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Ordinance to Provide Inspection and Maintenance of On-Site Sewage Disposal Systems and On-Site Water Supply Systems

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Ordinance to Provide Inspection and Maintenance of On-Site Sewage Disposal Systems and On-Site Water Supply Systems

Prepared for:

Kent County Septage Management Program Advisory Committee

4/23/02

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SECTION I

General Provisions

Policies

Sec. 1.1 In recognition of the right of the citizens of Kent County to the conservation and development of the County's natural resources and to the protection of its surface and groundwaters, it is hereby declared the policy of the County of Kent:

1. To protect and enhance the quality of the County's surface and groundwater resources and to avert adverse impact upon the public health by abating sources of water contamination; 2. To safeguard the County's water resources against pollution or destruction, to prevent damage to property and injury to plant or animal life, and to preserve the public's enjoyment of the County's recreational resources;

3. To assist prospective buyers of parcels containing on-site sewage disposal systems (OSDS) and on-site water supply systems (OSWSS) by identifying system defects and health hazards and securing remedial actions.

Purposes

Sec. 1.2 It is therefore the purpose of this Ordinance:

1. To protect the health, safety and welfare of the citizens of Kent County and to achieve the policy declarations enumerated above by providing an inspection and maintenance program for on-site sewage disposal systems and on-site water supply systems in the County;

2. To provide for the implementation, administration, and enforcement of this Ordinance by the Kent County Health Department, Health Officer and Environmental Health Section, to prescribe the powers and duties of the Health Officer and the Department, and to provide penalties for violation of this Ordinance;

3. To establish a certification system for inspectors who will evaluate on-site sewage disposal systems and on-site water supply systems, and to empower the Health Officer to de-certify individuals;

4. To prohibit the sale or transfer of parcels containing on-site sewage disposal systems and on-site water supply systems until the systems have been inspected and the inspector's requirements have been acted upon;

5. To provide a service to prospective buyers of parcels containing on-site sewage disposal systems and on-site water supply systems by requiring inspection of disposal and water supply systems prior to sale and by maintaining records of the systems' inspections for use by prospective buyers;

6. To establish a regular inspection schedule for on-site sewage disposal systems and/or operating permits as included in this Ordinance;

7. To encourage compliance with this Ordinance and increase public awareness through direct communication and the dissemination of educational materials.

Rules Adopted
Sec. 1.3 This regulation contains minimum standards and supplements the rules and regulations enacted by the Michigan Community Public Health Agency and Kent County. In addition, this regulation supplements Michigan law as it relates to public health and environmental quality and shall supercede all local minimum standards previously enacted that are inconsistent with this regulation.

Authority
Sec. 1.4 This regulation is enacted pursuant to MCLA 330.3101 et. seq. as amended, MCLA 324.1701 et. seq., and MCLA 46.11, to protect the public health, safety, and welfare of the citizens of Kent County.

Jurisdiction
Sec. 1.5 The Public Health Officer shall have jurisdiction to administer and enforce the provisions of this regulation. Nothing in this regulation shall be construed to restrict or nullify the authority of any municipality, or incorporated city, village, or township in Kent County to adopt standards that are more restrictive. However, whenever an inspection relating to health or sanitation is required, no municipality shall issue a license without first having obtained written permission from the Health Officer indicating that the applicant has complied with the minimum requirements of this regulation.

Effective date
Sec. 1.6 These regulations will be effective upon approval by the Kent County Board of Commissioners at the time provided under Michigan law. However, inspections will not begin until a year after its enactment in order to allow time for on-site sewage disposal system inspectors to be trained.

Severability
Sec. 1.7 Each provision of this regulation shall be interpreted in a way that is valid under Michigan law. If any provision is held invalid, the rest of the regulation will remain in full effect.

SECTION II

Definitions

Rules of Language
Sec. 2.1 The following rules of language shall be applied to the text in this regulation: The word “shall” is mandatory; the word “may” is permissive. When not inconsistent with the context, words in the present tense shall include the future and

words designating singular numbers shall include the plural. Words not defined herein shall be interpreted in the manner of their common usage.

Words and Terms
Sec. 2.2 The following words and terms used in this regulation, unless otherwise expressly stated, shall have the following meaning:

Appeal
A formal written request for administrative review of any decision, violation notice, order, citation, action or failure to act, on the part of the Health Officer, pursuant to the provisions of this Ordinance.

Authorized Agent
Any individual or corporation authorized, in writing, to act as the legal representative in all matters authorized by the seller or purchaser.

Committee
The Sewage Regulations Technical Advisory Committee, as described in Article IX of the Sewage Disposal Regulations for Kent County, Michigan.

Department
The Kent County Health Department.

Defective On-site Sewage Disposal System
A defective on-site sewage disposal system has at least one of the following characteristics: 1) the backup of sewage into a structure; 2) discharge of effluent to a water course, surface drain, or ground surface; 3) the connection of an OSDS to a storm drain; 4) liquid level in a septic tank above the outlet invert; 5) structural defect or dilapidation of a septic tank; 6) discharge above the outlet invert; 7) nonconformance with water well isolation from contamination source requirements; 8) discharge of sewage from the structure which does not reach the disposal system; 9) septic tank not accessible at finish grade.

Defective On-site Water Supply System
A defective on-site water supply system has at least one of the following characteristics: 1) Unsafe water sample 2) non-conformance with water well minimum design standards; 3) non-conformance with water well isolation from contamination source requirements; 4) non-conformance with construction standards.

Full Septic Tank
A septic tank is full whenever the top of the sludge or solids layer is within 12 inches or less of the bottom of the outlet tee or the top of the scum layer is within two inches of the top of the outlet tee or the bottom of the scum layer is within two inches of the bottom of the outlet tee, as determined by the inspector's visual estimate.

Health Officer
The Director of the Kent County Health Department, the acting Public Health Officer, or his or her duly authorized representative.

Inspector
A Kent County on-site sewage disposal system or on-site water supply system inspector.

Installer
A Kent County On-Site Sewage Disposal System or On-Site Water Supply System installer.

Municipality
Any incorporated city, village, or township within Kent County.

On-site Sewage Disposal System (OSDS)
The devices, including but not limited to all septic tanks, pipes, pumps, vents, and absorption systems used to treat and/or dispose of all wastewater from a structure.

On-site Water Supply System (OSWSS)
A system of pipes and structures through which water is obtained, including but not limited to: the source of the water, such as wells or hauled water storage tanks, pumping and treatment equipment, storage tanks, pipes and appurtenances used or intended to be used to furnish water for potable use.

Owner
Any person, agency, firm, or corporation that has legal title to any premises.

Person
Any individual, firm, partnership, party, corporation, company, society, association, or other legal entity.

Premises
Any tract of land, or portion thereof, or combination of tracts of land under single or common ownership, operation, or control that contains any type of structure that is, was, or will be inhabited either permanently or transiently and includes well water or septic tanks, drains, drainfield, or underground tanks, pipes, or similar appurtenances containing sewage or other contaminants or combinations thereof.

Public Health Hazard
Situations with the potential to adversely impact or threaten public health or safety, as determined by the Department.

Public Sanitary Sewer
A system of pipes and conduits used or intended to be used for the collection and transportation of sanitary sewage, which is owned, operated, and maintained by a government entity.

Public Water Supply
A water supply system that provides water for drinking or household purposes to persons other than the supplier of water, as defined in MCL 325.1002.

Certified Inspector
An individual who is certified and whose name is on the Health Department's Registration List.

Sanitary Sewage
Any water-transported waste material produced by any toilet, sink, bathtub, urinal, garbage disposal, shower, or laundry device, and human body waste material in any form, originating within or upon any premise. Excluded from the definition are storm drainage and wastewaters from roofs, foundation drains, water softening devices, industrial and commercial processes, and commercial laundries.

Septage
Any human excrement or other domestic waste, including gray water and other material or substance removed from a portable toilet, septic tank, seepage pit, cesspool, sewage lift station or other enclosure, but does not include liquid industrial waste.

Septic Tank
A buried watertight, covered tank designed and constructed to receive and partially treat sanitary sewage by physical settling and anaerobic decomposition prior to its release to a drainfield.

SECTION III

Powers of the Health Officer

Regulation and Control
Sec. 3.1 The Health Officer is responsible for regulating the inspection, operation and maintenance of all OSDSs and OSWSSs within Kent County. The Health Officer is also empowered to exercise control over OSDSs and OSWSSs regulated by others when so authorized by the public agencies possessing statutory jurisdiction over such OSDSs and OSWSSs.

Power to Establish Policy, Criteria, and Standards
Sec. 3.2 The Health Officer is empowered to establish criteria, policies and guidelines concerning the application and interpretation of these regulations, and for the purpose of carrying out the responsibilities delegated to the Health Officer by law.

SECTION IV

Inspections

Limitations on Sale or Transfer

Sec. 4.1 There shall be no sale or transfer of a parcel until all of the following have occurred:

a) An OSDS and OSWSS inspector who is certified by the Department has submitted a report to the Health Department;
b) The Health Department determines that the OSDS and/or OSWSS are not creating a health hazard or the necessary repairs have been completed or assured and accepted.

Inspections

Sec 4.2 Each parcel containing an OSDS and/or an OSWSS shall be inspected by a certified OSDS and OSWSS inspector every three years and before the time of sale or transfer. Only transfers of property that are described in Section Three (3) of the Seller Disclosure Act are exempt from inspection, including transfers that are:

a) Pursuant to court order;
b) To a mortgagee;
c) By a sale under any power of sale or foreclosure;
d) By a nonoccupant fiduciary;
e) From one co-tenant to another;
f) To a spouse, parent, grandparent, child, or grandchild;
g) Between spouses pursuant to a divorce or separation;
h) To or from any governmental entity;
i) By licensed residential builders of uninhabited property.

Inspection Report

Sec. 4.3 Inspection reports shall include at least:

a) The address of the site;
b) The parcel identification number;
c) The name of the owner or owner's agent;
d) The location of the systems;
e) A description of the current operation status of the systems;
f) An analysis of whether the septic tank is full;
g) If the septic tank is not full at the time of inspection, an approximation of when the septic tank will be full, given current household use;
h) A description of the adherence, or lack thereof, to minimum design standards for OSDS and OSWSSs pursuant to Kent County, Michigan Regulations and Michigan Department of Environmental Quality guidelines;
i) A description of any health hazards or defects in the systems;

j) Identification of any necessary repairs or replacement of all or portions of the system;
k) The results of a drinking water test and well evaluation;
l) Distance to the closest public sewer line;
m) Other relevant or unusual observations;
n) Recommendations to improve the life of the systems or prevent premature failing;
o) Completed forms.

A certified copy of the inspector's report shall be provided to the owner and purchaser or transferee, along with educational material on system maintenance. A copy shall also be filed with the Health Department. Such reports shall be available to the public pursuant to the Freedom of Information Act, MCLA 15.231 et. seq.

Inspection Function
Sec. 4.4 The inspection shall determine whether the system adversely affects the public health and environment or violates any other applicable rules or regulations.

System Compliance
Sec. 4.5 The inspector shall determine whether the OSDS and/or OSWSS are creating a health hazard by this regulation's standards.

Water Testing
Sec. 4.6 Any water samples shall be collected on site and analyzed by a laboratory certified by the Michigan Department of Environmental Quality.

Vacant Premises
Sec. 4.7 If the parcel or structure served by a system is vacant for more than ten (10) days prior to the scheduled inspection, the inspection shall be delayed until after re-occupancy. Notice shall be given to the Health Department not less than thirty (30) and not more than forty-five (45) days after the date of re-occupancy of the parcel or structure, and a system shall have an inspection between thirty (30) and sixty (60) days of the date of re-occupancy of the parcel or structure.

Other Inspections
Sec. 4.8 The Health Department may determine a different frequency of disposal system inspections:

a) For non-residential structures;
b) For unique, unusual or alternative disposal systems or water supply;
c) When the disposal system is determined by the Health Department to be inadequate for the current use or size of the structure it serves.

Fees
Sec. 4.9 Fees to cover the Department's expenses, including but not limited to overhead, labor, storage, training, inspections etc., shall be adopted as provided in the Public Health Codes (Act 268 of 1978 as amended).

SECTION V

Inspector and Installer Requirements

Inspector and Installer Certification
Sec. 5.1 All inspectors or installers of OSDS and/or OSWSS shall be certified by the Department before undertaking any inspections or installations.

De-certification
Sec. 5.2 An OSDS or OSWSS inspector may be de-certified for failure to comply with this Ordinance, submittal of unacceptable inspection reports, submittal of false information on an application for certification or on an inspection report, or failure to submit requested missing information to the Department within ten (10) days. Installers may be de-certified for failure to comply with applicable Kent County regulations or submittal of false information on an application for certification. The inability to properly perform the inspection of a disposal system or negligence in the discharge of duties is also grounds for de-certification for either inspectors or installers.

De-certification Recourse
Sec. 5.3 The Department shall give written notice to an inspector or installer before he or she is de-certified. The inspector or installer shall be given an opportunity at an informal meeting with the Department and/or Health Officer to demonstrate why he or she should not be de-certified. Any inspector or installer who is de-certified may appeal the decision by following the procedure in Section IV of this regulation. When an inspector or installer is de-certified, re-certification shall be contingent upon completing the requirements established by the Department.

Liability
Sec. 5.4 An inspector or installer, acting in good faith and without personal malice in the discharge of his or her duties, shall not render him or herself personally liable for any damages to persons or property accrued as a result of any act or by reason of any act or omission in the discharge of his or her duties. Approximations of when the septic tank should be pumped are not guaranteed and this Ordinance does not imply any legal responsibility for these estimates. Owners are encouraged to monitor their OSDS independently.

SECTION VI

Responsibilities of Various Parties

Owners

Obtaining an Inspection
Sec. 6.1.1 The owner shall hire certified inspectors to perform inspections under this regulation prior to the sale of any premises that he or she owns and secure a letter from the Department before the sale indicating that the sewage system and water supply system are functioning properly. The owner is also responsible for hiring a certified inspector for periodic inspections and supplying the Department with a pump-out manifest when required. Owners shall maintain the OSDS and OSWSS on their property and shall notify the Department if the inspector's inspection report indicates that the system is causing a health hazard or the owner observes such a health hazard.

Notification of Delayed Inspection
Sec. 6.1.2 The purchaser or transferee shall notify the Department of the purchase or acquisition of a parcel served by an OSDS and/or OSWSS not more than forty-five (45) days after the date of occupancy of the parcel if the OSDS and/or OSWSS have not been inspected prior to the closing of the sale or transfer.

Kent County Health Department

Tasks
Sec. 6.2.1 The responsibilities of the Department include:

a) Administer and enforce this regulation;
b) Maintain the most current disposal system inspection reports as long as a structure is served by the disposal system and for three (3) years thereafter;
c) Maintain a list of certified inspectors qualified to perform inspections under this regulation;
d) Require and enforce remediation when there is evidence of a health hazard;
e) Create and maintain a database of systems inspected and re-mediated as well as newly installed systems;
f) Establish criteria for OSDS and OSWSS inspection and the certification of inspectors and make such criteria available to the public;
g) Require risers, observation ports, and other features to facilitate inspections when issuing permits for installation, modification, or repair of OSDS;
h) Notify owners by mail when they are due for a periodic OSDS and/or OSWSS inspection;
i) Distribute educational material to the owners of properties containing OSDSs and/or OSWSSs;
j) Make note of other OSDS and/or OSWSS defects included in inspection reports.

Realtors

Owner Notification
Sec. 6.3.1 A real estate broker, or representative of a broker, shall notify the owner of a parcel containing an OSDS and/or OSWSS that the system shall be inspected and approved before the closing of the sale.

Buyer or Transferee Notification
Sec. 6.3.2 A real estate broker, or representative of a broker, shall present evidence to a prospective buyer or transferee, prior to closure, of the OSDS or OSWSS compliance with the County Ordinance or of the remediation of any disposal or water supply system health hazard or the information acceptable to the Department concerning who is responsible for any repairs, and how and when the remediation will be completed.

SECTION VII

Maintenance Action

Notification of Pumping Requirement
Sec. 7.1 If the inspection report states that the septic tank is within 20% of being full as defined by this Ordinance, the Department shall inform the owner or other persons legally responsible that the septic tank must be pumped. A written notice shall be sent within five (5) business days of when the Department reviews the inspection report.

Submittal of Pump-Out Manifest
Sec. 7.2 Upon notification that the septic tank must be pumped, the owner shall hire a licensed septage hauler within (30) days to pump any and all septic tanks that the Department requires. The septage hauler shall provide a copy of the pump-out manifest to the Health Department within thirty (30) days of when the tank was serviced.

SECTION VIII

Health Hazard Corrective Action

Notification of Health Hazard
Sec. 8.1 If, after reviewing the inspection report, the Department determines that the OSDS is causing a health hazard, the Department shall notify the owner. This written notice shall be sent no later than five (5) business days after the determination is made or after the Department reviews the inspection report. Any party is considered notified if the notice is sent to that party's last known mailing address or to the property address if the party occupies the premises with the non-conforming OSDS.

System Compliance
Sec. 8.2 Upon receiving written notice from the Department that the OSDS or OSWSS inspection report indicates that the OSDS or OSWSS is causing a health hazard, the owner, buyer or authorized agent shall, within thirty (30) days, submit a proposed

corrective action. The Department shall review the proposed corrective action and amend it as required to conform to federal, state, and local laws, rules, and regulations. The owner shall complete all necessary corrective actions within one hundred eighty (180) days following Department approval. Once the Department gives final approval of the completed corrective action, the system shall be deemed in compliance with this regulation.

Disputes

Sec. 8.3 A person who disputes any Department decisions shall have the right to a hearing and an appeal as described in Section IV of this Ordinance. Any appeal shall not stay an owner's, buyer's, or authorized agent's obligation to take measures to reduce or eliminate the impact of a health hazard until a full remediation plan can be determined and implemented.

SECTION IV

Violations and Enforcement

Right to Investigate

Sec. 9.1 The Department may, after presenting proper credential and other documents as may be required by law, and upon stating the authority and purpose for the investigation, enter and inspect any property at reasonable times to ascertain compliance or noncompliance with this regulation or rules promulgated under this regulation. This may include:

a) Inspection at reasonable times of any parcel containing an OSDS and/or OSWSS and related systems;
b) Collection of evidence and information for the purpose of determining compliance with this regulation or rules promulgated under this regulation.

Violation of a Regulation

Sec. 9.2 After learning that this regulation has been violated, the Health Officer may:

a) Issue a Cease and Desist Order and/or suspend any permit, certificate, or other approval issued pursuant to this regulation to the owner or other party in violation of this regulation, and afford the owner or other interested party notice and opportunity for a hearing;
b) Have a legal action filed to enjoin the violation. In addition, the Health Officer may seek to recover any and all costs related to correcting, removing, or abating the violation.

Power to Order Corrective Action

Sec. 9.3 The Health Officer may order correction of a violation and may specify the nature of corrective action required and a reasonable time limit for the corrective

action to be completed. In the case of violations that may present an imminent danger to public health and safety, immediate corrective action may be required.

Citation
Sec. 9.4 The Health Officer is authorized to issue a notice to any person who violates a provision of these regulations. The notice shall contain a description of the violation and shall cite the specific sections of these regulations that apply.

Civil Monetary Penalties: Citations
Sec. 9.5 As provided by Section 2461 of the Public Health Code (Act No. 368 of the Public acts of 1978 as amended), the Kent County Board of Commissioners may adopt, and the Kent County Board of Commissioners may approve a schedule of civil monetary penalties to be levied for specific violations of this Ordinance. Further, the Health Officer may issue citations for violations of these regulations as provided by Section 2461 of the Public Health Code (Act No. 368 of the Public Acts of 1978 as amended).

Conviction of a Misdemeanor
Sec. 9.6 Any person who violates this regulation is guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, a fine of not more than two hundred (200) dollars, or both. Conviction by jury, court, or voluntary plea and acceptance by court under this provision shall not waive any other claim for fines, costs, injunctions or other relief authorized by this regulation. Each day that a violation of this regulation exists may constitute a separate offense.

Billing for Inspections
Sec. 9.7 If an owner does not have his or her property inspected as specified by this regulation, the Department shall cause an inspection to be performed and may charge all costs and fees for the inspection to the owner of the premises.

Assessment against the Property
Sec. 9.8 If the owner of party violating this regulation refuses on demand to pay such expenses incurred by the Department to abate, correct, or remove a violation, unsanitary condition, or nuisance, the sum shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the general tax law of this state.

Right to Sample
Sec. 9.9 An inspection shall include the right to obtain samples where the Health Officer has reason to believe that there is a likelihood of contamination of surface water, groundwater, water supply, or other unsanitary conditions. Upon written notice, an owner or occupant of the premises from which an inspection is sought shall co-operate with the Health Officer.

SECTION X

Recourse

Hearing

Sec. 10.1 Any person wishing to appeal a Notice of Violation, order, citation, or decision issued or made by the Health Officer under this Ordinance must petition the Health Department for a hearing within 20 days of the date of the decision. The petition shall be in writing and shall be filed with the Health Department. The specific procedures applicable to any appeal under these regulations shall be as set forth in Article X-A "Appeals Procedures" of the Kent County Department Sewage Disposal Regulations, as amended.

Hearing Verdict

Sec. 10.2 The hearing shall be held before the Health Officer within 30 days after receipt of the petition by the Health Department. After the hearing, the Health Officer may affirm, dismiss, modify, or reverse the Notice, order, citation, or decision.

Filing an Appeal

Sec. 10.3 The decision of the Health Officer shall be final, unless, within 60 days of the decision, the Kent County Health Director receives a written petition for a hearing by the Committee. The Committee may hear the appeal, as provided in the Article X-A "Appeals Procedures" of the Kent County Sewage Disposal Regulations, as amended. If the review is granted, the Committee may affirm, dismiss, modify, or reverse the decision of the Health Officer.

Further Appeals

Sec. 10.4 A person aggrieved by a final decision of the Health Officer or the Committee under this Section may petition the Circuit Court of Kent County for relief.

Action by the Health Officer

Sec. 10.5 Nothing in this Section shall be construed to prohibit the Health Officer from taking appropriate action when an emergency exists, as provided by the Sewage Disposal Regulations of Kent County Michigan and this Ordinance.