

## **Chapter 11 Point-of-Sale Evaluations of On-Site Water and Sewage Disposal Systems**

### **1. General Provisions**

**Sec. 1:1** Manistee and Kalkaska County adopts this Regulation that states the procedures, standards and enforcement that shall be used by the District 10 Health Department Environmental Health Division, under the authority of the District 10 Health Department Health Officer, to manage any residential premises within their jurisdiction containing an On-site Water and/or Sewage Disposal System, ("OWSDS") 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 ("OWSS"); and/or
- b) Ensure the adequate disposal of sewage from homes served by an On-site Sewage Disposal System ("OSDS"); and
- c) It is not the intention of this Regulation to cause all existing systems, that are currently functioning but do not meet existing construction standards, to be brought into compliance with such standards. Only those that are failing or do not meet approval criteria established by District 10 Health Department will require corrective action.

**Sec. 1:2** This Regulation contains minimum standards and supplements the Rules and Regulations enacted by the Michigan Department of Environmental Quality (MDEQ) 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.

**Sec. 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.

**Sec. 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 a license without first having obtained written approval from the Health Officer indicating that the applicant has complied with the minimum requirements of this Regulation.

**Sec. 1:5** This 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 the District 10 Health Department and at least 45 days after approval by the District 10 Board of Health, or at a time specified by the District 10 Board of Health.

### **2. Definitions**

**Sec. 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.

**Sec. 2:2** The following words and terms used in this Regulation, unless otherwise expressly stated, shall have the following meaning:

**Municipality**

The term "municipality" shall mean any incorporated city, village, or township within Manistee and Kalkaska County.

**Authorized Agent**

The term "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.

**Environmental Health Division**

The term "Environmental Health Division" shall mean the District Health Department #10, Environmental Health Division.

**Health Code Board of Appeals**

The term "Health Code Board of Appeals" (HCBA) shall mean the District Health Department #10 Board of Appeals.

**OSDS**

The term "OSDS" shall mean an on-site sewage disposal system.

**OWSS**

The term "OWSS" shall mean a on-site water supply system.

**OWSDS**

The term "OWSDS" shall mean an on-site water and/or sewage disposal system.

### **Septage Hauler**

The term "septage hauler" shall mean a firm licensed by MDEQ for the purpose of removing septic tank waste and properly disposing this waste.

### **Evaluation**

The evaluation shall consist of a determination if the OSDS and OWSS meet approval of 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.

### **Satisfactory**

The term "Satisfactory" shall mean that there shall not be more than a minimal likelihood of degradation of groundwater and surface water, or risk to public health caused by improper construction, location or function of an OWSDS.

### **Unsatisfactory**

The term "Unsatisfactory" is defined as not meeting approval of standards of the District Health Department #10 Sanitary Code and its regulations.

## **3. Limitations on Sale or Transfer of Property**

**Sec. 3:1** There shall be no sale of a parcel containing an OWSS, OSDS, or OWSDS in Manistee County until the following conditions are met:

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

**Sec. 3:2** Each OWSDS in Manistee and Kalkaska County shall be inspected and evaluated prior to the sale of property upon which an OWSDS is located if certification has not been done within twelve (12) months preceding the date of property sale.

**Sec. 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 within the previous twenty-four (24) months prior to 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) Public Sanitary Sewer will be available within six (6) months, and system is not failing. Affidavit or letter from the municipality will be required.

The owner of premises containing an OWSDS shall have the system evaluated by a District Health Department #10 certified inspector or District Health Department #10, Environmental Health Division staff. If records can not be provided that indicates that the septic tank has been pumped within the past two (2) years, servicing will be required. Persons certified to perform evaluations of an OWSDS shall meet the minimum standards in Sec: 3.7 of this Article. A licensed septage hauler shall provide proof of service and an evaluation report to the owner and the District Health Department #10. After the evaluation is complete, the District Health Department #10, Environmental Health Division 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.

**Sec. 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, and other water quality parameters as required by the 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 system(s);
- j) Educational material(s) about system(s) maintenance that have been approved by the District Health Department #10; and,
- k) Completed forms approved by the District Health Department #10.

**Sec. 3:5** A copy of the evaluation report of an OWSDS shall be provided to the owner and a copy filed with the District Health Department #10, Environmental Health Division. Such reports shall be freely available to the public through the Freedom of Information Act, MCLA 15.231 et. seq.

### **Section 3.6 Performance Standards**

**Sec. 3:6.1** The evaluation shall determine whether the system(s) adversely affects the public health and environment or violates any other applicable rules or regulations.

**Sec. 3:6.2** The evaluation shall determine whether the OSDS structure and its operational status are in substantial conformance with the standards of this Regulation.

**Sec. 3:6.3** 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 water quality standards in areas of known water quality concerns.

**Sec. 3:6.4** Water samples shall be collected and analyzed at a laboratory certified by the Michigan Department of Environmental Quality to determine the presence of coliform bacteria, nitrates, or other contaminants as determined by the District Health Department #10.

**Sec. 3:7** All inspectors performing evaluations under this Regulation must be registered with the District Health Department #10 and certified before undertaking any evaluations. All qualified inspector applicants must file an application with the District Health Department #10, pay the District Health Department #10 registration fee annually and satisfactorily complete a training course approved by the District Health Department #10. Prospective inspectors must demonstrate knowledge of construction practices, operational standards as well as the causes and indicators of OWSDS failures. Inspectors shall provide proof of general liability insurance. No evaluation reports shall be accepted from individuals not certified by the District Health Department #10.

**Sec. 3:8** An individual shall not be permitted to install, or replace an OWSS and/or OSDS without prior approval of the District Health Department #10. This section does not preclude the requirements for permits where necessary.

**Sec. 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 Regulation;
- 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 within three (3) business days after being requested by the District Health Department #10; or,
- f) The inspector does not maintain the required certification as required by this Regulation.

**Sec. 3:10** The 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 meeting with the District Health Department #10, Environmental Health Division and/or 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 procedure in Section 11 of this regulation.

**Sec. 3:11** If an inspector is de-certified, re-certification shall be contingent upon completing the requirements established by the District Health Department #10.

#### **4. Responsibilities of Various Parties**

**Sec. 4:1** Owners are responsible for hiring certified inspectors/licensed septage haulers to perform inspections under this Regulation prior to the sale of any premises that he/she owns. The owner must also secure documentation from the District Health Department #10, Environmental Health Division 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 the 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.

**Sec. 4:2** The Responsibilities of the District 10 Health Department Environmental Health Division 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/licensed septage haulers to perform inspections under this Regulation;
- d) Require correction where there is evidence of a system failure;
- e) Create and maintain a database of systems inspected and evaluated as well as newly installed systems;
- f) Establish criteria for the inspection of OWSDS and the certification of inspectors and make such criteria and related forms available to the public;
- g) Require observation ports to facilitate evaluations when issuing permits for installation of OWSDS; and,

## **5. Fees**

**Sec. 5:1** Fees to cover expenses, including but not limited to overhead, processing, labor, storage, training, etc., by the District Health Department #10 may be adopted as provided in the Public Health Code (Act 368 of 1978 as amended). The District Health Department #10 Board of Health is responsible for establishing those fees.

Sec. 5:2 Private inspectors that are certified by District Health Department #10 are responsible for establishing their own fees for inspections.

## **6. Failure**

**Sec. 6:1** When an OWSDS fails, the owner, agent or other responsible party shall contact the District 10 Health Department and shall complete all repairs as required by the District Health Department #10.

## **7. Inspection Notification**

**Sec. 7:1** If, after reviewing the inspection, the District Health Department #10, Environmental Health Division determines that the OWSDS is unsatisfactory as defined, then the property owner shall be subject to enforcement as provided in this Regulation. The District Health Department #10, Environmental Health Division shall notify in writing 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 the 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. Corrective Action**

**Sec. 8:1** Upon receiving written notice from the District Health Department #10 of non-compliance with this Regulation, the owner, buyer or authorized agent shall, within thirty (30) days, submit a proposed corrective action and contract for services in order to bring the affected system into compliance with applicable laws. In addition, the owner, buyer or authorized agent shall place into an escrow account a deposit of a surety or performance bond or cash in an amount equal to one and one-half (1 ½) times the estimated cost of the contract guaranteeing performance of such contract. The 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 within one hundred eighty (180) days following District Health Department #10 approval of the proposed correction action plan, unless weather prohibits the corrective action. Once the 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 and any affidavit previously filed with the Register of Deeds shall be discharged. If an OWSDS presents an immediate health hazard, the owner or other responsible party shall take such measures, in cooperation with the District Health Department

#10, which will immediately reduce or eliminate the impact of such failure until the full corrective plan can be implemented.

**Sec. 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. Enforcement and Compliance**

**Sec. 9:1** If, after investigation, the District Health Department #10 believes that a person is violating these Regulations, the 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, the 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.

**Sec. 9:2** As stated in the State of Michigan Public Health Code and District Health Department #10 Sanitary Code, the District 10 Health Department 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 or Rules promulgated under 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 or Rules promulgated under the Regulation.

**Sec. 9:3** If an owner or purchaser does not comply with the requirements of this Regulation, a Health Officer or his/her duly authorized representative may record an affidavit that details the non-compliance with the jurisdiction's County Register of Deeds.

## **10. Violation of the Regulation**

**Sec. 10:1** After learning that this Regulation has been violated, the Health Officer or his/her designated representative 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 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.

**Sec. 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 conference at which time the person may indicate why he/she believes that he/she has not violated this Ordinance.
- b) Any party issued a citation may appeal the citation to the District Health Department #10 Board of Health or its designated committee within 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, or the District Health Department #10 Board of Health 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.

**Sec. 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 (\$500.00) 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.

**Sec. 10:4** If an owner does not have his/her property evaluated as specified by this Regulation, the 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.

**Sec. 10:5** If the owner or party violating this Regulation refuses on demand to pay such expenses incurred by the Department to abate, correct or remove a 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.

**Sec. 10:6** As stipulated in the State of Michigan Public Health Code, an inspection under Sec. 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. Appeals**

**Sec. 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. Miscellaneous Provisions**

**Sec. 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.

**Sec. 12:2** All amendments to this Ordinance shall be approved by the Board of Commissioners of all Counties in the 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.