



1105 ½ 8TH Ave. NE
Austin, Minnesota 55912
General Office Extension:
Phone: (507) 437-9527
Fax: (507-437-9582)

To: Interested Parties
From: Angie Knish, Director
Date: October 16, 2009
Re: DRAFT Proposed SSTS Ordinance Changes

NOTICE OF INTENTION TO MAKE CHANGES / AMENDMENTS TO THE MOWER COUNTY ISTS ORDINANCE: The Mower County Planning Commission on behalf and under the direction of the Mower County Board of Commissioners will hold a public hearing on Tuesday, October 27, 2009, at 7:00 p.m. at the Mower County Courthouse, 201 First Street NE, Austin, MN to discuss the following update and changes to the Mower County Individual Sewage Treatment System Ordinance 04-04.

Preparation of a new Septic System Ordinance based upon Minnesota Rules 7080-7083 (passed February 2008) regarding subsurface sewage treatment systems.

A copy of the proposed changes will be available for review in the Mower County Auditor's Office and online at the Mower County website: www.co.mower.mn.us under the Plan & Zoning tab. Electronic copy can be provided by the Mower County Environmental Services Office by email – contact: angiek@co.mower.mn.us.

NOTES BEFORE REVIEW:

The State of Minnesota has changed MN Rules 7080 regarding Individual Sewage Treatment Systems (ISTS) to MN Rules 7080 through 7083. All Counties in the State of Minnesota are required by law to adopt new Ordinances consistent with these new Rules by February 4, 2010.

The Association of Minnesota Counties and other groups, including attorneys, devised a Model Ordinance for Local Subsurface Sewage Treatment System (SSTS) Regulatory Program. That Model is the basis for the proposed changes. Within that model there are 3 program options: 1) Conventional, 2) Performance, 3) Alternative Local Standards. The Environmental Services staff is recommending the Conventional Program as the basis for this Ordinance Revision. The reasons for this are explained on page 1 of the document. Please note that this matter will be an item of discussion at the public hearing held before the Planning Commission on October 27, 2009.

On the first page the document you will find some guidance information regarding how this "Working – Document-in-Process" is devised. Some of the information contained in this first draft is there for discussion purposes and may not remain in the final draft. I anticipate there will be several modified versions before the final document is adopted by the County Board. Please note at the bottom right hand corner you will find the date of the most current draft. You will want to notice this as this document evolves to make sure that you have received or are reviewing the most current draft version.

As always, if you have any questions, please feel free call our office; and please feel free to participate or attend any of the meetings of this governing process. Participation is welcomed and encouraged

(Index to be included at later date.)

Guidance Information regarding formats:

1. DOUBLE UNDERLINED, ITALIC, SMALL CAPS, BOLD BRITANNICA – (RECOMMENDED) LANGUAGE

ADDED BY MOWER COUNTY STAFF

2. *Shaded Italics appear which provide narrative guidance in the form of “Notes”, “Options”, and “Comments” to assist in drafting ordinance provisions which will best serve the County’s SSTS program. These are provided to explain a particular section, listing possible options, considerations important to their use, or cross referencing pertinent laws or sections as appropriate.*

3. Ordinance provisions strictly required by MPCA for inclusion in the ordinance are highlighted by underlining where they apply.

4. *Text Box, Italic font: County staff comment or recommendation regarding a certain issue.*

5. No formatting: Model Ordinance as written

Angie’s Comments: The Model Ordinance Developed by the Association of Minnesota Counties for local Subsurface Sewage Treatment Systems contained 3 program selection options: 1) Conventional; 2) Performance; 3) Alternative Local Standards. The Planning Commission may discuss these options and choose a different model if they disagree with staffs recommendation

Bill explains why we chose to work from the Conventional Model over the Alternative Local Standards and Performance Model. (SEE ATTACHED Table 1 {last page} outlining the three models)

RE: SSTS Program Selection Considerations

I feel that the conventional program is most appropriate for Mower County A conventional program requires only moderate resources and an average SSTS program. With budget constraints and cutbacks I would be concerned we would not have the resources available for a performance program including IT resources. And while we have what I think is an, at least average if not stronger SSTS program with staffing cuts and budget constraints I am not sure the county is willing to make the commitments necessary for a performance program. Although a performance program may provide extra protection for our Karst and sensitive areas the conventional program should provide adequate protection. An alternative program would not provide this protection for our sensitive ground water areas and surface waters. Alternative local standards would also not be appropriate in the Townships around Austin where growth is likely.

MOWER COUNTY
ORDINANCE NO. ____

SUBSURFACE SEWAGE TREATMENT SYSTEMS (SSTS)

This is an ordinance authorizing and providing for sewage treatment and soil dispersal in unsewered areas of the county. It establishes:

- 1) Minimum standards for and regulation of individual sewage treatment systems (ISTS) and mid-sized Subsurface Sewage Treatment Systems (MSTS) (collectively referred to as SSTS) in unsewered incorporated and unincorporated areas of Mower County incorporating by reference minimum standards established by Minnesota statutes and administrative rules of the Minnesota Pollution Control Agency,
- 2) Requirements for issuing permits for installation, alteration, repair or expansion of SSTS,
- 3) Requirements for all SSTS permitted under the revised Minnesota Rules, Chapters 7080 and 7081 to be operated under an approved management plan,
- 4) Standards for upgrade, repair, replacement, or abandonment of SSTS,
- 5) Penalties for failure to comply with these provisions,
- 6) Provisions for enforcement of these requirements, and
- 7) Standards which promote the health, safety and welfare of the public as reflected in Minnesota Statutes sections 115.55, 145A.05, 375.51, 394.21-394.37, and 471.82, the County Comprehensive Plan and the County Zoning and Shoreland Ordinance.

ARTICLE I PURPOSE AND AUTHORITY

ARTICLE I, SECTION 1.0 PURPOSE AND INTENT

1.01 Purpose

The purpose of this ordinance is to establish minimum requirements for regulation of ISTS and MSTS for the treatment and dispersal of SEWAGE AND THE TREATMENT AND DISPOSAL OF SEPTATGE within the applicable jurisdiction of the County to protect public health and safety, groundwater quality, and prevent or eliminate the development of public nuisances. It is intended to serve the best interests of the County's citizens by protecting its health, safety, general welfare, and natural resources.

1.02 Intent

It is intended by the County that this Ordinance will promote the following:

- A. The protection of lakes, rivers and streams, wetlands, and groundwater in Mower County essential to the promotion of public health, safety, welfare, socioeconomic growth and development of the County .

- 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 ESTABLISHMENT OF MINIMUM STANDARDS FOR TREATMENT AND DISPOSAL OF SEPTAGE THROUGH LAND SPREADING OR DISPOSAL AT APPROPRIATE SITES OR FACILITIES**
- F. 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.

Option:

Include minimum requirements for septage treatment and disposal.

1.03 STANDARDS FOR SEPTAGE TREATMENT AND DISPOSAL

SEPTAGE MAY BE LAND SPREAD OR DISPOSED OF AT A SEWAGE TREATMENT PLANT ONLY WITH THE PERMISSION OF THE OWNER. THE FOLLOWING REQUIREMENTS SHALL APPLY TO THE LAND SPREAD SEPTAGE FROM INDIVIDUAL SEWAGE TREATMENT SYSTEMS WHICH RECEIVE AND TREAT DOMESTIC WASTES. THEY DO NOT APPLY TO WASTE MATERIALS FROM SEPTIC OR HOLDING TANKS WHICH RECEIVE INDUSTRIAL OR AGRICULTURAL WASTES.

A. REQUIREMENTS FOR LAND APPLICATION SITES.

GENERAL. SITES SELECTED TO RECEIVE SEPTAGE APPLICATION SHALL MEET THE REQUIREMENTS OF THIS PART

(1) SOIL REQUIREMENTS. SOILS SUITABLE FOR SEPTAGE APPLICATION MUST MEET THE REQUIREMENTS OF A THROUGH D.

- A. THE SOIL TEXTURE AT THE ZONE OF SEPTAGE APPLICATION MUST BE FINE SAND, LOAMY SAND, SANDY LOAM, LOAM, SILT, SILT LOAM, SANDY CLAY LOAM, CLAY LOAM, SANDY CLAY, SILTY CLAY LOAM, SILTY CLAY, OR CLAY.**
- B. SEPTAGE MAY NOT BE APPLIED TO SOIL WITH A SEASONALLY HIGH WATER TABLE OR BEDROCK OF LESS THAN 3 FEET FROM THE ZONE OF APPLICATION. SEPTAGE MAY NOT BE APPLIED TO SOIL WITH A SEASONALLY HIGH WATER TABLE OR BEDROCK OF LESS THAN 5 FEET FROM THE ZONE OF APPLICATION IF THE SOIL IS RATED AS HIGHLY PERMEABLE BY THE NATURAL RESOURCE CONSERVATION SERVICE. FOR SEASONALLY HIGH WATER TABLE SOILS, THIS SEPARATION DISTANCE CAN BE GAINED BY A DRAINAGE SYSTEM DESIGNED ACCORDING TO OR EQUIVALENT TO NATURAL RESOURCE CONSERVATION SERVICE ENGINEERING CRITERIA.**
- C. SEPTAGE SHALL NOT BE APPLIED TO SOIL WITHIN A 100-YEAR FLOODPLAIN AS DESIGNATED BY THE DEPARTMENT OF NATURAL RESOURCES.**
- D. SEPTAGE MUST BE INCORPORATED WITHIN 48 HOURS OR INJECTED IF THE PERMEABILITY OF THE SURFACE LAYER OF THE SOIL IS LESS THAN OR EQUAL TO 0.2 INCHES/HOUR.**

2. SLOPE RESTRICTIONS. THE SLOPE RESTRICTIONS IN TABLE 1 SHALL BE MAINTAINED.

<u>TABLE 1</u>		
<u>SLOPE PERCENT</u>	<u>SURFACE APPLICATION</u>	<u>INJECTION OR INCORPORATION WITHIN 48 HOURS</u>
<u>0 - 6%</u>	<u>ALLOWED</u>	<u>ALLOWED</u>
<u>6% - 12%</u>	<u>NOT ALLOWED</u>	<u>ALLOWED</u>
<u>> 12%</u>	<u>NOT ALLOWED</u>	<u>NOT ALLOWED</u>
<u>SEPTAGE MAY ONLY BE APPLIED ON AREAS WITH A SLOPE OF 2% OR LESS WHEN THE SOIL IS SNOW COVERED OR FROZEN.</u>		

3. SETBACK REQUIREMENTS. SEPTAGE SHALL NOT BE LAND APPLIED CLOSER THAN THE DISTANCES LISTED IN TABLE 2.

<u>TABLE 2</u>			
<u>FEATURE</u>	<u>SURFACE APPLIED</u>	<u>INCORPORATED WITHIN 48 HOURS</u>	<u>INJECTED</u>
	<u>SEPARATION DISTANCES IN FEET</u>		
<u>PRIVATE DRINKING WATER</u>	<u>200</u>	<u>200</u>	<u>200</u>
<u>PUBLIC DRINKING WATER SUPPLY WELLS (1)</u>	<u>1000</u>	<u>1000</u>	<u>1000</u>
<u>IRRIGATION WELLS</u>	<u>50</u>	<u>25</u>	<u>25</u>
<u>RESIDENCES (2)</u>	<u>200</u>	<u>200</u>	<u>100</u>
<u>RESIDENTIAL DEVELOPMENTS (2)</u>	<u>600</u>	<u>600</u>	<u>300</u>
<u>PUBLIC CONTACT SITES</u>	<u>600</u>	<u>300</u>	<u>300</u>
<u>DOWN GRADIENT LAKES, RIVERS, STREAMS</u>	<u>SLOPE 0-6%</u>	<u>200</u>	<u>50</u>
<u>WETLANDS, INTERMITTENT STREAMS, OR TILE INLETS CONNECTED TO THESE SURFACE WATER FEATURES, AND SINKHOLES (3)</u>	<u>WINTER 0 - 2%</u>	<u>600</u>	<u>NOT APPLICABLE</u>
<u>GRASSED WATERWAYS (4)</u>	<u>SLOPE 0-6%</u>	<u>100</u>	<u>33</u>
	<u>SLOPE 6 - 12%</u>	<u>NOT ALLOWED</u>	<u>33</u>
<u>1. THERE MAY BE SPECIAL REQUIREMENTS IF THE LAND APPLICATION SITE IS WITHIN THE BOUNDARIES OF A WELLHEAD PROTECTION AREA. CHECK WITH THE MINNESOTA DEPARTMENT OF HEALTH OR LOCAL UNIT OF GOVERNMENT.</u>			
<u>2. SEPARATION DISTANCES MAY BE REDUCED WITH WRITTEN PERMISSION FROM ALL PERSONS INHABITING WITHIN THE PROTECTED DISTANCE.</u>			
<u>3. IF DOWNGRADIENT SURFACE WATER DOES NOT RECEIVE RUNOFF BECAUSE THE SITE IS BERMED, SEPARATION DISTANCE CAN BE REDUCED TO 33 FEET.</u>			
<u>4. SEPARATION DISTANCES ARE MEASURED FROM THE CENTERLINE OF GRASSED WATERWAYS. FOR GRASSED WATERWAYS THAT ARE WIDER THEN THESE SEPARATION DISTANCES, APPLICATION IS ALLOWED TO THE EDGE OF THE GRASS STRIP. GRASSED WATERWAYS ARE NATURAL OR CONSTRUCTED, TYPICALLY BROAD AND SHALLOW, AND SEEDED TO GRASS AS PROTECTION AGAINST EROSION.</u>			

B. GREASE TRAP WASTES DISPOSAL REQUIREMENTS

DISPOSAL OF GREASE TRAP WASTE OR GREASE TRAP WASTES MIXED WITH NON GREASE TRAP SEPTAGE MUST BE AS FOLLOWS:

- 1. GREASE TRAP WASTE SHALL BE INCORPORATED INTO THE SOIL WITHIN SIX HOURS OF SURFACE APPLICATIONS OR INJECTED INTO THE SOIL. THE APPLICATION RATE SHALL NOT EXCEED 15,000 GALLONS/ACRE/YEAR.**
- 2. GREASE TRAP WASTE SHALL BE MIXED WITH SEPTAGE NOT DERIVED FROM GREASE TRAPS PRIOR TO LAND APPLICATION. THE QUANTITY OF GREASE TRAP WASTE MIXED WITH SEPTAGE SHALL NOT EXCEED 25% OF THE MIXTURE BY VOLUME. MAXIMUM APPLICATION RATES OF THIS MIXTURE ARE LIMITED TO 60,000 GALLONS/ACRE/YEAR.**
- 3. GREASE TRAP WASTE SHALL BE MIXED WITH SEPTAGE NOT DERIVED FROM GREASE TRAPS PRIOR TO LAND APPLICATION. THE QUANTITY OF GREASE TRAP WASTE MIXED WITH SEPTAGE SHALL NOT EXCEED 50% OF THE MIXTURE BY VOLUME. MAXIMUM APPLICATION RATES OF THIS MIXTURE ARE LIMITED TO 30,000 GALLONS/ACRE/YEAR.**

Bill Buckley, Mower County Environmental Health Specialist comments / reasoning.
 RE: Section 1.01, Purpose & 1.03 Standards for Septage Treatment Disposal

Are included to carry over the septage treatment and disposal requirements adopted into the Mower County code in 1994.

RE: Section 1.02; Intent Item E
Is included for the same reason.

ARTICLE I, SECTION 2.0 AUTHORITY

This Ordinance is adopted pursuant to Minnesota Statutes, Section 115.55; Minnesota Statutes, Sections 145A.01 through 145A.08; Minnesota Statutes, Section 375.51; or successor statutes, and Minnesota Rules, Chapter 7080, Chapter 7081, Chapter 7082;, or successor rules.

ARTICLE I, SECTION 3.0 EFFECTIVE DATE

The provisions set forth in this Ordinance shall become effective on _____ **(GOAL: FEBRUARY 1, 2010.)**

ARTICLE II DEFINITIONS

The following words and phrases shall have the meanings ascribed to them in this Article. If not specifically defined in this Article, terms used in this Ordinance shall have the same meaning as provided in the standards adopted by reference. Words or phrases that are not defined here or in the standards adopted by reference shall have common usage meaning. For purposes of this Ordinance, the words “must” and “shall” are mandatory and the words “may” and “should” are permissive.

Comment:

The purpose of this section is to define key words in a clear and simple manner to enable the reader to understand their meaning within the context of this Ordinance. Care should be taken to avoid potential conflicts between definitions of words used in standards adopted by reference and this Ordinance. Where local definitions conflict, but are to prevail, the differences must be highlighted.

Recommended definitions for inclusion in a local Ordinance are provided below.

Authorized Representative: An employee or agent of the **MOWER COUNTY ENVIRONMENTAL SERVICES DEPARTMENT.**

Advisory Committee (optional): A committee of SSTS stakeholders appointed by the County Board to advise the (COUNTY AND DEPARTMENT NAME) on issues related to the regulation and practices of SSTS in (COUNTY NAME).

Board of Adjustment: A board established by county ordinance with the authority to order the issuance of variances, hear and decide appeals from a member of the affected public and review any order, requirement, decision, or determination made by any administrative official charged with enforcing any ordinance adopted pursuant to the provision of Minnesota Statutes, sections 394.21 to 394.37, order the issuance of permits for buildings in areas designated for future public use on an official map and perform such other duties as required by the official controls.

Class V Injection Well: 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 US 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 & 146).

Cluster System: A SSTS 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.

County: **MOWER COUNTY, MINNESOTA.**

County Board: **THE MOWER COUNTY BOARD OF COMMISSIONERS.**

Department: **THE MOWER COUNTY ENVIRONMENTAL SERVICES DEPARTMENT.**

Design Flow: The daily volume of wastewater for which an SSTS is designed to treat and discharge.

Failure to Protect Groundwater: At a minimum, a SSTS that does not protect groundwater is considered to be a seepage pit, cesspool, drywell, leaching pit, or other pit; a SSTS with less than the required vertical separation distance, described in MR Chapter 7080.1500 Subp. 4 D and E; and a system not abandoned in accordance with part 7080.2500. The determination of the threat to groundwater for other conditions must be made by a Qualified Employee or an individual licensed pursuant to Section 5 hereof.

Imminent Threat to Public Health and Safety: At a minimum 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; or sewage tanks with unsecured, damaged, or weak maintenance access covers. The determination of protectiveness for other conditions must be made by a Qualified Employee or a SSTS inspection business licensed pursuant to Section 5 hereof.

ISTS: An individual sewage treatment system having a design flow of no more than 5,000 gallons per day.

Optional definition:

Industrial Waste: Sewage containing waste from activities other than sanitary waste from industrial activities including, but not limited to, the following uses defined under the Standard Industrial Classification (SIC) Codes established by the U.S. Office of Management and Budget.

SIC CODE(S)	INDUSTRY CATEGORY
753-7549	Automotive Repairs and Services
7231-7241	Beauty Shops, Barber Shops
7211-7219	Laundry Cleaning and Garment Services
4011-4581	Transportation (Maintenance only)
8062-8069	Hospitals
2000-3999	Manufacturing
2000-2099	Food Products
2100-2199	Tobacco Products
2400-2499	Lumber and Wood Products, except Furniture
2500-2599	Furniture and Fixtures
2600-2699	Paper and Allied Products
2700-2799	Printing, Publishing, and Allied Industries
2800-2899	Chemicals and Allied Products
2900-2999	Petroleum Refining and Related Industries
3000-3099	Rubber and Miscellaneous Plastics
3100-3199	Leather Tanning and Finishing
3000-3099	Rubber and Miscellaneous Plastics
3100-3199	Leather Tanning and Finishing
3200-3299	Stone, Clay, Glass, and Concrete Products
3300-3399	Primary Metal Industries
3400-3499	Fabricated Metal Products (except Machinery, and Transportation Equipment
3500-3599	Industrial and Commercial Machinery and Computer Equipment
3700-3799	Transportation Equipment
3800-3899	Measuring, Analyzing, and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks
3900-3999	Miscellaneous Manufacturing Industries

LAND SPREADING: THE SPREADING OR PLACEMENT OF SEPTAGE OR HUMAN WASTE FROM SEPTIC TANKS, HOLDING TANKS, PRIVYS OR OUTHOUSE VAULTS ON OR INTO THE SOIL SURFACE.

Malfunction: The partial or complete loss of function of a SSTS component, which requires a corrective action to restore its intended function.

Management Plan: A plan that describes necessary and recommended routine operational and maintenance requirements, periodic examination, adjustment, and testing, and the frequency of each to ensure system performance meets the treatment expectations, including a planned course of action to prevent an illegal discharge.

Minor Repair: 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 concept of the SSTS.

MSTS: A “mid-sized subsurface sewage treatment system” under single ownership that receives sewage from dwellings or other establishments having a design flow of more than 5,000 gallons per day to a maximum of 10,000 gallons per day.

Notice of Noncompliance: A written document issued by the Department notifying a system owner that the owner’s onsite/cluster treatment system has been observed to be noncompliant with the requirements of this Ordinance.

MPCA: Minnesota Pollution Control Agency.

Qualified Employee: An employee of the state or a local unit of government, who performs site evaluations or designs, installs, maintains, pumps, or inspects SSTS as part of the individual’s employment duties and is registered on the SSTS professional register verifying specialty area endorsements applicable to the work being conducted.

Record Drawings: A set of drawings which to the fullest extent possible 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.

Sewage: Waste from toilets, bathing, laundry, or culinary activities or operations or floor drains associated with these sources, including household cleaners and other constituents in amounts normally used for domestic purposes.

SSTS: Subsurface sewage treatment system Including an ISTS, MSTS or LSTS.

State: The State of Minnesota.

Treatment Level: Treatment system performance levels defined in Minnesota Rules, Chapter 7083.4030, Table III for testing of proprietary treatment products, which include the following:

Level A: $cBOD_5 \leq 15$ mg/L; $TSS \leq 15$ mg/L; fecal coliforms $\leq 1,000/100$ mL.

Level B: $cBOD_5 \leq 25$ mg/L; $TSS \leq 30$ mg/L; fecal coliforms $\leq 10,000/100$ mL.

Level C: $cBOD_5 \leq 125$ mg/L; $TSS \leq 80$ mg/L; fecal coliforms N/A.

Comment:

This definition is necessary to understand Table IX (Minnesota Rules, Chapter 7080.2150, Subp. 3(E)).

Type I System: An ISTS that follows a standard trench, bed, at-grade, mound, or graywater system design in accordance with MPCA rules, Minnesota Rules, Chapter 7080.2200 through 7080.2240.

Type II System: An ISTS with acceptable modifications or sewage containment system that may be permitted for use on a site not meeting the conditions acceptable for a standard Type I system. These include systems on lots with rapidly permeable soils or lots in floodplains and privies or holding tanks.

Type III System: A custom designed ISTS having acceptable flow restriction devices to allow its use on a lot that cannot accommodate a standard Type I soil treatment and dispersal system.

Type IV System: An ISTS, having an approved pretreatment device and incorporating pressure distribution and dosing, that is capable of providing suitable treatment for use where the separation distance to a shallow saturated zone is less than the minimum allowed.

Type V System: An ISTS, which is a custom engineered design to accommodate the site taking into account pretreatment effluent quality, loading rates, loading methods, groundwater mounding, and other soil and other relevant soil, site, and wastewater characteristics such that groundwater contamination by viable fecal coliforms is prevented.

Bill Buckley, Mower County Environmental Health Specialist comments / reasoning.
RE: Article II - Definitions

Inclusion of a definition for land spreading is included to carry over a definition that was adopted into the 1994 Ordinance.

ARTICLE III GENERAL PROVISIONS

ARTICLE III, SECTION 1.0 SCOPE

This Ordinance regulates the siting, design, installation, alterations, operation, maintenance, monitoring, and management of all SSTS within the County's applicable jurisdiction including, but not necessarily 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 County 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.

Option:

Large SSTS, which require State Disposal System (SDS) permits, also may be regulated under local ordinance if desired.

ARTICLE III, SECTION 2.0 JURISDICTION

The jurisdiction of this Ordinance shall include all lands of the County except for incorporated areas that administer a Subsurface Sewage Treatment System (SSTS) program by Ordinance within their incorporated jurisdiction, which is at least as strict as this Ordinance and has been approved by the County. The County **ENVIRONMENTAL SERVICES DEPARTMENT** shall keep a current list of local jurisdictions within the County administering a SSTS program.

Note:

Cities and townships may enact their own SSTS ordinances to administer and enforce. If so, these ordinances must conform to the county's regulatory strategy and be administratively and technically as strict as the county ordinance. Before the cities or townships can adopt SSTS ordinances, the county is required to review and confirm that the ordinances meet the strictness requirement. The county must permit and inspect SSTS within cities and townships that do not administer an effective SSTS ordinance. See Minnesota Rules, Chapter 7082.0040, Subp. 2 & 3.

ARTICLE III, SECTION 3.0 ADMINISTRATION**3.01 COUNTY ADMINISTRATION**

The County **ENVIRONMENTAL SERVICES DEPARTMENT** shall administer the SSTS program and all provisions of this Ordinance. At appropriate times, the County shall review this and revise and update this Ordinance as necessary. The County shall employ or retain under contract qualified and appropriately licensed professionals to administer and operate the SSTS program.

3.02 STATE OF MINNESOTA

Where 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 MPCA. For any SSTS that has a measured daily flow for a consecutive seven-day period which equals or exceeds 10,000 gallons per day, a State Disposal System permit is required.

SSTS serving establishments or facilities licensed or otherwise regulated by the State shall conform to the requirements of this Ordinance.

ANY SSTS REQUIRING APPROVAL BY THE STATE OF MINNESOTA SHALL ALSO COMPLY WITH THIS ORDINANCE.

3.03 CITIES AND TOWNSHIPS

Any jurisdiction within the County that regulates SSTS must comply with the standards and requirements of this Ordinance. The standards and ordinance of the jurisdiction may be administratively and technically more restrictive than this Ordinance.

ARTICLE III, SECTION 4.0 VALIDITY

The validity of any part of this Ordinance shall not be affected by the invalidity of any other parts of this Ordinance where the part can be given effect irrespective of any invalid part or parts.

ARTICLE III, SECTION 5.0 LIABILITY

Any liability or responsibility shall not be imposed upon the department or agency or any of its officials, employees, or other contract agent, its employees, agents or servants thereof for damage resulting from the defective construction, operation, or abandonment of any onsite or cluster treatment system regulated under this rule by reason of standards, requirements, or inspections authorized hereunder.

Comment:

Liability of the County must be limited to effectively administer this rule. This protection should be provided only against claims where the county employees or its agents act under the authorities expressly given to the county by statutes or adopted ordinances. If county employees or its agents assume authorities not expressly assigned to the county, the courts might not extend the limits of liability to include such actions.

ARTICLE III, SECTION (6.0) ADVISORY COMMITTEE (OPTIONAL)

Option:

Ordinance language is provided here for the option of establishing an advisory committee to advise the County board, department or staff by offering technical advice, evaluating the regulatory program effectiveness periodically to assess whether it is achieving its purpose and goals, and recommending needed program improvements. Numbers or language in parentheses indicates where optional methods might be considered.

6.01 Functions

The advisory group shall consult with the County with respect to implementation and administration of this Ordinance and to make recommendations regarding program improvements. The advisory group may provide technical assistance regarding evaluation of treatment technology design and performance, conduct periodic program audits to report on the effectiveness of the rules and their administration with respect to their intent and application, and provide other support where needed in the development and performance of the regulatory program. The focus of the advisory group is to be only on the regulatory program. It is not to advise on specific regulatory actions except as they relate to overall program procedures.

6.02 Membership

Membership shall consist of representatives from stakeholder groups and citizens as appropriate. The number of committee members shall be at least (5) but no more than (15). County staff shall not be committee members but shall attend all meetings and provide administrative support to the committee.

6.03 Appointments and Terms

Members shall be appointed by the County Board for (3 year) staggered terms. (Their terms may be renewed.) The members shall serve (with/without) compensation in accordance with County policy. Expenses to attend committee meetings shall be reimbursed by the County according to County's reimbursement procedures and policies.

6.04 Administration

The committee shall be chaired by a committee member appointed by the committee members for a term not to exceed (3) years. The chair shall be responsible for establishing meeting agenda, meeting dates, and meeting locations. Agenda items shall be determined by the committee and may include any aspect of the program. The County staff shall provide administrative support as needed and requested by the committee chair. The County staff may suggest meeting agenda items.

6.05 Meeting Frequency

The committee shall meet as often as deemed necessary by the committee chair. At a minimum, the committee shall meet (twice) annually.)

Angie's Comment: The Advisory Committee is optional. Should the county determine one is necessary I recommend utilizing the Planning Commission: it is a pre-established board. With current budgetary constraints utilizing the Planning Commission would not add additional burden to the county for funding of this advisory committee.

ARTICLE IV GENERAL REQUIREMENTS

Note:

Local SSTS programs must retain the specific provisions in Minnesota Rules, Chapters 7080 and 7081 that are listed in 7082.0100, Subp. 1 and Subp. 3. However, counties may make these provisions stricter. Many of the necessary provisions are included in this article below. Others appear in other articles of this Ordinance. Each required provision and their respective locations in this Ordinance are cited in the Ordinance Checklist provided by the MPCA commissioner, which appears in Appendix A.

ARTICLE IV, SECTION 1.0 RETROACTIVITY

1.01 All SSTS

Except as explicitly set forth in Article IV, Section 1.02, all provisions of this Ordinance shall apply to any SSTS regardless of the date it was originally permitted.

1.02 Existing Permits

Unexpired permits which were issued prior to the effective date shall remain valid under the terms and conditions of the original permit until the original expiration date or until a change in system ownership whichever is earlier.

1.03 SSTS on Lots Created ~~BEFORE~~ AFTER January 23, 1996; MINIMUM LOT SIZE

- a) All lots created after January 23, 1996 must have a minimum of two soil treatment and dispersal areas that can support trenches, seepage beds, mounds, and at-grade systems as described in Minnesota Rules, Chapters 7080. 2200 through 7080.2230 or site conditions described in 7081.0270, Subp. 3 through 7.
- b) **NO LOT REQUIRING A SSTS AND A WELL SHALL BE LESS THAN 1 ½ ACRE IN SIZE, EXCLUDING THE ROAD RIGHT-OF-WAY. WHERE LOTS HAVE AN APPROVED SHARED WELL AND INDIVIDUAL SEWAGE TREATMENT SYSTEM IS TO BE INSTALLED, LOT SIZE SHALL BE DETERMINED ON A CASE BY CASE BASIS PROVIDED THE LOT CONTAINING THE WELL SHALL BE A MINIMUM OF 1 ½ ACRE IN SIZE. ANY LOT TO BE DEVELOPED WITHOUT A WELL OR SEWAGE TREATMENT SYSTEM LOCATED ON IT SHALL BE NO LESS THAN ½ ACRE. LOTS OF RECORD LESS THAN 1 ½ ACRE IN SIZE SHALL BE HANDLED ON A CASE BY CASE BASIS DEPENDING ON THE CAPABILITY OF THE SOILS TO SUPPORT AN SSTS. WHERE ADJACENT LOTS OF RECORD ARE IN THE SAME OWNERSHIP, PROPERTIES SHALL BE COMBINED TO MEET THE MINIMUM LOT SIZE REQUIREMENT.**

1.04 Existing SSTS without Permits

ALL SYSTEMS WITHOUT A PERMIT OF RECORD SHALL BE ALLOWED UNTIL SUCH TIME THAT THEY ARE FOUND TO FAIL A COMPLIANCE INSPECTION REQUIRED FOR ANY PURPOSE OR ARE FOUND TO POSE AN IMMINENT PUBLIC HEALTH THREAT. AT SUCH TIME THEY SHALL BE REPLACED OR REPAIRED AS REQUIRED IN THIS ORDINANCE.

Existing SSTS with no permits of record shall require a permit and be brought into compliance with the requirements of this Ordinance regardless of the date they were originally constructed.

ARTICLE IV, SECTION 2.0 UPGRADE, REPAIR, REPLACEMENT, AND ABANDONMENT

2.01 SSTS Capacity Expansions

Expansion of an existing SSTS must include any system upgrades that are necessary to bring the entire system into compliance with the prevailing provisions of this Ordinance at the time of the expansion.

2.02 Bedroom Additions

The owner is allowed 5 years from the date of issuance of a bedroom addition permit to upgrade, repair, replace or abandon an existing system if the following conditions apply:

- A. The **MOWER COUNTY ENVIRONMENTAL SERVICES DEPARTMENT** issues a permit to add a bedroom;
- B. A SSTS inspection is triggered by a bedroom addition permit request;
- C. The existing system was installed between May 27, 1989 and January 3, 1996;
- D. The SSTS does not comply with Minnesota Rules, Chapter 7080.1500, Subp. 4.B.;
- E. The SSTS is not determined to be an imminent threat to public health or safety in accordance with Minnesota Rules, Chapter 7080.1500, Subp. 4.A.

2.03 Failure to Protect Groundwater

An SSTS that is determined not to be protective of groundwater in accordance with Minnesota Rules, Chapter 7080.1500, Subp.4.B shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this Ordinance within(18 ~~18~~ **12** months)of receipt of a Notice of Noncompliance.

Angie's comment: 12 months remains consistent with what the current ordinance allows; attempting remain consistent.

2.04 Imminent Threat to Public Health or Safety

An SSTS that is determined to be an imminent threat to public health or safety in accordance with Minnesota Rules, Chapter 7080.1500, Subp.4A shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this Ordinance within 10 months of receipt of a Notice of Noncompliance.

2.05 Abandonment

Any SSTS, or any component thereof, which is no longer intended to be used, must be abandoned in accordance with Minnesota Rules, Chapter 7080.2500.

ARTICLE IV, SECTION 3.0 SSTS IN FLOODPLAINS

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

ARTICLE IV, SECTION 4.0 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 by the Federal Government to submit SSTS inventory information to the Environmental Protection Agency as described in CFR40 part 144. Further, owners are required to identify all Class V injection wells in property transfer disclosures.

ARTICLE IV, SECTION 5.0 SSTS PRACTITIONER LICENSING

No person shall engage in site evaluation, inspection, design, installation, construction, alternation, extension, repair, maintenance, or pumping of SSTS without an appropriate and valid license issued by MPCA in accordance with Minnesota Rules, Chapter 7083 except as exempted in 7083.0700.

Option:

Chapter 7083 exempt a property owner who wishes to construct a SSTS, which is to treat wastewater solely from their own dwelling or seasonal dwelling, from the licensing requirement if a site evaluation and a system design are obtained from appropriately licensed practitioners. While counties are not allowed to require additional local licenses or other professional credentials, counties might consider requiring owners who wish to install or construct their own systems to a) attend SSTS construction training and/or b) sign an agreement indemnifying the county against claims due to the failure of the owner to comply with the provisions of this ordinance.

HOWEVER, PROPERTY OWNERS WHO WISH TO INSTALL OR CONSTRUCT THEIR OWN SYSTEMS FOR THEIR OWN RESIDENCE MUST (A) ATTEND SSTS CONSTRUCTION TRAINING AND (B) SIGN AN AGREEMENT INDEMNIFYING THE COUNTY AGAINST CLAIMS DUE TO THE FAILURE OF THE OWNER TO COMPLY WITH THE PROVISIONS OF THIS ORDINANCE.

ARTICLE IV, SECTION 6.0 PROHIBITIONS

6.01 Occupancy or Use of a Building without a Compliant SSTS

It is unlawful for any person to maintain, occupy, or use any building intended for habitation that is not provided with a wastewater treatment system that disposes of wastewater in a manner that does not comply with the provisions of this Ordinance.

6.02 Sewage Discharge to Ground Surface or Surface Water

It is unlawful for any person to construct, maintain, or use any SSTS 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 under the National Pollutant Discharge Elimination System program by the MPCA.

6.03 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 Minnesota Rules, Chapter 4725.2050, or any other excavation in the ground that is not in compliance with this ordinance.

6.04 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.

Bill Buckley, Mower County Environmental Health Specialist comments / reasoning.

RE: Article IV, Section 1.04 – Existing SSTS without permits

I feel the original model ordinance language would be difficult to enforce and in many cases would be an unnecessary burden for county residents and county staff. The recommended language essentially continues existing policy rules and law.

RE: Article IV, Section 5.0 - SSTS practitioner licensing

Due to advance technology and previous problems incurred with homeowner installation of individual sewage treatment systems I feel it would be preferred to prohibit homeowner installation. However with Mower County's long standing practice of allowing homeowner installation I recommend the additional language. This would allow homeowner installation if the homeowner has attended the 3-day University of Minnesota onsite sewage treatment system training course and signs a liability waiver with the county. These courses are offered throughout the state several times a year and are generally offered in the Rochester, Austin and Mankato areas in the early spring. The cost of tuition and instructional material for this course is approximately \$250.00. Courses are not offered in all location every year.

Angie's Comment: Secondary Option: If homeowner installation is more burdensome to the county in staff time; consider hourly fee of oversight provided be assessed to the landowner in addition to the customary permit fee.

ARTICLE V SSTS STANDARDS

ARTICLE V, SECTION 1.0 STANDARDS ADOPTED BY REFERENCE

The County hereby adopts by reference Minnesota Rules, Chapters 7080 and 7081 in their entirety as now constituted and from time to time amended. This adoption does not supersede the County's right or ability to adopt local standards that are in compliance with Minnesota Statute 115.55.

Options:

- a) Other applicable local ordinances would be referenced here as appropriate.*
- b) Other applicable sections of federal and state regulations such as federal septage management rules, and recreational vehicle waste tank disposal rules would be referenced here as appropriate.*
- c) Other applicable federal regulations such as U.S. EPA Underground Injection Control Program Class V rules, Clean Water Act rules, and Drinking Water Act rules would be referenced here as appropriate.*

ARTICLE V, SECTION 2.0 AMENDMENTS TO THE ADOPTED STANDARDS**2.01 List of Adopted Standards****Note**

Counties may adopt stricter provisions than the minimum requirements in Minnesota Rules, Chapters 7080 and 7081. For example, counties may choose to allow only Type I and Type II systems. If stricter provisions are adopted, a list of all technical and administrative differences between the ordinance and the adopted standards of 7080 and 7081 must be provided to the MPCA commissioner and public upon request (7082.0100, Subp. 2). (Counties should consider going beyond this requirement and list the differences in the ordinance within this section to assist designers, installers, and other service providers.)

2.02 Determination of Hydraulic Loading Rate and SSTS Sizing for Systems Not in Fill Soils**Options:**

Chapter 7082.0100, Subp. 3(P) requires that the Ordinance specify Table IX or IXa in Chapter 7080.2150, Subp.3(E) as the allowed method for determining the hydraulic loading rate for sizing of the infiltration area. Three different options for this required provision are provided below:

- ⓐ Table IX from Minnesota Rules, Chapter 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 herein adopted by reference shall be used to determine the hydraulic loading rate and infiltration area for all SSTS permitted under this ordinance.*
- ⓑ Table IXa from Minnesota Rules, Chapter 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 be used to determine the hydraulic loading rate and infiltration area for all SSTS permitted under this ordinance.*
- ⓒ Table IX 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 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” from Minnesota Rules, Chapter 7080.2150, Subp. 3(E) 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.*

2.03 DETERMINATION OF HYDRAULIC LOADING RATE AND SSTS SIZING FOR SYSTEMS IN FILL OR COMPACTED SOILS

TABLE IX 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 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” FROM MINNESOTA RULES, CHAPTER 7080.2150, SUBP.3(E) AND HEREIN ADOPTED BY REFERENCE SHALL BOTH BE USED TO SIZE SSTS INFILTRATION AREAS USING THE LARGER SIZING FACTOR OF TH TWO FOR SSTS DESIGN IN FILL AND COMPACTED SOILS AND IN INSTANCES OF PROBLEM SOILS AS IDENTIFIED BY DEPARTMENT STAFF OR THE SYSTEM DESIGNER.

2.04 Compliance Criteria for Existing SSTS

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.

Optional Provision:

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 7080.1100, Subp. 84 shall have a three-foot vertical separation between the bottom soil infiltrative surface and the periodically saturated soil and/or bedrock. Existing systems that have no more than a 15 percent reduction in this separation distance (a separation distance no less than 30.6 inches) to account for settling of sand or soil, normal variation of separation distance measurements and interpretation of limiting layer characteristics may be considered compliant under this Ordinance. The vertical separation measurement shall be made outside the area of system influence but in an area of similar soil. 7080.1500, Subp.4

2.05 Holding Tanks

Option: If counties wish to allow **holding tanks**, the specific conditions under which their use will

be allowed must be specified (7082.0100, Subp.3G). These conditions should be listed as an amendment to the adopted standards in this section. Note that to qualify as a holding tank, tanks must comply with 7080.2290, items A through F. Further, all owners of holding tanks shall be issued an operating permit (7082.0600, Subp.2A), which must include the minimum provisions listed in 7082.0600, Subp.2B, (1) through (8). See Article V. Section 2.01(c) of this Ordinance.

Many jurisdictions prohibit or severely limit the use of holding tanks because of the concern that owners will allow illicit discharges to occur. Yet, holding tanks are a practical method of handling wastewater for a variety of applications where water use is low such as in seasonal homes, buildings located on sensitive sites, parks, playgrounds service station drains, etc. However, reliable management, which ensures that the tanks are pumped and the contents are hauled to permitted treatment facilities, is a critical and necessary element of holding tank use. With rigorous management assured, holding tanks offer safe, effective and affordable options for low water use applications.

Example holding tank provisions are provided:

Restrictive Provision: Holding tanks may be allowed for the following applications; as replacements for existing failing SSTS, SSTS that pose an imminent threat to public health or safety, or for new construction on lots existing as of the date of the enactment of this Ordinance and only where it can be shown conclusively that a SSTS permitted under this Ordinance cannot be feasibly installed. Holding tanks shall not be allowed for all other wastewater applications except for the exempted uses listed here. (List of exemptions to be allowed.)

Conditional Provision: Holding tanks may be used for single family homes and other buildings with limited water use under the following conditions:

- 1) The owner shall install a holding tank in accordance with Minnesota Rules Section 7080.2290.
- 2) The owner shall install a remote reading water meter to continuously record indoor water use.
- 3) The owner shall maintain a valid contract with a licensed liquid waste hauler to pump and haul the holding tank to a licensed treatment facility.
- 4) The holding tank shall be regularly pumped, no less frequently than bi-weekly or other regular schedule agreed upon with the Department.
- 5) The pumper shall certify each date the tank is pumped, the volume of the liquid waste removed, the treatment facility to which the waste was discharged, and the water meter reading at the time of pumping and report to the Department that the holding tank is pumped less frequently than bi-weekly or other schedule agreed upon with the Department.

Failure to meet these requirements will result in (insert penalties to be applied).

HOLDING TANKS

1) HOLDING TANKS MAY BE CONSIDERED FOR INSTALLATION ON PREVIOUSLY DEVELOPED SITES, AS A TEMPORARY METHOD FOR A PERIOD OF UP TO 12 MONTHS, DURING WHICH TIME MEASURES ARE TAKEN TO PROVIDE MUNICIPAL SEWER SERVICES OR THE INSTALLTION OF AN APPROVED SYSTEM AS PROVIDED IN THIS CHAPTER.

2) HOLDING TANKS MAY BE CONSIDERED ON A PERMANENT BASIS FOR NON RESIDENTIAL, LOW WATER USE ESTABLISHMENTS WITH A SEWAGE FLOOR OF 150 GALLONS PER DAY OR LESS, SUBJECT TO APPROVAL BY THE DEPARTMENT OR LOCAL UNIT OF GOVERNMENT.

2.06 MINIMUM SEPTIC TANK SIZING

B. EXISTING DWELLING OR STRUCTURES

(1) SEPTIC TANK SIZING SHALL BE SPECIFIED IN 7080.1930, SUBPART 1, TABLE V.

C. NEW HOME CONSTRUCTION

(1) THE MINIMUM SEPTIC TANK SIZE SHALL BE 1500 GALLSON CAPACITY AND ALL TANKS SHALL BE COMPARTMENED OR MULTIPLE TANKS UTILIZED FOR DWELLINGS UP TO AND INCLUDING THREE BEDROOMS.

(2) MINIMUM SEPTIC TANK CAPACITY SHALL BE AS FOLLOWS FOR DWELLINGS OF OVER THREE BEDROOMS:

<u>FOUR OR FIVE BEDROOMS</u>	<u>2250 GALLSONS</u>
-------------------------------------	-----------------------------

SIX OR SEVEN BEDROOMS 3000 GALLONS

EIGHT OR NINE BEDROOMS 3750 GALLONS

(3) SEWAGE PUMPING AND GARBAGE DISPOSALS

THE SEPTIC TANK SIZING LISTED IN B (2) ABOVE ALLOWS FOR PUMPING AND SEWAGE TO THE SEPTIC TANK OR A GARBAGE GRINDING APPLIANCE, HOWEVER 7080.1930 SUBPART 2 AND 3 APPLY AND AN EFFLUENT SCREEN AND ALARM SHALL BE EMPLOYED.

ARTICLE V, SECTION 3.0 VARIANCES

3.01 Variance Requests

A property owner may request a variance from the standards as specified in this ordinance pursuant to county policies and procedures.

3.02 Affected Agency

Variations that pertain to the standards and requirements of the State of Minnesota must be approved by the affected State Agency pursuant to the requirements of the State Agency.

Note:

Counties may request a variance from MR Chapter 7082 or public health or environmental protection standards in Chapter 7080.2150, Subp. 2 and 7081.0080, Subp. 2 through Subp. 5 from MPCA. Counties may approve variances from standards and criteria not listed above on a case-by-case basis if local variance procedures are followed. The language below, which uses the Board of Adjustment for variance approvals is offered as an optional provision.

Optional provision:

3.03 Board of Adjustment

The Board of Adjustment shall have the authority only to consider variances to horizontal setbacks from property lines, rights of way, structures, or buildings. Variances shall only be permitted when they are in harmony with the general purposes and intent of this Ordinance where there are practical difficulties or particular hardship in meeting the strict letter of this Ordinance. Variance requests to deviate from the design flow determination procedures in Minnesota Rules, Chapter 7081.0110 if the deviation reduces the average daily estimated flow from greater than 10,000 gallons per day to less than 10,000 gallons per day, or to provisions in 7080.2150, Subp. 2 and 7081.0080, Subp. 2 through 5 regarding the vertical separation required beneath the treatment and dispersal soil system and saturated soil or bedrock from the required three feet of unsaturated soil material (except as provided in 7082.1700, Subp. 4D) must be approved by MPCA. Variances to wells and water supply lines must be approved by the Minnesota Department of Health.

Comment:

If variances from more technical requirements are to be considered by the Board of Adjustment, establishment of an Advisory Committee as described in the optional provision under Article III, Section 6.0 should be considered. The committee would

advise the Board of Adjustment on the merits of requested variances from technical requirements in this Ordinance.

- A. Any property owner requesting relief from the strict application of the provisions in this Ordinance must complete and submit an Application for Variance to the Department on a form provided by the Department. The variance request must include, as applicable:*
- 1. A statement identifying the specific provision or provisions in the ordinance from which the variance is requested;*
 - 2. A description of the hardship that prevents compliance with the rule;*
 - 3. The alternative measures that will be taken to achieve a comparable degree of compliance with the purposes and intent of the applicable provisions;*
 - 4. The length of time for which the variance is requested;*
 - 5. Cost considerations only if a reasonable use of the property does not exist under the term of the Ordinance; and*
 - 6. Other relevant information requested by the Department as necessary to properly evaluate the variance request.*
- B. The appropriate fee shall be paid at the time of submittal of the application to receive consideration by the Board of Adjustment*
- C. Upon receipt of the variance application, the Department shall decide if a site investigation conducted by the Department will be necessary. After the necessary information has been gathered, the Department shall make a written recommendation to approve or deny the variance to the Board of Adjustment.*
- D. The Board of Adjustment shall make the final decision after conducting a public hearing. The variance may be granted provided that:*
- 1. The condition causing the demonstrated hardship is unique to the property and was not caused by the actions of applicant;*
 - 2. The granting of the variance will not be contrary to the public interest or damaging to the rights of other persons or to property values in the vicinity;*
 - 3. The property owner would have no reasonable use of the land without the variance;*
 - 4. The granting of the variance would not allow a prohibited use; and*
 - 5. The granting of the variance would be in accordance with Minnesota Rules, Chapters 7080, 7081, and 7082.*
- E. In granting a request for a variance, the Board of Adjustment may attach such conditions as it deems necessary to conform to the purpose and intent of this Ordinance.*
- F. Any violation of the terms and conditions of a variance issued pursuant to this Ordinance, or any violation of any provision of this Ordinance relating to the specific issue of the variance, shall result in immediate revocation of the variance.*

G. Any variance granted shall automatically expire if the system is not installed within one year of the grant of the variance.

H. An appeal from any order, requirement, decision, or determination of the Board of Adjustment in accordance with its policies and procedures.

Bill Buckley, Mower County Environmental Health Specialist comments / reasoning.

RE: Article V, Section 2.02 –

As stated Chapter 7082 requires that table 9 or 9a be chosen for sizing of systems. The language in the model ordinance allows for table 9, 9a or a combination of 9-9a with the most restrictive being chosen. I am recommending that for systems not in fill soil that table 9 be required to be used. This is consistent with our current practices and requires soil borings or soil pits as is currently the case. Requiring 9a would require the use of percolation tests which is a more difficult and expensive test and is typically used in problem soils or large systems.

RE: Article V, Section 2.03

Would then require the use of tables 9 and 9a choosing the larger of the two sizing for fill or compacted soils. This is also consistent with current practices although percolation tests are not currently required.

RE: Article V, Section 2.04 Compliance Criteria for existing SSTS

The first part of this section is required by state law. The second part is optional and is allowed in Chapter 7080 to allow for settling that may have occurred in new systems installed in systems since 1996 especially in the sand layer of mounds. This optional provision does not apply to the 2-foot separation for systems built prior to 1996. As written this would apply to all systems but could also be made specific to mounds, if you want to be more restrictive.

RE: Article V, Section 2.05 Holding Tanks

There are three options presented here. There is a very restrictive option, a much less restrictive conditions allowing holding tanks in most situations. And then there is the third option written by me which I believe falls within the first two. A variance could be applied for any of these. I feel this section is worthy of discussion.

RE: Article V, Section 2.06

This section was written to conform both to our existing ordinance and the new provision of 7080. 7080 increased the size of septic tanks for a 4-bedroom home. Existing Mower County code establishes a minimum septic tank sizing for new construction which accommodates either a garbage disposal or sewage ejector pump. This language keeps the minimum tank sizing and the requirement for a compartmented tank for new construction while increasing the tank size from 1,000 gallons to 1,500 gallons for a 4-bedroom home for existing housing.

ARTICLE VI SSTS PERMITTING

ARTICLE VI, SECTION 1.0 PERMIT REQUIRED

It is unlawful for any person to construct, install, modify, replace, or operate a SSTS without the appropriate permit from the ENVIRONMENTAL SERVICES DEPARTMENT, MOWER County, MN. The issuing of any permit, variance, or conditional use under the provisions of this ordinance shall not absolve the applicant of responsibility to obtain any other required permit.

ARTICLE VI, SECTION 2.0. ~~CONSTRUCTION PERMIT~~ TO CONSTRUCT

A permit to construct a sewage treatment system shall be obtained by the property owner or an agent of the property owner from the County prior to the installation, construction, replacement, modification, alteration, repair, or capacity expansion of a SSTS. The purpose of this permit is to ensure that the proposed construction activity is sited, designed, and constructed in accordance with the provisions of this Ordinance by appropriately certified and/or licensed practitioner(s).

2.01 Activities Requiring a Permit

A 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. THE ADDITION OR REPLACEMENT OF A SEPTIC TANK OR PUMP TANK OR REPLACEMENT OF A DRAINFIELD OR SOIL TREATMENT UNIT SHALL REQUIRE A PERMIT.

2.02 Activities Not Requiring a Permit

A 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. A PERMIT IS NOT REQUIRED FOR REPLACEMENT OF A TANK FOR A SYSTEM WITH A PERMIT OF RECORD FOR INSTALLATION OF A TANK THAT WAS ISSUED A CERTIFICATE OF COMPLIANCE AT THE TIME OF CONSTRUCTION AND IS LESS THAN TEN YEARS OLD.

Optional provision:

The following provision should be considered in counties that issue building and/or land use permits.

2.03 Construction Permit Required to Obtain Building Permit

For any property on which a SSTS permit is required, approval and issuance of a valid SSTS Construction Permit must be obtained before a building or land use permit may be issued by the Department.

Optional provision:

2.04 Conformance to Prevailing Requirements

Any activity involving an existing system that requires a Construction Permit shall require that the entire system be brought into compliance with this Ordinance.

2.05 Permit Application Requirements

Construction Permit applications shall be made on forms provided by the **MOWER COUNTY ENVIRONMENTAL SERVICES DEPARTMENT** and signed by the applicant and an appropriately certified practitioner including the practitioner's certification number and date of expiration. The applications shall include the documents listed in items A through E below.

- A. Name, mailing address, telephone number, and email address.
- B. Property Identification Number and address or other description of property location.
- C. Site Evaluation Report as described in Minnesota Rules, Chapter 7080.1730
- D. Design Report as described in Minnesota Rules, Chapter 7080.2430.
- E. Management Plan as described in Minnesota Rules, Chapter 7082.0600.

2.06 Application Review and Response

The Department shall review a permit application and supporting documents. Upon satisfaction that the proposed work will conform to the provisions of this Ordinance, the Department shall issue a written permit authorizing construction of the SSTS as designed. In the event the applicant makes a significant change to the approved application, the applicant must file an amended application detailing the changed conditions for approval prior to initiating or continuing construction, modification, or operation for approval or denial. The Department shall complete the review of the amended application within (15) working days of receipt of the amended application. If the permit application is incomplete or does not meet the requirements of this ordinance the Department shall deny the application. A notice of denial shall be provided to the applicant, which must state the reason for the denial.

2.07 Appeal

The applicant may appeal the Departments decision to deny the Construction Permit in accordance with the County's established policies and appeal procedures.

2.08 Permit Expiration

The Construction Permit is valid for a period of no more than one year from its date of issue. 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 reasonable conformance with the approved design documents by a qualified employee of the Department or a licensed inspection business, which is authorized by the Department and independent of the owner and the SSTS installer.

Comment:

This provision is included to track the status of the Construction Permit. If construction does not proceed within the valid permit period, the permit should be voided automatically and the applicant notified. A formal closure of the permit is needed to ensure that the Department is aware and that proper construction documents are submitted and recorded so that a Certificate of Compliance may be issued.

Optional:

2.09 Extensions and Renewals

The Department 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 (6) months.

Comment:

This provision provides the opportunity for the Department to require the applicant to reapply and conform to the prevailing rules if they have been revised since the original date of the permit.

2.10 Transferability

A Construction Permit shall not be transferred to a new owner. The new owner must apply for a new Construction Permit in accordance with this section.

Comment:

This provision provides the opportunity for the Department to require the new owner to conform to any revised rules since the date of the original permit but also provides a “teachable moment” to ensure the new owner is aware of the SSTS and his/her responsibilities associated with it.

2.11 Suspension or Revocation

The Department may suspend or revoke a Construction Permit issued under this section for any false statements, misrepresentations of facts on which the Construction Permit was issued, or unauthorized changes to the system design that 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. A notice of suspension or revocation and the reasons for the suspension or revocation shall be conveyed in writing to the permit holder. If suspended or revoked, installation or modification of a treatment system may not commence or continue until a valid Construction Permit is obtained.

2.12 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.

2.13 SATURATED SOIL DISPUTE RESOLUTION

IF A DOCUMENTED DISAGREEMENT ARISES OVER THE DEPTH OF THE PERIODICALLY SATURATED SOIL BETWEEN TWO LICENSED BUSINESSES OR A LICENSED BUSINESS AND A MOWER COUNTY QUALIFIED EMPLOYEE THE FOLLOWING PROCEDURES SHALL BE FOLLOWED:

- a. ALL DISPUTING PARTIES MUST MEET ON THE DISPUTED SITE AND ATTEMPT TO RESOLVE DIFFERENCES.**
- b. IF THE PROCEDURE ABOVE DOES NOT RESOLVE THE DISPUTE, THE PARTIES SHALL REQUEST AN OPINION FROM A MINNESOTA LICENSED SOIL SCIENTIST WHO IS ALSO A CERTIFIED SSTS DESIGNER OR INSPECTOR AND WHO IS INDEPENDENT OF EITHER OF THE DISPUTING PARTIES, INCLUDING MOWER COUNTY.**

- c. IF OPINIONS IN SUBITEM B. ABOVE ARE NOT SOUGHT OR DO NOT RESOLVE THE DISPUTE, ALL INITIAL AND FOLLOW-UP DOCUMENTS AND INFORMATION GENERATED MUST BE SUBMITTED TO THE MOWER COUNTY ENVIRONMENTAL SERVICES DEPARTMENT. THE DEPARTMENT SHALL TAKE INTO CONSIDERATION ALL INFORMATION AND OPINIONS RENDERED AND MAKE A FINAL JUDGEMENT. THE DEPARTMENT SHALL RENDER FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINDINGS SETTING FORTH THE REASON FOR ANY FINAL DECISION IT RENDERS.**
- d. ANY COST INCURRED SHALL BE BORN BY THE PRIVATE BUSINESS (ES) OR OWNERS FOR THE PROPERTY INVOLVED AND SHALL NOT BE THE RESPONSIBILITY OF MOWER COUNTY.**

ARTICLE VI, SECTION 3.0 OPERATING PERMIT

3.01 SSTS Requiring an Operating Permit

An Operating Permit shall be required of all owners of new holding tanks or MSTs or any other system deemed by the Department to require operational oversight. Sewage shall not be discharged to a holding tank or MSTs until the (DEPARTMENT) certifies that the MSTs or holding tank was installed in substantial conformance with the approved plans, receives the final record drawings of the MSTs, and a valid Operating Permit is issued to the owner.

3.02 Permit Application Requirements

Comment:

Minnesota Rules, Chapter 7082.0500, Subp. 2 requires that the local unit of government issue and enforce operating permits for all holding tanks, Type IV and Type V systems, and MSTs and any other system deemed by the local unit of government to require operational oversight. Also, Chapter 7082.0100, Subp. 3L requires that the local program require owners of systems that are not operated under a management plan (typically existing SSTS) must inspect and remove solids from septic tanks if necessary every three years. Counties should consider requiring operating permits for these systems as well to confirm that inspections are performed when required and solids removed as necessary. Operating permits are also useful in identifying systems that are no longer in use and must be properly abandoned.

A. Application for an Operating Permit shall be made on a form provided by the **MOWER COUNTY ENVIRONMENTAL SERVICES DEPARTMENT** including:

- (1) Owner name, mailing address, telephone, and email address
- (2) Construction Permit reference number and date of issue
- (3) Final record drawings of the treatment system
- (4) Owners of holding tanks must submit a copy of a valid executed monitoring and disposal contract with a licensed maintenance business

B. Monitoring and Disposal Contract

Owners of holding tanks shall provide to the **MOWER COUNTY ENVIRONMENTAL SERVICES DEPARTMENT** a copy of a valid monitoring and disposal contract executed between the owner and a licensed maintenance business, which guarantees the removal of the

holding tank contents in a timely manner that prevents an illegal discharge in accordance with *Minnesota Rules, Chapter 7082.0100, Subp. 3G*. This requirement is waived if the owner is a farmer who is exempt from licensing under Minnesota Statutes, section 115.56, subdivision 3, paragraph (b), clause (3).

Comment:

While individual contracts may be terminated by either the owner or the licensed business, counties should consider requiring that the owner hold a valid contract with a licensed maintenance business at all times until which time the holding tank is abandoned or the property sold.

Optional:

C. SSTS existing prior to the effective date of this ordinance

All SSTS existing prior to the effective date of this ordinance shall require an operating permit upon transfer of ownership, replacement, any modification or expansion that requires a permit, or following any SSTS enforcement action.

3.03 Department Response

The Department shall review 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 Department. If the submitted documents fulfill the requirements, the Department shall issue an operating permit within (10) working days of receipt of the permit application.

Comment:

Consideration should be given to allow a temporary permit to be issued to alleviate a hardship if the owner has need to occupy the building before the operating permit can be issued. The temporary permit should be limited to only allowing operating the treatment tank(s) as a holding tank until the operating permit is issued.

3.04 Operating Permit Terms and Conditions

The Operating Permit shall include the following (*see Minnesota Rules, Chapter 7082.0600, Subp.2.B*):

- A. System performance requirements
- B. System operating requirements
- C. Monitoring locations, procedures and recording requirements
- D. Maintenance requirements and schedules
- E. Compliance limits and boundaries
- F. Reporting requirements
- G. Department notification requirements for non-compliant conditions
- H. Valid contract between the owner and a licensed maintenance business

- I. Disclosure, location and condition of acceptable soil treatment and dispersal system site.
- J. Descriptions of acceptable and prohibited discharges.

3.05 Permit Expiration and Renewal

- A. Operating Permits shall be valid for the specific term stated on the permit as determined by the Department.
- B. An Operating Permit must be renewed prior to its expiration. If not renewed, the Department may require the system to be removed from service or operated as a holding tank until the permit is renewed. If not renewed within in (90) calendar days of the expiration date, the County may require that the system be abandoned in accordance with Article IV, Section 4.0.
- C. The Department shall notify the holder of an operating permit at least (90) calendar days prior to expiration of the permit. The Owner must apply for renewal at least (30) calendar days before the expiration date.
- D. Application shall be made on a form provided by the Department including:
 - (1) Applicant name, mailing address and phone number.
 - (2) Reference number of previous owner's operating permit.
 - (3) Any and all outstanding Compliance Monitoring Reports as required by the Operating Permit.
 - (4) Certified treatment system inspection signed and/or sealed by a certified designer, maintenance contractor, or operator at the discretion of the County.
 - (5) Any revisions made to the operation and maintenance manual.
 - (6) Payment of application review fee as determined by the County.

3.06 Amendments to Existing Permits not Allowed

The County may not amend an existing permit to reflect changes in this Ordinance until the permit term has expired and is renewed, unless an amendment is necessary to eliminate an imminent threat to public health or safety.

3.07 Transfers

The operating permit may not be transferred. A new owner shall apply for an operating permit in accordance with Article IV, Section 3.02 of this Ordinance. The Department 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 Department may require a performance inspection of the treatment system certified by a licensed inspector or qualified employee.

3.08 Suspension or Revocation

- A. The Department may suspend or revoke any operating permit issued under this section for any false statements or misrepresentations of facts on which the Operating Permit was issued.

- B. Notice of suspension revocation and the reasons for revocation shall be conveyed in writing to the owner.
- C. If suspended or revoked, the Department may require that the treatment system be removed from service, operated as a holding tank, or abandoned in accordance with Article IV, Section 4.0.
- D. At the Department's discretion, the operating permit may be reinstated or renewed upon the owner taking appropriate corrective actions.

3.09 Compliance Monitoring

- A. 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.
- B. A monitoring report shall be prepared and certified by the licensed inspection business or licensed service provider. The report shall be submitted to the Department on a form provided by the Department on or before the compliance reporting date stipulated in the operating permit. The report shall contain a description of all maintenance and servicing activities performed since the last compliance monitoring report as described below:
 - (1) Owner name and address
 - (2) Operating Permit number
 - (3) Average daily flow since last compliance monitoring report
 - (4) Description of type of maintenance and date performed
 - (5) Description of samples taken (if required), analytical laboratory used, and results of analyses
 - (6) Problems noted with the system and actions proposed or taken to correct them
 - (7) Name, signature, license and license number of the licensed professional who performed the work

ARTICLE VI, SECTION 4.0 ABANDONMENT CERTIFICATION

4.01 Purpose

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

Comment:

Proper abandonment of systems must be confirmed for health and safety reasons. An owner may overlook the abandonment requirement when discontinuing use of the system. If the county has an operating permit program, these systems can be readily identified when the owner fails to renew the operating permit. If the county does not have an operating permit program, the county must rely on disclosure statements and property transfers to identify systems that have not been properly abandoned. This approach is not reliable however. Alternatively, abandonment requirements could be sent out with

maintenance reminders. When a decommissioned system or component is discovered, the county should issue a Notice of Violation, which directs the owner to obtain an abandonment certificate from a licensed/certified contractor.

4.02 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 under this Ordinance shall be prohibited.
- B. Continued use of a treatment tank where the tank is to become an integral part of a replacement system or a sanitary sewer system requires the prior written approval of the Department.
- C. An owner of an SSTS must retain a licensed installation business to abandon all components of the treatment system within (60) calendar days of a system. Abandonment shall be completed in accordance with Minnesota Rules, Chapter 7080.2500. No prior notification of the Department of an owner's intent to abandon a system is necessary.
- D. A report of abandonment certified by the licensed installation business shall be submitted to the Department. 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
 - (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.

4.03 Abandonment Certificate

Upon receipt of an abandonment report and its determination that the SSTS has been abandoned according to the requirements of this Ordinance, the Department shall issue an abandonment certificate. If the abandonment is not completed according to the requirements of this ordinance the County shall notify the owner of the SSTS of the deficiencies, which shall be corrected within (30) calendar days of the notice.

Bill Buckley, Mower County Environmental Health Specialist comments / reasoning.

RE: Article VI Section 2.01 Activities requiring a permit

The language shown in the last sentence was added to make it clearer that the addition or even replacement of a tank or drainfield or any other type of soil treatment unit requires a permit even though it may be replacing a tank or drainfield of the same size.

RE: Article VI Section 2.02 Activities not requiring a permit

This language was added because occasionally a septic tank will crack or develop a leak. In the last 5 years since our permit fee went to \$500.00 at least 2 tanks have been replaced that cracked and developed leaks within 5 years of installation. When a "new" tank to be replaced and is replaced with the same size of tank and it is being replaced by a licensed SSTS contractor so that staff does not need to be present onsite it would seem reasonable that a permit fee is not charged. Another option would be to charge a reduced fee for the replacement of a tank only. I think the office should be informed of such an installation but I am not sure it is necessary to record the replacement on the original permit.

RE: Article VI Section 2.12 Posting (Should this section be deleted?)

Our permits are not really conducive to positing and unless we change our permit design and practice of issuing this doesn't seem practical.

RE: Article VI Section 2.13 Saturated Soil Dispute resolution

Chapter 7082 requires that the county have a dispute resolution procedure for settling saturated soil disputes. This language incorporates the dispute resolution procedure written in 7082 which deals with disputes between two licenses businesses and language for dealing with disputes with a licensed business and the county. This procedure requires the disputing parties to attempt to settle their dispute while looking at the soil onsite. If this can not be done the parties must agree on a neutral licensed soil scientist who is a certified SSTS designer and inspector to observe the soil and make a decision. This language also makes it clear that any cost incurred including that to obtain the opinion of the licensed soil scientist will not be the responsibility of the county and must be borne by the private parties of those involved in the dispute.

ARTICLE VII MANAGEMENT PLANS

ARTICLE VII, SECTION 1.0 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.

ARTICLE VII, SECTION 2.0 MANAGEMENT PLAN REQUIREMENTS

2.01 SSTS Requiring Management Plans

Management plans are required for all new or replacement SSTS. The management plan shall be submitted to the Department with the construction permit application for review and approval. The Department shall be notified of any system modifications made during construction and the management plan revised and resubmitted at the time of final construction certification

Comment:

Management plans (or operating permits) should be considered for any system requiring a permit for a repair, modification, or expansion to increase owner awareness of the need for timely maintenance. Consideration should be given also to requiring plans (or operating permits) for any system without a management plan when a property is transferred.

2.02 Required Contents of a Management Plan

Management plans shall include (*Minnesota Rules, Chapter 7082.0600, Subp.1*):

- A. Operating requirements describing tasks that the owner can perform and tasks that a licensed service provider or maintainer must perform;
- B. Monitoring requirements;
- C. Maintenance requirements including maintenance procedures and a schedule for routine maintenance;
- D. Statement that the owner is required to notify the Department when the management plan requirements are not being met;
- E. 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.
- F. Other requirements as determined by the Department

Options:

Other requirements might include a description of the system and each component, how the system functions, a plot plan of the system, equipment specifications, emergency operating procedures in the event of a malfunction, and a troubleshooting guide.

2.03 Requirements for Systems not Operated under a Management Plan (*Minnesota Rules, Chapter 7082.0100, Subp. 3.(L)*)

SSTS that are not operated under a management plan or operating permit must have treatment tanks inspected and provide for the removal of solids if needed every three

years. Solids must be removed when their accumulation meets the limit described in Minnesota Rules, Chapter 7080.2450.

ARTICLE VIII COMPLIANCE MANAGEMENT

ARTICLE VIII, SECTION 1.0 PUBLIC EDUCATION OUTREACH

Programs shall be provided by the Department and/or others to increase public awareness and knowledge of SSTS. Programs may include distribution of educational materials through various forms of media and SSTS workshops focusing on SSTS planning, construction, operation, maintenance, and management.

Comment;

Construction permits, operating permits, and monitoring plans should also be considered as educational aids by providing descriptive materials, either generic but preferably specific, about the type of the owner's system.

ARTICLE VIII, SECTION 2.0 COMPLIANCE INSPECTION PROGRAM

2.01 Department Responsibility

It is the responsibility of the Department, or its agent, to perform various SSTS compliance inspections periodically to assure that the requirements of this Ordinance are met.

Note: The local inspection program must specify the frequency and times of inspections, specify the requirements of an inspection, establish an inspection protocol, provide for the event that an inspection cannot be completed in a timely manner, and at a minimum, include the requirements for a compliance inspection as described in 7082.0700, Subp. 2 and 3 except for Subp. 3(3).

A. SSTS compliance inspections must be performed:

- (1) To ensure compliance with applicable requirements;
- (2) To ensure system compliance before issuance of a permit for addition of a bedroom unless the permit application is made during the period of November 1 to April 30, provided a compliance inspection is performed before the following June 1 and the applicant submits a certificate of compliance by the following September 30;

Note: This provision only applies in counties that require building permits for bedroom additions.

- (3) For all new SSTS construction or replacement;
- (4) 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 Minnesota Rules, Chapter 7082.0700 using the SSTS inspection report forms provided by MPCA.

- B. All compliance inspections must be performed and signed by licensed inspection businesses or qualified employees certified as inspectors.
- C. The Department 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. The Department shall notify the owner of the Department’s intent to inspect the SSTS least (2) days in advance of the intended inspection.
- D. No person shall hinder or otherwise interfere with the Department’s employees in the performance of their duties and responsibilities pursuant to this ordinance. Refusal to allow reasonable access to the property by the Department shall be deemed a separate and distinct offense.

2.02 New Construction or Replacement

- A. Compliance inspections must be performed on new or replacement SSTS to determine compliance with Minnesota Rules, Chapters 7080 or 7081. SSTS found not to be in compliance with 7080.1500, Subp. 4A or 7081.0080, Subp. 3 must be repaired or replaced within ten months or as directed under Minnesota Statutes, Chapter 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 Department’s requirements.

Note:

Counties must develop a certificate of compliance or use a certificate of compliance developed by MPCA. See Minnesota Rules, Chapter 7082.0700, Subp. 3(C), for MPCA’s compliance inspection requirements for new development and replacements. Counties may include additional compliance requirements as appropriate.

- B. It is the responsibility of the SSTS owner or the owner’s agent to notify the Department (2) calendar days prior to any permitted work on the SSTS.
- C. A Certificate of Compliance for new SSTS construction or replacement, which shall be valid for (five) years, shall be issued by the Department if the Department has reasonable assurance that the system was built in accordance with the applicable requirements as specified in the construction permit.
- D. 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 which includes a statement specifying those ordinance provisions with which the SSTS does not comply.

Note:

Notices of noncompliance should only specify what ordinance provisions are violated. Counties should consider adding a requirement for a compliance plan that would be negotiated between the owner and the county, which would specify the

methods and actions that will be taken to bring the system into compliance and a schedule for completing the compliance plan.

- E. The certificate of compliance or notice of noncompliance must be submitted to the Department no later than (15) calendar days after the date the inspection was performed. The Department 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 certificated of compliance has been issued.
- F. Certificates of compliance for new construction or replacement shall remain valid for (5) years from the date of issue unless the Department finds evidence of noncompliance.

2.03 Existing Systems

- A. Compliance inspections shall be required when any of the following conditions occur:
- (1) When a construction permit is required to repair, modify, or upgrade an existing system;
 - (2) Any time there is an expansion of use of the building being served by an existing SSTS which may impact the performance of the system;
 - (3) Any time there is a change in use of the property being served by an existing SSTS which may impact the performance of the system;
 - (4) At any time as required by this Ordinance or the Department deems appropriate such as upon receipt of a complaint or other notice of a system malfunction.

Options:

Compliance inspections also should be considered for the following:

- 1) when an operating permit is to be renewed,*
- 2) at the time of property sale or transfer (see Article VIII, Section 2.04),*
- 3) during systematic lake or area-wide SSTS surveys by the Department, and/or*
- 4) anytime the Department deems appropriate such as upon receiving a complaint or other information of system malfunction or failure.*

- B. Compliance inspections of existing SSTS shall be reported on the inspection report forms provided by MPCA. The following conditions, must be assessed, or verified:
- (1) Water tightness assessment of all treatment tanks including a leakage report;
 - (2) Vertical separation distance between the bottom of the soil treatment and dispersal system and the periodically saturated soil or bedrock including a vertical separation verification report;

Additional provision needed:

Chapter 7082.0700, Subp. 3(2) requires that a vertical separation report include verifications by two independent parties, which may be licensed inspection businesses and/or a qualified employee inspector with jurisdiction. If there is a dispute between the two verifying inspectors, the disputing parties must follow the local dispute resolution procedures. If no local dispute resolution procedures

exist, the dispute resolution procedure described in 7080.0700, Subp. 5 must be followed.

- (3) Sewage backup, surface seepage, or surface discharge including a hydraulic function report.

Note

The requirements for the inspection reports in this section are described in Minnesota Rules, Chapter 7082.0700, Subp. 4(B)

- C. The certificate of compliance must include a certified statement by a Qualified Employee or licensed inspection business, indicating 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 Department if the required corrective action is not a minor repair.

Note:

Notices of noncompliance should only specify what ordinance provisions are violated. Counties should consider adding a requirement for a compliance plan that would be negotiated between the owner and the county, which would specify the methods and actions that will be taken to bring the system into compliance and a schedule for completing the compliance plan.

- D. The certificate of compliance or notice of noncompliance must be submitted to the Department no later than (15) calendar days after the date the inspection was performed. The Department 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.
- E. Certificates of compliance for existing SSTS shall remain valid for (three) years from the date of issue unless the Department finds evidence of noncompliance.

Optional provision:

SSTS on properties sold or transferred to new owners should be repaired, replaced, or upgraded as determined by a compliance inspection, records search, or other means acceptable to the Department that are conducted prior to ownership transfers. The determination of need to repair, replace, or upgrade should proceed in a manner that does not needlessly delay or otherwise interfere with the property sale transaction. This provision should be preceded with a public and local realtors awareness campaign.

2.04 Transfer of Properties

- A. Whenever a conveyance of land upon which a dwelling is located, or a tract of land upon which a structure that is required to have an SSTS occurs, the following requirements shall be met:

- (1) A compliance inspection has been performed and a Certificate of Compliance has been issued by the Department within (three) years for SSTS older than five years or within (five) years if the system is less than five years old prior to the intended

sale or transfer of the property. unless evidence is found identifying an Imminent Threat to Public Health and Safety.

- (2) The compliance inspection must have been preformed by a qualified employee of the Department or a licensed inspection business following procedures described in Article VIII, Section 2.03 of this ordinance.
- (3) The seller of the property must disclose in writing information about the status and location of all known ISTS on the property to the buyer on a form acceptable to the Department.

Note:

Attachment B of this manual provides an example of a SSTS disclosure form published by the Traverse Area Association of Realtors of Michigan.

- (4) If the seller fails to provide a Certificate of Compliance, the seller shall provide the buyer sufficient security in the form of an escrow agreement to assure the installation of a complying ISTS. The security shall be placed in an escrow with a licensed real estate closer, licensed attorney-at-law, or federal or state chartered financial institution. The amount escrowed shall be equal to (150%) of a written estimate to install a complying ISTS 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 ISTS provided by a licensed and certified installer. After a complying SSTS has been installed and a certificate of compliance issued, the Department shall provide the escrow agent a copy of the Certificate of Compliance.

B. The compliance portion of the Certificate of Compliance need not be completed if the sale or transfer involves the following circumstances:

- (1) The affected tract of land is without buildings or contains no dwellings or other buildings with plumbing fixtures.
- (2) The transfer does not require the filing of a Certificate of Real Estate Value, as described in Minnesota Statutes, Section 272.115, subdivision 1.
- (3) The transfer is a foreclosure or tax forfeiture.
- (4) 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 a contract.
- (5) Any dwellings or other buildings that are connected exclusively to a municipal wastewater treatment system; any dwellings or other buildings that are located within the jurisdiction of a County approved agreement requiring exclusive connection to the wastewater treatment system of any municipality; or, any dwellings or other buildings that are connected exclusively to an approved wastewater treatment facility other than an individual sewage treatment system.

C. All property conveyances subject to this ordinance occurring during the period between November 15th and April 15th, 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 1st 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 non-compliant, an escrow agreement must be established in accordance with section 2.04 A(4), above, and the system upgraded.
- D. The responsibility for filing the completed compliance portion of the Certificate of Compliance under section 2.04 A, above, or for upgrading a system found to be non-compliant shall be determined by the buyer and seller. Buyer and seller shall provide the Department with a signed statement indicating responsibility for completing the compliance portion of the Certification and for upgrading a system found to be non-conforming.
- E. Neither the issuance of permits, certificates of compliance, or notices of noncompliance as requested or issued shall 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 non-compliance with the provisions of these standards and regulations.

ARTICLE IX ENFORCEMENT

ARTICLE IX, SECTION 1.0 VIOLATIONS

1.01 Cause to Issue a Notice of Violation

Any person, firm, agent, or corporation who violates any of the provisions of this Ordinance, or who fails, neglects, or refuses to comply with the provisions of this Ordinance, including violations of conditions and safeguards, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable as defined by Minnesota State Statutes. Each day that a violation exists shall constitute a separate offense.

1.02 Notice of Violation

The Department shall serve, in person or by mail, a notice of violation to any person determined to be violating provisions of this Ordinance. The notice of violation shall contain:

- A. A statement documenting the findings of fact determined through observations, inspections, or investigations;
- B. A list of specific violation(s) of this Ordinance
- C. Specific requirements for correction or removal of the specified violation(s);
- D. A mandatory time schedule for correction, removal and compliance with this ordinance.

Option:

Counties should consider the use of citations to respond to violations. Example language is provided here. However, we recommend that your legal council review this provision to ensure compliance with State and local rules.

1.03 Issuance of Citations

A. As specified herein, individuals occupying the designated County positions are authorized to issue citations in lieu of arrest or continued detention for a petty misdemeanor or misdemeanor violation of this ordinance.

(1) Zoning Administrator

(2) Building Inspector

(3) Sanitarian

(4) Code Enforcement Officer

(5) Qualified Employee

B. Additional Authority

Except as otherwise provided by statute, only a peace officer and a part-time peace officer may take a person into custody as permitted by Minn. Stat. §629.34.

C. Fines

Fines shall be paid within 30 day. If they are not, they may be assessed along with property taxes to the subject property.

1.04 Cease and Desist Orders

Cease and desist orders may be issued when the Department has probable cause that an activity regulated by this or any other County Ordinance is being or has been conducted with out a permit or in violation of a permit. When work has been stopped by a cease and desist order, the work shall not resume until the reason for the work stoppage has been completely satisfied, any administrative fees paid, and the cease and desist order lifted.

ARTICLE IX, SECTION 2.0 PROSECUTION

In the event of a violation or threatened violation of this Ordinance, the County may, in addition to other remedies, initiate appropriate civil action or proceedings to prevent, prosecute, restrain, correct or abate such violations or threatened violations and the County Attorney shall have authority to commence such civil action. The Department and County Attorney may take such actions as may be necessary to enforce the provisions of this ordinance.

ARTICLE IX, SECTION 3.0 STATE NOTIFICATION OF VIOLATION

In accordance with state law, the Department shall notify the MPCA of any inspection, installation, design, construction, alteration or repair of an SSTS by a licensed/certified person or any septage removal by a licensed pumper that is performed in violation of the provisions of this Ordinance.

Option:

Section 4.0 below provides authorization to the Department to recover costs from the property owner where it is necessary to remove or abate an imminent threat to public health.

SECTION 4.0 COSTS AND REIMBURSEMENTS

If the Department is required to remove or abate an imminent threat to public health or safety, the Department may recover all costs incurred in removal or abatement in a civil action,

including legal fees; at the discretion of the County Board, the cost of an enforcement action under this ordinance may be assessed and charged against the real property on which the public health nuisance was located. The County Auditor shall extend the cost as assessed and charged on the tax roll against said real property.

ARTICLE X RECORD KEEPING

The County 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 county sorted by licensed installation businesses, and other records relevant to each system.

Note:

See Minnesota Rules, Chapter 7082.0300, Subp. 4, which describes the records that the county is required by MPCA to retain.

ARTICLE XI ANNUAL REPORT

The department shall provide an annual report of SSTS permitting activities to MPCA no later than February 1 for the previous calendar year.

Note:

For the specific MPCA reporting requirements see Minnesota Rules, Chapter 7082.0040, Subp.5.

ARTICLE XII FEES

From time to time, the County Board shall establish fees for activities undertaken by the Department pursuant to this Ordinance. Fees shall be due and payable at a time and in a manner to be determined by the department.

ARTICLE XIII INTERPRETATION

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the County and shall not be deemed a limitation or repeal of any other powers granted by Minnesota Statutes.

ARTICLE XIV 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.

ARTICLE XV ABROGATION AND GREATER RESTRICTIONS

It is not intended by this Ordinance to repeal, abrogate, or impair any other existing County ordinance, easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other Ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency only.

ARTICLE XVI ORDINANCE REPEALED

The previous Mower County ordinance for the regulation of Individual Sewage Treatment Systems of the County is hereby repealed.

ARTICLE XVII ADOPTION

The Mower County Subsurface Sewage Treatment Program Ordinance is hereby adopted by the Mower County Board of Commissioners on the _____ day of _____, 20__.

CHAIRPERSON, MOWER COUNTY BOARD OF COMMISSIONERS

ATTEST:

EFFECTIVE DATE: _____, 20__

TABLE 1: SSTS PROGRAM SELECTION CONSIDERATIONS

Existing Local Conditions	Program Suitability		
	Conventional	Performance	Alternative Local Standards
Local Government Resources (Considerations are financial, staffing, IT resources, etc.)	Requires moderate resources	Requires certified staff, IT resources	Requires moderate resources
Strength of SSTS Program* (Qualified staff, financial and political support, effective enforcement)	At least an average SSTS program	Must have a strong SSTS program	At least an average SSTS program
Strength of Planning and Zoning Program* (Current land use and water plans exist and good plan enforcement)	Weak to average planning and zoning program	Must have a strong planning and zoning program	Weak to average planning and zoning program
Threats to Water Resources (Considerations include shallow water tables, very permeable soils, karst geology, lake shore developments, high density developments, etc)	Good for most areas of the state	Extra protection for sensitive resources such as karst areas or surface waters susceptible to nutrient loading	Only in areas with low threat to quality of water resources
Developmental Pressure on Soils where SSTS are not Appropriate (Strong residential growth pressure in unsewered areas)	Low	Medium to High	Not applicable in growth areas

* May be the same or independent programs