basis for the suspension, the facts which support the conclusion that the violation(s) occurred, and a statement that if the permittee desires to appeal, the permittee must file a written request for an appeal hearing with the Town Clerk within 10 working days of the service of the suspension notice, exclusive of the day of service. The appeal hearing request shall state the grounds for appeal and be served on the Town Clerk by personal service or certified mail with a copy to the Septic Inspector. Following timely service of a request for hearing, the Town Board shall set a time and place for the hearing pursuant to section 13.00.

- C. If said suspension is upheld and the permittee has not demonstrated compliance with the terms of the ordinance within the 60 day time period, the Septic Inspector may serve notice of continued suspension for up to an additional 60 days or initiate revocation procedures.

## **12.02 SUMMARY SUSPENSION.**

- A. If the Septic Inspector finds that an imminent threat to the environment or to public health, safety or welfare requires emergency action and incorporates a finding to that effect in its order, summary suspension of a permit may be ordered by the Septic Inspector. Written notice of such summary suspension shall be made by personal service or by certified mail on the permittee at the address designated in the permit application. Service by certified mail shall be deemed complete upon mailing. Alternatively, the Septic Inspector may post copies of the notice of summary suspension of the permit on the property for which the permit was issued. Said posting shall constitute the notice required under this section.
- B. The written notice shall state the effective date of the summary suspension, the nature of the violation(s) requiring emergency action, the facts which support the conclusion that the violation(s) occurred and a statement that if the permittee desires to appeal, the permittee must file a written request for an appeal hearing with the Town Clerk within 10 working days of service or posting of the suspension notice, excluding the day of service. The appeal hearing request shall state the grounds for appeal and be served on the Town Clerk by personal service or by certified mail, with a copy to the Septic Inspector. Following timely service of a request for a hearing, the Town Board shall set a time and place for the hearing pursuant to section 13.00.
- C. The summary suspension shall not be stayed pending an appeal to the Town Board or an informal review by the Septic Inspector, but shall be subject to dismissal upon a favorable re-inspection by the Septic Inspector or favorable appeal to the Town Board.

## **12.03 SUSPENSION RE-INSPECTIONS.**

Upon written notification from the permittee that all violations for which a suspension or summary suspension was invoked have been corrected, the Septic Inspector shall re-inspect the system, device, site or activity within a reasonable length of time, but in no case more than three working days after receipt of the notice from the permittee. If the Septic Inspector finds upon re-inspection that the violations constituting the grounds for the suspension have been corrected or removed, the Septic Inspector shall immediately dismiss the suspension by written notice to the permittee, served personally or by certified mail on the permittee at the address designated in the permutation application, with a copy to the Town Clerk.

## **12.04 REVOCATION.**

- A. Any permit granted pursuant to this ordinance may be revoked by the Septic Inspector for violation of any provision of this ordinance.
- B. Revocation shall not occur earlier than 10 working days from the time that written notice of revocation from the Septic Inspector is served on the permittee, or if a hearing is requested, until written notice of the Town Board's action has been served on the permittee. The notice of revocation to the permittee shall be made by personal service or by certified mail to the address designated in the permit application. Service by certified mail shall be deemed complete upon mailing. Such written notice of revocation shall contain the effective date of the revocation, the nature of the violation(s) constituting the basis for the revocation, the facts which support the conclusion that the violation(s) occurred and a statement that if the permittee desires to appeal, the permittee must file a request for an appeal hearing with the Town Clerk within 10 working days of service of the revocation notice, exclusive of the day of service. Following timely service of a

request for a hearing, the Town Board shall set a time and a place for the hearing to be held pursuant to section 13.00.

## **SECTION 13.00 HEARINGS**

Hearings requested under this ordinance shall be held before the Town Board, or a hearing examiner as provided below, and shall be open to the public.

- A. **TIMEFRAME FOR HEARING.** Unless an extension of time is requested by the appellant in writing directed to the chair of the Town Board and is granted, the hearing will be held no later than 45 calendar days after the date of service of request for a hearing, exclusive of the date of such service. In any event, such hearing shall be held no later than 90 calendar days after the date of service of request for a hearing, exclusive of the date of such service.
- B. **NOTICE OF HEARING.** The Town Clerk shall mail notice of the hearing to the appellant, with a copy to the Septic Inspector, at least 15 working days prior to the hearing. Such notice shall include:
  - 1. A statement of time, place, and nature of the hearing.
  - 2. A reference to the particular section of the ordinance and rules involved.
- C. **HEARING EXAMINER.** The Town Board may by resolution appoint an individual, to be known as the hearing examiner, to conduct the hearing and to make findings of fact, conclusions and recommendations to the Town Board. The hearing examiner shall submit the findings of fact, conclusions and recommendations to the Town Board in a written report and the Town Board may adopt, modify or reject the report.
- D. **CONDUCT OF THE HEARING.** The appellant may be represented by counsel. The Septic Inspector, the appellant, and additional parties, as determined by the Town Board or hearing examiner, in that order, shall present evidence. All parties shall have full opportunity to respond to and present evidence, cross-examine witnesses, and present argument. The Town Board or hearing examiner may also examine witnesses.
- E. **BURDEN OF PROOF.** The Septic Inspector shall have the burden of proving its position by a preponderance of the evidence, unless a different burden is provided by substantive law. All findings of fact, conclusions, and decisions by the Town Board shall be based on evidence presented and matters officially noticed.
- F. **ADMISSION OF EVIDENCE.** All evidence that possesses probative value, including hearsay, may be admitted if it is the type of evidence on which prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence that is incompetent, irrelevant, immaterial or unduly repetitious may be excluded. The hearing shall be confined to matters raised in the Septic Inspector's written notice of suspension, summary suspension, revocation, or denial of a permit, or in the written request for a hearing.
- G. **PRE-HEARING CONFERENCE.** At the written request of any party, or upon motion of the Town Board or hearing examiner, a pre-hearing conference shall be held. The pre-hearing conference shall be conducted by the hearing examiner, if the Town Board has chosen to use one, or by a designated representative of the Town Board. The pre-hearing conference shall be held no later than five working days before the hearing. The purpose of the pre-hearing conference is to:
  - 1. Clarify the issues to be determined at the hearing.

2. Provide an opportunity for discovery of all relevant documentary, photographic or other demonstrative evidence in the possession of each party. The hearing examiner or Town Board's representative may require each party to supply a reasonable number of copies of relevant evidence capable of reproduction.
  3. Provide an opportunity for discovery of the full name and address of all witnesses who will be called at the hearing and a brief description of the facts and opinions to which each is expected to testify. If the names and addresses are not known, the party shall describe them thoroughly by job duties and involvement with the facts at issue.
  4. If a pre-hearing conference is held, evidence not divulged as provided above shall be excluded at the hearing unless the party advancing the evidence took all reasonable steps to divulge it to the adverse party prior to the hearing and:
    - a. The evidence was not known to the party at the time of the pre-hearing conference; or
    - b. The evidence is in rebuttal to matters raised for the first time at or subsequent to the pre-hearing conference.
- H. **FAILURE TO APPEAR.** If the appellant fails to appear at the hearing, appellant shall forfeit any right to a hearing before the Town Board or hearing examiner. Appellant's failure to appear shall also be deemed as a waiver of appellant's right to appeal the Septic Inspector's decision and the decision shall stand.
- I. **APPEAL OF TOWN BOARD DECISION.** Any person aggrieved by the decision of the Town Board may appeal that decision to any court with appropriate jurisdiction.

## **SECTION 14.00 RECORD KEEPING AND ANNUAL REPORT**

### **14.01 RECORD KEEPING.**

The Septic Inspector shall maintain a current record of all permitted systems. The record shall contain all permit applications, issued permits, fees assessed, variance requests, certificates of compliance, notices of noncompliance, enforcement proceedings, site evaluation reports, design reports, record drawings, management plans, maintenance reports, an annual list of all sewage tanks installed in the Township sorted by licensed installation businesses, and other records relevant to each system.

### **14.02 ANNUAL REPORT.**

The Septic Inspector shall provide an annual report of SSTS permitting activities to the MPCA in accordance with the requirements set forth in Minn. R. 7082.0040, subp. 5.

## **SECTION 15.00 SEVERABILITY**

If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of law, the remainder of this ordinance shall not be affected and shall remain in full force.

## **SECTION 16.00 REMEDIES CUMULATIVE**

No remedy set forth in this ordinance is intended to be exclusive but each such remedy shall be cumulative and in addition to other remedies now or hereafter existing at law or in equity. No delay in the exercise of any remedy for violation of this ordinance shall later impair or waive any such right or power of the Township.



**SECTION 17.00 EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and publication according to law.

EUREKA TOWNSHIP, STATE OF MINNESOTA

\_\_\_\_\_  
Nanett Sandstrom  
Town Clerk

\_\_\_\_\_  
Brian Budenski  
Chair, Eureka Township Board

Date: October 12, 2010

Date: October 12, 2010

Summary of Ordinance 2010-3 approved by Town Board and published in the Thisweek Farmington/ Lakeville on October 22, 2010.