

Subsurface Sewage Treatment  
System (SSTS) Ordinance  
Clay County, MN

County Ordinance No. 2014-1

May 6, 2014

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# **Clay County Ordinance No. 2014-1**

## **Subsurface Sewage Treatment Systems**

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 subsurface sewage treatment systems [SSTS]) in unsewered incorporated areas that have not adopted ordinances that are as strict as this ordinance and unincorporated areas of Clay 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 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 individual subsurface sewage treatment systems (ISTS) and midsized subsurface sewage treatment systems (MSTS) for the treatment and dispersal of sewage 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 Clay 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 against the degradation of surface water and groundwater quality.
- C. The establishment of minimum standards for SSTS placement, design, construction, reconstruction, repair and maintenance to prevent contamination and, if contamination is discovered, the identification and control of its consequences and the abatement of its source and migration.
- D. The appropriate utilization of privy vaults and other non-water carried sewage collection and storage facilities.
- E. The provision of technical assistance and education, plan review, inspections, SSTS surveys and complaint investigations to prevent and control water-borne diseases, lake degradation, groundwater-related hazards, and public nuisance conditions.

**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 May 6, 2014.

**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.

**Authorized Representative:** An employee or agent of the Clay County Planning and Environmental Programs.

**Board of Adjustment:** Clay County Board of Adjustment as appointed by the Clay County Board of Commissioners.

**County:** Clay County, Minnesota.

**County Board:** Clay County Board of Commissioners.

**Department:** Clay County Planning and Environmental Programs.

**Environmental Services Officer:** The Environmental Services Officer of Clay County or the Clay County Board's authorized agent or representative.

**Lot:** "Lot" means a parcel of land in a plat recorded in the office of the county recorder or registrar of titles or a parcel of land created and conveyed, using a specific legal description.

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

**Minor Repair:** The repair or replacement of an existing damaged or faulty component/part of an SSTS excluding septic tanks and soil dispersal systems 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 or be made to a septic tank (except for allowed baffle repair) or soil dispersal system.

**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 certified by the Minnesota Pollution Control Agency.

**State:** The State of Minnesota.

**Type 4 Wetlands:** Inland deep fresh marshes in which soil is usually covered with six inches to three feet or more of water during the growing season. Vegetation includes cattails, reeds, bulrushes, spikerushes, and wild rice. In open areas, pondweeds, naiads, coontail, water milfoils, waterweeds, duckweeds, water lilies, or spatterdocks may occur. These deep marshes may completely fill shallow lake basins, potholes, limestone sinks, and sloughs, or may border open water in such depressions.

**Type 5 Wetlands:** Inland open fresh water, shallow ponds, and reservoirs in which water is usually less than ten feet deep and is fringed by a border of emergent vegetation similar to open areas of type 4 wetland.

**Wetland Type or Type:** "Wetland type" or "type" means a wetland type classified according to Wetlands of the United States, United States Fish and Wildlife Service Circular 39 (1956 and 1971 editions), as summarized in this subpart. "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin et al., 1979 edition) is a separate, parallel wetland typing system that may be used to characterize components of a wetland.

# **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.

## **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 SSTS program by Ordinance within their incorporated jurisdiction, which is at least as strict as this Ordinance.

## **Article III, Section 3.0      Administration**

### **3.01      County Administration**

The County Planning and Environmental Programs shall administer the SSTS program and all provisions of this Ordinance.

### **3.02      State of Minnesota**

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

### **3.04      Amendments**

The procedure for amendments to this Ordinance shall be as follows:

- A. An amendment may be initiated by a property owner, the Planning Commission, or the County Board of Commissioners. Property owners wishing to initiate an amendment shall fill out an application for amendment form, available from the Department. Such application shall be filled out and submitted to the Department together with the appropriate fee.
- B. The applicant shall appear before the Planning Commission to answer any questions that Commission members may have concerning the amendment request.



- C. A public hearing on the amendment request shall be conducted by the Planning Commission. The public hearing shall be conducted in accordance with Minnesota Statute, Chapter 394.26.
- D. The Planning Commission shall make a recommendation to the County Board of Commissioners after the proceedings of this public hearing.
- E. The County Board shall consider the recommendation of the Planning Commission.

### **3.05 Appeals**

An appeal of any administrative decision made in the enforcement of this Ordinance shall be made within fifteen (15) days of the date of the administrative decision by filling out and submitting to the Department an Administrative Decision Appeal Application form, which is available from the Department. Such appeal shall be heard by the Board of Adjustment within sixty (60) days of the date that such application is submitted to the Department and found complete and accepted by the Department.

## **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 SSTS regulated under this Ordinance by reason of standards, requirements, or inspections authorized hereunder.

# **Article IV General Requirements**

## **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 design whichever is earlier.

## **1.03 SSTS on Lots Created After January 23, 1996**

- 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. If a lot has one or more existing SSTS, a compliance inspection that includes an alternate site soil boring shall be conducted on each existing SSTS and required in lieu of a site evaluation on that lot.

## **Article IV, Section 2.0 Upgrade, Repair, Replacement, and Abandonment**

### **2.01 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 ten (10) months of receipt of a Notice of Noncompliance.

### **2.02 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 thirty (30) days of receipt of a Notice of Noncompliance.

An SSTS posing an imminent threat to public health or safety shall be pumped within 24 hours of the determination that the SSTS is an imminent threat and managed as a holding tank if the tank is sealed and compliant until an SSTS upgrade is completed. If the tank is not compliant or able to function as a holding tank, the building(s) serviced by the SSTS shall not be occupied or habituated per Article IV, Section 6.01 of this Ordinance until an SSTS upgrade is completed or unless a Department approved alternative for safe waste disposal is implemented.

### **2.03 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 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 CFR 40 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, alteration, 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.

## **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 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 complies with the provisions of this Ordinance with the following exceptions:

1. Building connected to SSTS that are non-compliant and are imminent health threats may continue to be occupied or used during the time period in which the system is noncompliant until it is upgraded if the property complies with Article IV, Section 2.02 of this Ordinance.
2. Building connected to SSTS that are noncompliant and failing to protect groundwater may continue to be occupied or used during the time period until the system is upgraded not to exceed the ten month upgrade time period allowed in Article IV, Section 2.01 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 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.

## **Article V SSTS Standards**

### **Article V, Section 1.0 Standards Adopted by Reference**

#### **1.01 Adoption of Rule by Reference**

The County hereby adopts by reference the provisions of Minnesota Rules Chapters 7080-7083 in their entirety as now constituted and from time to time amended, except as referenced under Article V, Section 2.0 and except as otherwise expressly modified by this ordinance.

### **Article V, Section 2.0 Amendments to the Adopted Standards**

#### **2.01 List of Changes to Adopted Standards**

- A. An inspection pipe of four inches in diameter shall be installed on every drop box, cross pipe used to top-load, or distribution box.
- B. A SSTS shall be upgraded to conform in entirety with all requirements of this Ordinance when additional bedrooms or water-using appliances are added to a building or the SSTS is disconnected from a building and being replaced and connected to a new building such as in the case of replacement of mobile homes, modular homes, etc.
- C. The setback distance from an ISTS to the delineated boundary of a Type 4 or Type 5 wetland shall be one hundred (100) feet and the bottom and sides of trenches and beds shall be in original soils at least three feet above the saturated soil or bedrock. In cases where a property owner can demonstrate through legal description, or plat, or certified survey that there is insufficient depth on a lot to accommodate placement of the drainfield at the 100 foot setback, the Environmental Services Officer may vary the setback administratively, but in no case shall the setback be less than 50 feet.
- D. The top of sewage tanks shall be buried no deeper from final grade than the tank manufacturer's maximum designed depth for the tank. This provision is adopted per the County's ability to do so as stated in Minnesota Rules, Chapter 7080.2000, C.

- E. On holding tanks, the maintenance hole of at least 20 inches in least dimension must extend through the cover to above final surface grade rather than follow the requirement in Minnesota Rules, Chapter 7080.2290, C.
- F. SSTS designs that will be used for a self-installed SSTS must include detailed construction/installation specifications and instructions meeting Department policy criteria for such designs.
- G. A homeowner may install alter or repair sewage treatment systems on their own property when such treatment systems are of the standard type, specifically, excluding mounds, at-grade systems and not considered to be an alternative or experimental system. In such instances, the homeowner is required to obtain the required permits and be in compliance with the same criteria and procedures as all licensed installers, with the exception of becoming licensed installers themselves.
- H. 7080.2100. Subp. 2 D. Replace with an ISTS with a pump must employ an electronic alarm devise to warn of failure.
- I. 7080.2210. Subp. 1. C. Replace with “may” provide flow measurement if a pump is employed.
- J. 7080.2220. Subp. 1. D. Replace with “may” provide flow measurement.
- K. 7080.2230. Subp. 1. D. Replace with “may” provide flow measurement.
- L. 7080.2270. Subp. 1. C. Replace with “may” provide flow measurement.
- M. 7080.2290. F. Replace with holding tanks must have an electronic alarm.
- N. 7080.2550. Subp. 1. Replace with seepage pit, drywell, or leaching pit systems are considered non-compliant.
- O. Any time a pump is utilized to pressurize a system, a filter with an electric alarm must be installed.

## **2.02 Determination of Hydraulic Loading Rate and SSTS Sizing**

Table IX entitled “Loading rates for determining bottom absorption area and absorption ratios using detailed soil descriptions” or Table IXa entitled “Loading rates for determining bottom absorption area and absorption ratios using percolation tests” from Minnesota Rules, Chapter 7080.2150, Subp. 3(E) and herein adopted by reference shall be used to size SSTS infiltration areas.

## **2.03 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.

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.

## **2.04 Holding Tanks**

Holding tanks may be allowed for the following applications: as replacements for existing failing SSTS and SSTS that pose an imminent threat to public health or safety on lots with limitations that will not allow for the installation of a Type I SSTS or for uses that are seasonal or intermittent in nature and will not use more than 150 gallons of water per day.

Holding tanks meeting the above-mentioned criteria may be used for structures with limited water use as determined by the Department under the following conditions:

- A. The owner shall install a holding tank in accordance with Minnesota Rules, Chapter 7080.2290.
- B. An electric alarm device shall be installed that identifies when the holding tank is at 75 percent capacity per Minnesota Rules, Chapter 7080.2290 Subp. F.
- C. The owner shall maintain a valid contract with a licensed maintainer to pump and haul the holding tank contents to a licensed treatment facility or to a site which meets the guidelines set forth in the MPCA "Septage and Restaurant Grease Trap Waste Management Guidelines" (Water/Wastewater-ISTS #4.20 – August 2002), and as periodically amended. This requirement is waived if the owner is a farmer who is exempt from licensing under Minnesota Statute 115.56, Subd. 2, paragraph (b), clause (3).
- D. The holding tank shall be regularly pumped, no less frequently than once a year or other regular schedule approved by the Department based on water use.
- E. The maintainer shall certify each date the tank is pumped, the volume of the liquid waste removed, the treatment facility to or site on which the waste was discharged, and report this information to the Department.

Failure to meet these requirements shall constitute a violation of this Ordinance and will result in enforcement actions being taken by the County per Article IX of this Ordinance which may include, but not be limited to, banning use/occupancy of the structure(s) served by the holding tank(s).

## **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 Chapter 4, Section 8-4-5 of the Clay County Development Code.

- A. 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.
- B. Any variance granted shall automatically expire if the SSTS is not installed within one year of the date of the variance approval.

### **3.02 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 and other standards and criteria per Minnesota Rules, Chapter 7082.0300 Subp. 3. Variances shall only be permitted when they are in harmony with the general purposes and intent of this Ordinance where there are practical difficulties 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.

## **Article VI SSTS Permitting**

### **Article VI, Section 1.0 Permit Required**

It is unlawful for any person to construct, install, alter, modify, repair, replace, or operate a SSTS without the appropriate permit and accompanying compliance inspection resulting in the issuance of a certificate of compliance from the Clay County Planning & Environmental Services Department. The issuing of any permit or variance under the provisions of this Ordinance shall not absolve the applicant of responsibility to obtain any other required permit or inspection.

## **Article VI, Section 2.0 SSTS Permit**

An SSTS permit 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).

No permit will be issued to landowners or on property on which there are unresolved violations of this or any other ordinance unless that permit is part of a Department approved plan to resolve the violation(s).

### **2.01 Activities Requiring an SSTS Permit**

An SSTS 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.

### **2.02 Activities Not Requiring an SSTS Permit**

An SSTS 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.

### **2.03 SSTS Permit Required to Obtain Sewered Structure Building Permit**

For any property on which an SSTS permit is required in the Shoreland Management Ordinance jurisdictional area, approval and issuance of a valid SSTS permit must be obtained or a valid certificate of compliance for the SSTS, as applicable, must be submitted to the Department before a sewer structure building or zoning permit can be issued by the Department.

### **2.04 Permit Application Requirements**

SSTS Permit applications shall be made on forms provided or approved by the Department and signed by the applicant or an authorized agent. The applications shall include, but is not limited to the information and documents listed in items A through E below.

- A. Name, mailing address, telephone number, (and email address, if available.)
- 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.



## **2.05 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 such as a change in the soil dispersal system location, distribution method, or treatment type, the applicant must file an amended application with the Department detailing the changed conditions prior to initiating or continuing construction, modification, or operation. Upon satisfaction that the amended application will conform to the provisions of this Ordinance, the Department shall issue a written permit authorizing construction of the SSTS as amended and then construction may commence per the amended and accompanying permit. 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.

## **2.06 Permit Expiration**

The SSTS permit is valid for a period of no more than one (1) 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 substantial conformance with the approved design documents by a qualified employee of the Department.

If construction is not completed within the valid permit period, the permit is automatically voided.

## **2.07 Extensions and Renewals**

The Department may grant an extension of the SSTS permit if the construction has commenced prior to the original expiration date of the permit. The permit may be extended for a period of no more than six (6) months.

## **2.08 Transferability**

An SSTS permit may be transferred to a new owner provided there are no proposed changes to the SSTS design.

## **2.09 Suspension or Revocation**

The Department may suspend or revoke an SSTS permit issued under this section for any false statements, misrepresentations of facts on which the SSTS 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 SSTS may not commence or continue until a valid SSTS permit is obtained.

## **2.10 Posting**

The SSTS 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.

## **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, Type IV systems, Type V systems, or MSTs or any other system deemed by the Department to require operational oversight. Sewage shall not be discharged to a holding tank, Type IV system, Type V system, or MSTs until the Department certifies that the holding tank, Type IV system, Type V system, or MSTs was installed in substantial conformance with the approved plans, receives the final as-builts of the holding tank, Type IV system, Type V system, or MSTs, and a valid Operating Permit is issued to the owner.

### **3.02 Permit Application Requirements**

A. Application for an Operating Permit shall be made on a form provided by the Department including:

- (1) Owner name, mailing address, telephone, (and email address, if available.)
- (2) SSTS Permit reference number and date of issue
- (3) Final as-builts of the SSTS
- (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 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) and doing his/her own maintaining. Owners of holding tanks shall hold a valid monitoring and disposal contract with a licensed maintenance business at all times until which time the holding tank is abandoned or the property sold and provide to the Department a copy of each and every said contract within thirty (30) days of the contract's execution.

### **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.

### **3.04 Operating Permit Terms and Conditions**

The operating permit shall include the following:

- 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 the additional soil treatment and dispersal system site
- J. Descriptions of acceptable and prohibited discharges
- K. Any other information the Department deems necessary

### **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 ninety (90) calendar days of the expiration date, the County may require that the system be abandoned in accordance with Article IV, Section 2.03.
- C. The owner must apply for renewal at least thirty (30) calendar days before the expiration date.
- D. Application shall be made on a form provided by the Department including, but not limited to:
  - (1) Applicant name, mailing address, phone number, (and email address, if available)
  - (2) Reference number of previous owner's operating permit

- (3) Any and all outstanding compliance monitoring reports as required by the operating permit
- (4) Evidence of all pumping done during the most recent operating permit period such as paid receipts from a state-licensed maintainer
- (5) Certified treatment system inspection signed and/or sealed by a certified designer, maintenance contractor, or operator at the discretion of the County
- (6) Any revisions made to the operation and maintenance manual
- (7) 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 shall not be transferred. A new owner shall apply for an operating permit in accordance with Article IV, Section 3.02 of this Ordinance. To consider the new owner's application, the Department may require a performance inspection of the treatment system certified by a 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 or in cases when a monitoring report shows the system is not operating per the terms of the operating permit.
- 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 2.03.
- 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, address, telephone number, (and email address, if available)
- (2) Property tax parcel identification number and legal description
- (3) Operating permit number
- (4) Average daily flow since last compliance monitoring report
- (5) Description of type of maintenance and date performed
- (6) Description of samples taken (if required), analytical laboratory used, and results of analyses
- (7) Problems noted with the system and actions proposed or taken to correct them
- (8) Name, signature, license and license number of the licensed professional who performed the work

## **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 SSTS permit application. The Department shall be notified of any system modifications made during construction and the management plan revised and resubmitted prior to final construction certification.

#### **2.02 Required Contents of a Management Plan**

Management plans shall include:

- 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.

### **2.03 Requirements for Systems not Operated under a Management Plan**

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 Compliance Inspection Program**

#### **1.01 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.

- 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 provides a copy of the compliance inspection to the Department within 15 days of its completion.
  - (3) For all new SSTS construction or replacement (includes privies);
  - (4) It is the responsibility of the seller to provide to the buyer a copy of the certification inspection indicating whether the system is in compliance or noncompliance prior to closing on an agreement to sell or transfer real property. During the period between November 1 and April 30, a request for a certification inspection must be submitted to the Clay County Environmental Services Division office prior to closing on an agreement to sell or transfer real property and the associated inspection completed by July 1. Inspections shall be conducted for the following situations, in

accordance with Minnesota Rules, Chapter 7082.0700 using the SSTS inspection report forms provided by MPCA.

- a. A contract for deed is considered a transfer of property whether it has been filed or not;
  - b. Receipt of a nuisance complaint;
  - c. Observation by environmental health personnel of any failure as described below; or
  - e. Request of the property owner.
- B. All compliance inspections must be performed and signed by a qualified employee certified as an inspector.
- 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.
- 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.

## **1.02 New Construction or Replacement**

- A. Compliance inspections shall be performed on new or replacement SSTS during construction and installation of a SSTS before it is covered with soil to determine compliance with Minnesota Rules, Chapters 7080 or 7081.
- B. It is the responsibility of the SSTS owner or the owner's agent to notify the Department that an SSTS permit installation inspection is being requested at least 24 hours prior to, exclusive of Saturdays, Sundays and holidays.
- C. A certificate of compliance for new SSTS construction or replacement, which shall be valid for five (5) 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 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.
- E. The Department shall deliver the certificate of compliance or notice of noncompliance to the owner or the owner's agent within fifteen (15) calendar days of receipt from the certified inspector. No SSTS shall be placed into operation until a valid certificate of compliance has been issued.

- F. Certificates of compliance for new construction or replacement shall remain valid for five (5) years from the date of issue unless the Department finds evidence of noncompliance.
- G. When additional inspections are required, an additional re-inspection fee will be charged.

### **1.03 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 addition or alteration to, or an expansion of use of the building being served by an existing SSTS or a new building is being connected to an existing SSTS;
  - (3) Bedroom Additions. The owner is allowed 10 months from the date of issuance of a bedroom addition permit to upgrade, repair, replace or abandon an existing system if any of the following conditions apply:
    - A. The Planning & Environmental Programs 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;
  - (4) 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;
  - (5) When an operating permit is to be renewed;
  - (6) During systematic lake or area-wide SSTS surveys by the Department; and/or
  - (7) 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.
- 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;
  - (3) Sewage backup, surface seepage, or surface discharge including a hydraulic function report.
- C. The certificate of compliance must include a certified statement by a Qualified Employee, 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.
  - D. If the certificate of compliance is being performed for a permit or variance application where the size of the SSTS tank(s) and drainfield must be known in order to act on the permit or variance application, then the quantity and capacity of tanks and size of the soil dispersal system must be shown on the certificate of compliance.
  - E. A copy of the certificate of compliance or notice of noncompliance shall be provided to the property owner and the original certificate of compliance or notice of noncompliance shall be provided to the Department by the licensed inspector conducting the inspection within fifteen (15) days of the date the inspection was performed.
  - F. Certificates of compliance for existing SSTS shall remain valid for three (3) years from the date of issue unless the Department finds evidence of noncompliance.
  - G. SSTS found not to be in compliance with Minnesota Rules, Chapter 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.

#### **1.04 Periodically Saturated Soil Disagreements**

Resolution of disputes between SSTS certified individuals regarding conflicting compliance inspections, determination of seasonally saturated soils, and other technical issues shall follow Minnesota Rule 7082.0700, Subp. 5.

#### **1.05 Disclaimer**

Neither the issuance of permits, certificates of compliance, nor 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 Interference with Department Access or Administration/Enforcement Prohibited**

The Department shall be given access to enter a property without prior notice at any reasonable time to inspect and/or monitor the SSTS for any reason the Department deems necessary. As used in this paragraph, “property” does not include a residence or private building.

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.

### **1.03 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.

### **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 without 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.

### **1.05 Administrative Fees and Restoration**

Any application for a permit that is made after the work has commenced and which requires a permit or is done in violation of a permit shall be charged an additional administrative fee. In addition, the Department may require correction and/or restoration of the property to its original state should the application for a permit be denied or if the action permitted does not include all or part of the work commenced prior to approval of said permit.

### **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 X 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 XI 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 XII 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 XIII Abrogation and Greater Restrictions**

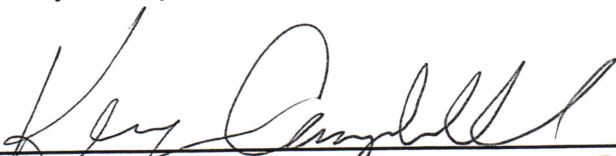
It is not intended by this Ordinance to repeal, abrogate, or impair any other existing County ordinance, easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other Ordinances inconsistent with this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

## **Article XIV Ordinance Repealed**

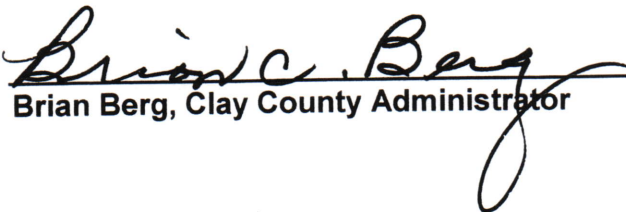
The Clay County previous ordinance for the regulation of Individual Sewage Treatment Systems of Title 6 of the Clay County Code, dated December 18, 2001, is hereby repealed.

## **Article XV Adoption**

The Clay County Subsurface Sewage Treatment Program Ordinance is hereby adopted by Clay County Board of Commissioners on the 6th day of May, 2014.

  
\_\_\_\_\_  
Kevin Campbell, Chairperson, Clay County Board of  
Commissioners

Attest:

  
\_\_\_\_\_  
Brian Berg, Clay County Administrator

**Effective Date: 6th day of May, 2014**