

# SUBSURFACE SEWAGE TREATMENT SYSTEM ORDINANCE

## LAKE OF THE WOODS COUNTY



**Adoption Date: June 27, 2023**

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**LAKE OF THE WOODS COUNTY  
SUBSURFACE SEWAGE TREATMENT SYSTEM ORDINANCE**

**SECTION 1 GENERAL PROVISIONS**

**1.1 Purpose**

The purpose of this Ordinance is to establish minimum requirements for regulation of subsurface sewage treatment systems (SSTS) for the proper treatment and dispersal of sewage within the applicable jurisdiction of the County to protect public health and safety by protecting the County's surface water and groundwater quality, and to prevent or eliminate the development of public nuisances. The Lake of the Woods County Board of Commissioners ordains this Ordinance, hereby establishing the following:

- A. Minimum standards for, and regulation of, Individual Sewage Treatment Systems (ISTS) and Midsize Subsurface Sewage Treatment Systems (MSTS), collectively referred to as Subsurface Sewage Treatment Systems (SSTS), in unsewered incorporated and unincorporated areas of Lake of the Woods County and incorporating by reference minimum standards established by Minnesota Statutes and Minnesota Pollution Control Agency (MPCA) Rules;
- B. Requirements for issuing permits for installation, alteration, repair, or expansion of SSTS;
- C. Provisions for Alternative Local Standards (ALS);
- D. Requirements for all SSTS permitted under Minnesota Rules, Chapter 7080 and 7081, to be operated under an approved Management Plan;
- E. Standards for upgrade, repair, replacement, and abandonment of SSTS;
- F. Provisions for the enforcement of these requirements; and,
- G. Standards which promote the health, safety, and welfare of the public pursuant to Minnesota Statutes, Sections 115.55, 145A.05, 375.51, 394.21 - 394.37, 471.82, and the Lake of the Woods County Comprehensive Land Use Plan, Lake of the Woods County Zoning Ordinance and the Lake of the Woods One Watershed One Plan and the Rainy/Rapid Rivers One Watershed One Plan.

**1.2 Intent**

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

- A. The protection of lakes, rivers, streams, wetlands, natural resources, and groundwater in the County essential to the promotion of public health, safety, welfare, socioeconomic growth and development of the County;
- B. The proper SSTS construction, reconstruction, repair, maintenance, and location of SSTS to prevent the entry and migration of contaminants, thereby preventing the degradation of surface water and groundwater quality;

- C. The establishment of minimum and alternative local standards for SSTS placement, design, construction, reconstruction, repair, maintenance and 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; and,
- E. The provision of technical assistance and education, SSTS permitting, inspections, and enforcement to prevent and control water-borne diseases, lake and stream degradation, groundwater-related hazards, and public nuisance conditions.

### **1.3 Scope**

This Ordinance regulates the siting, design, installation, alteration, maintenance, monitoring, and management of all SSTS within the County's applicable jurisdiction; including, but not necessarily limited to, individual SSTS, 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 sewage treatment system that has been permitted by the Agency (MPCA).

### **1.4 Title**

This Ordinance shall be known and may be cited and referred to as the "Lake of the Woods County Subsurface Sewage Treatment System Ordinance", when referred to herein; it shall be known as "this Ordinance".

### **1.5 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, Minnesota Rules 2006, Chapter 7080; and, elements from the 2011 Rules Chapters 7080, 7081, 7082 and 7083; or successor Rules.

### **1.6 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.

### **1.7 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.

## **1.8 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.

## **1.9 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.

## **1.10 Liability**

The County's involvement in administration of this Ordinance does not create a special duty to any person and, further liability or responsibility shall not be imposed upon the County or any of its officials, employees, or other contract agents, 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.

## **1.11 References to Rule**

References to Minnesota Rule Chapter 7080 are referencing the 2011 Rules. References to the 2006 Rules will be specifically indicated as the 2006 Minnesota Rules Chapter 7080.

## **SECTION 2 ADMINISTRATION**

### **2.1 County**

The Department shall administer the SSTS program and all provisions of this Ordinance.

### **2.2 State of Minnesota**

The owner or owners of a SSTS must obtain a State Disposal System (SDS) permit from the Agency (MPCA) according to Chapter 7001 when:

- A. A single proposed or existing soil dispersal area receives a flow greater than 10,000 gallons per day; or
- B. When all proposed and existing SSTS soil dispersal areas that are under common ownership and within one-half mile of each other have a combined flow greater than 10,000 gallons per day. Flow from a SSTS with low impact to potable water is not counted in this subitem.

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

### **2.3 Cities**

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.

### **2.4 Appeals**

An appeal of any administrative decision made in the enforcement of this Ordinance shall be made within ten (10) business days of the date of the administrative decision by filling out and submitting to the Department an Application to Appeal form, which is available upon request from the Department. Such appeal shall be heard by the Board of Adjustment with sixty (60) days of the date that such application is submitted to the Department and found complete and accepted by the Department.

### **2.5 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. 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. A public hearing on the amendment request shall be conducted by the Planning Commission. The public hearing shall be conducted in accordance with Minnesota Statutes, Chapter 394.26.



- C. The applicant shall appear before the Planning Commission to answer any questions that they may have concerning the amendment request. The Planning Commission shall make a recommendation to the County Board after the proceedings of this public hearing.
- D. The County Board shall consider the recommendation of the Planning Commission and render a decision based off of the information presented at the public hearing.

## SECTION 3 DEFINITIONS

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

**Absorption Area:** The design parameters associated with the hydraulic acceptance of effluent. The original soil below a mound that is designed to absorb sewage tank effluent. This area is determined by multiplying the rockbed length by the required absorption width. The absorption area shall be the minimum clean sand area under the mound. For trenches, seepage beds, and at-grade systems is the soil area in contact with the part of the distribution medium that is designed and loaded to allow absorption of sewage tank effluent. This includes both bottom and sidewall soil contact areas.

**Agency:** The Minnesota Pollution Control Agency (MPCA).

**Alternative Local Standards (ALS):** Individual sewage treatment system standards that are less restrictive than the State’s technical standards and criteria. ALS contains the adopted standards from the 2006 MN Rules for systems using less than 2,500 gallons of water per day.

**Alternative Local Standards Vertical Separation:** Standards that allow less than three (3) feet vertical separation but not less than two (2) feet in appropriate locations of the County.

**As-Built:** Drawings and documentation specifying the final in-place location, elevation, size, and type of all system components. These records identify the results of materials testing and describe conditions during construction. Information provided must be verified by a certified statement.

**Authorized Representative:** An employee or agent of the Department.

**Bedroom:** An area that is a room designed or used for sleeping; or a room or area of a dwelling that has a minimum floor area of 70 square feet with access gained from the living area or living area hallway. Architectural features that affect the use as a bedroom under this item may be considered in making the bedroom determination for the purpose of estimating design flow from a dwelling.

**Certificate of Compliance:** A document written, signed and issued by a certified inspector after a compliance inspection certifying that an SSTS is in compliance with applicable requirements at the time of inspection.

**Cluster System:** An SSTS under 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 dwelling or buildings.

**Compliance Inspection:** An evaluation, investigation, inspection, or other such process for the purpose of issuing a certificate of compliance or notice of noncompliance.

**County:** Lake of the Woods County, Minnesota.

**County Board:** The Lake of the Woods County Board of Commissioners.

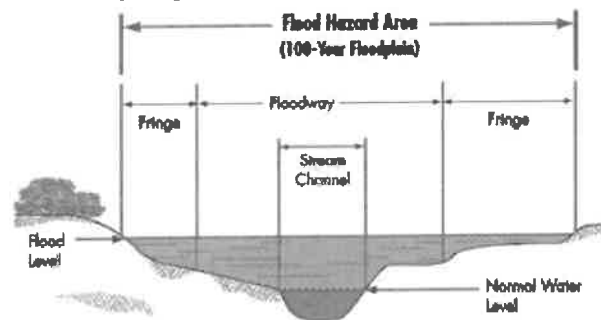
**Department:** The Lake of the Woods County Land and Water Planning Office.

**Failing To Protect Groundwater System:** An SSTS that discharges sewage to a seepage pit, cesspool, drywell, leaching pit, or other pit; and any system with less than the required vertical separation distance between the bottom of the distribution medium and the saturated soil level or bedrock.

**Flood Fringe:** The portion of the floodplain outside of the floodway. It is synonymous with the term “floodway fringe” used in flood insurance studies.

**Floodplain:** The area covered by a 100-year flood event along lakes, rivers, and streams as published in technical studies by local, state, and federal agencies, or in the absence of these studies, estimates of the 100-year flood boundaries and elevations as developed according to a local unit of government’s floodplain or related land use regulations.

**Floodway:** The bed of a wetland or lake, the channel of a watercourse, and those portions of the adjoining floodplain that are reasonably required to carry the regional flood discharge.



**Graywater or Greywater:** Sewage that does not contain toilet wastes.

**Imminent Threat to Public Health or Safety (ITPHS):** 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 licensed inspection business.

**Individual Subsurface Sewage Treatment System (ISTS):** A subsurface sewage treatment system, or part thereof, as set forth in Minnesota Statutes, sections 115.03 and 115.55, that employs sewage tanks or other treatment devices with final discharge into the soil below the natural soil elevation or elevated final grade that are designed to receive a sewage design flow of 5,000 gallons per day or less. It includes all holding tanks that are designed to receive a design flow of 10,000 gallons per day or less; sewage collection systems and associated tanks that discharge into ISTS treatment and dispersal components; and privies. It does not include those components defined as plumbing under the Minnesota Plumbing Code, Chapter 4714, except for a building sewer connected to a subsurface sewage treatment system.

**Midsize Subsurface Sewage Treatment System (MSTS):** A subsurface sewage treatment system, or part thereof, as set forth in Minnesota Statutes, sections 115.03 and 115.55, that employs sewage tanks or other treatment devices with final discharge into the soil below the natural soil elevation or elevated final grade and that is designed to receive sewage design flow of greater than 5,000 gallons per day to 10,000 gallons per day. It also includes sewage collection systems and associated tanks that discharge into a MSTS treatment or dispersal components. It does not include those components defined as plumbing under the Minnesota Plumbing Code, Chapter 4714, except for a building sewer connected to a subsurface sewage treatment system.

**Minor Repair:** The repair or replacement of an existing damaged or faulty component/part of an SSTS, excluding the replacement of tanks and soil dispersal system 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.

**Notice of Noncompliance:** A document written, signed and issued by a certified inspector after a compliance inspection that gives notice that a SSTS is not in compliance with applicable requirements.

**Other Establishments:** Any public or private structure other than a dwelling that generates sewage that discharges to a SSTS.

**Privy:** Is an aboveground structure with an underground cavity meeting the requirements of Minnesota Chapter 7080.2280, that is used for the storage or treatment and dispersal of toilet waste, excluding water for flushing and graywater. A privy also has the meaning of a nondwelling structure containing a toilet waste treatment device.

**Qualified Employee:** An employee of the state or a local unit of government who designs, installs, maintains, pumps, or inspects a SSTS as part of the individual's employment duties.

**Sewage:** Waste produced by 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.

**Soil Dispersal System:** A system where sewage effluent is dispersed into the soil for treatment by absorption and filtration and includes, but is not limited to, trenches, seepage beds, at-grade systems, mound systems and drip dispersal systems.

**State:** The State of Minnesota.

**Subsurface Sewage Treatment System (SSTS):** Is either an ISTS, and MSTS.

**Toilet Waste Treatment Devices:** A toilet waste apparatus including incinerating, composting, biological, chemical, recirculating, or holding toilets or portable restrooms.

**Type I System (Standard):** A SSTS that is designed according to 7080.2200 through 7080.2240.

**Type II System:** A SSTS that is designed according to 7080.2270 to 7080.2290.

**Type III System:** A SSTS that deviates from the requirements in 7080.2210 to 7080.2240.

**Type IV System:** A SSTS that is designed according to 7080.2350.

**Type V System:** A SSTS that is designed according to 7080.2400.

## **SECTION 4 GENERAL REQUIREMENTS**

### **4.1 Retroactivity**

#### **4.1.1 Existing Permits**

Land Use Permits which were issued prior to the effective date of this Ordinance shall remain valid under the terms and conditions of the original permit until the original expiration date or until a change in system design, whichever is earlier.

#### **4.1.2 Existing SSTS**

A SSTS installed prior to the effective date of this Ordinance and meeting the minimum requirements at the time of installation, shall be allowed to continue in use except if it is determined to be a failure to protect ground water system or an Imminent Threat to Public Health or Safety (ITPHS) system.

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

All lots created after January 23, 1996 shall have a minimum of two (2) soil treatment and dispersal areas that can support a standard/Type 1 SSTS or site conditions described in 7081.0270, Subparts 3-7, for MSTTS systems. Lots that would require use of holding tanks shall not be approved.

### **4.2 Upgrade, Repair, Replacement, and Abandonment**

#### **4.2.1 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 provisions of this Ordinance at the time of the expansion. Expansions may include the addition of bedrooms, water using appliances, or an addition or alteration to, or an expansion of the use of the structure being served by an existing SSTS or a new structure is being connected to an existing SSTS.

#### **4.2.2 Bedroom Additions**

Any addition to a structure that includes a bedroom or bedrooms that require issuances of a Land Use Permit from the Department shall require that the SSTS meet the required design flow according to this Ordinance.

#### **4.2.3 Failure to Protect Groundwater**

A SSTS that is determined not to be protective of groundwater in accordance with 7080.1500, Subpart 4, B, shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this Ordinance within two (2) years of the date of issuance of a Notice of Noncompliance.

#### **4.2.4 Imminent Threat to Public Health or Safety (ITPHS)**

A SSTS that is determined to be an ITPHS in accordance with 7080.1500, Subpart 4, A, shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this Ordinance within ten (10) months of issuance of a Notice of Noncompliance.

#### **4.2.5 Abandonment of SSTS**

Any SSTS, or components thereof, which is no longer intended to be used, must be abandoned in accordance with 7080.2500

### **4.3 SSTS Located in Floodplain**

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

### **4.4 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 an UIC Class 5 Inventory Form 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.

### **4.5 SSTS Practitioner Licensing**

#### **4.5.1 License Required**

A valid state SSTS license applicable to the type of work being performed is required for any business that conducts work to design, install, repair, maintain, operate, or inspect all or part of a SSTS. A valid license is also required to land spread septage and operate a sewage collection system discharging to a SSTS. Property owners that employ a business to perform this work shall hire a business that is licensed. Individuals exempt from a state SSTS license must follow all applicable local, state, and federal requirements. Exemptions to licensure requirements are identified in 7083.0700, items A through I.

### **4.6 Prohibitions**

#### **4.6.1 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/sewage 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.

#### **4.6.2 Sewage Discharge to a Well or Boring**

It is unlawful for any person to discharge raw or treated wastewater/sewage 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.

#### **4.6.3 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.



## **SECTION 5 SSTS STANDARDS**

### **5.1 Standards Adopted by Reference**

Should technical differences exist that are not listed in the 2011 Minnesota Rule elements, the 2006 version of Minnesota Rules Chapter 7080 provisions shall prevail.

#### **5.1.1 Alternative Local Standards for New and Existing SSTS**

The County hereby adopts by reference the 2006 version of Minnesota Rules Chapter 7080 effective April 3, 2006, as the Alternative Local Standards for new and existing residential SSTS with design flows of less than 2,500 gallons per day, and SSTS that serve Food, Beverage and Lodging Establishments with design flows of less than 2,500 gallons per day provided the effluent discharge does not exceed the standards in the 2011 version of Minnesota Rules Chapter 7080.2150, Subpart 3, K.

The following elements from the 2006 version of Minnesota Rules Chapter 7080 are hereby adopted in their entirety by reference and made a part of this Ordinance:

- Multiple Tanks – 7080.0130, Subpart 2, O
- Pressure Lateral Spacing – 7080.0150, Subpart 3, F
- Final Treatment and Disposal – 7080.0170, Subpart 2, D, 9

#### **5.1.2 Adoption of Rule by Reference**

The County hereby adopts by reference the 2011 version of Minnesota Rules Chapter 7080 and 7081 for new and replacement systems with a design flow of greater than 2,500 gallons per day. Specific elements that are required by the 2011 Rule for all systems are listed below. This adoption does not supersede the County's right or ability to adopt local standards that are in compliance with Minnesota Statute 115.55.

The following elements from the 2011 version of Minnesota Rules Chapter 7080 and 7081 are hereby adopted in their entirety by reference and made a part of this Ordinance:

- Tank Strength – 7080.1910
- Septic Tank Capacity – 7080.1930
- Septic Tank Baffles – 7080.1960
- Tank Construction – 7080.1980
- Dosing of Effluent – 7080.2100
- Septic Tank Design – 7080.1920
- Compartmentalization of Single Tanks – 7080.1950
- Sewage Tank Access – 7080.1970
- Tank Storage, Transport and Use – 7080.1990
- Final Treatment and Disposal – 7080.2150, Subpart 3, A

### **5.2 Differences in Standards**

1. Alternative Local Standards as per Section 5.1.1.
2. Flow measurement when a pump is installed, is not required in the 2006 version of Minnesota Rules; therefore, Minnesota Rules Chapter 7080, Sections 7080.2210, 2220, 2230, 2240, 2270, and 2300 concerning flow measurements is not mandatory.

3. Clean outs on ends of pressure laterals, as stated in Minnesota Rules Chapter 7080.2050, Subpart 4, J, are not mandatory however, highly recommended.
4. Location and installation of tanks, as stated in Minnesota Rules Chapter 7080.2000, excluding Floodways in items D and H. Also, insulating the tanks is not mandatory. It is a recommendation of this Department that if the top of the sewage tank is to be less than two (2) feet from final grade, the top of the tank should be insulated to an R-value of 10. The Maintenance hole covers should be insulated to the same R-value of 10. All insulating material, if installed, must be resistant to water absorption.
5. For trenches and seepage beds, the minimum depth of cover over the distribution medium shall be at least six (6) inches in accordance with the 2006 version of Minnesota Rules.

### **5.3 List of More Restrictive Standards**

1. A cleanout pipe of four (4) inches in diameter must meet the following:
  - a. Be in-line with the outlet pipe of the structure.
  - b. The top of the cleanout pipe must be located above final grade.
  - c. Be located between the structure and the first tank.
2. An inspection pipe of four (4) inches in diameter shall be installed and be located above final grade on every drop box, cross pipe used to top-load, or distribution box.
3. The top of sewage tanks shall be buried no deeper from final grade than the tank manufacture's maximum design depth for the tank. This provision is adopted pursuant to Minnesota Rules Chapter 7080.2000, C.
4. On holding tanks, the maintenance hole of at least 20 inches in least dimension must extend through the cover to above final grade rather than follow the requirements in Minnesota Rules Chapter 7080.2290, C.

### **5.5 Soil Dispute Resolution**

If there is a soil verification dispute between the Department and a licensed business, a different Department representative from the one that conducted the initial verification, will have final decision on determining the depth of periodically saturated soils. Additionally, if the dispute is between different licensed businesses, the Department will have the final decision on determining the depth of periodically saturated soils.

### **5.6 Holding Tanks**

Holding tanks are not allowed as a means of sewage treatment for new construction on lots created after January 23, 1996.

The use of holding tanks may be permitted by the Department as replacement for a SSTS that is a failure to protect groundwater system or poses an Imminent Threat to Public Health or Safety system

and for structures where it can be shown that a drainfield cannot be feasibly installed, as determined by the Department, under the following conditions:

- A. A licensed designer must submit a site design indicating that the use of holding tanks is the only feasible alternative to treating and disposing of wastewater/sewage, and state the reasons why a drainfield is not viable.
- B. The property owner shall maintain a valid Maintenance and Monitoring Agreement (Pumping Agreement) with a licensed maintainer and a copy of said Agreement to be submitted to the Department.
- C. An alarm device shall be installed that identifies when holding tanks are at seventy-five (75) percent capacity.
- D. For dwellings, the minimum size shall be 1,000 gallons or 400 gallons times the number of bedrooms, whichever is greater. For other establishments, the minimum capacity shall be at least five (5) times the design flow.
- E. Holding tanks shall be located in an area readily accessible to the maintainer under all weather conditions and where accidental spillage from maintenance, will not create a nuisance.
- F. Holding tanks shall meet applicable setback requirements.
- G. The maintenance hole of at least 20 inches in least dimension must extend through the cover to above final grade.

## **5.7 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 or that contains one or more of the following: sleeping areas, bathtub, shower, toilet facilities, sink, or any other feature that would make the structure more oriented towards a dwelling unit than an accessory structure, that is not provided with a SSTS or that disposes of wastewater/sewage in a manner that does not comply with the provisions of this Ordinance.

## **5.8 New or Replacement SSTS**

Any structure that generates sewage and is served by a pressurized water supply system must be served by a compliant SSTS. New, or replacement of existing SSTS servicing a dwelling shall be designed as a Class 1 dwelling in accordance with Section 5.10 of this Ordinance and constructed as per the approved design.

Recreational vehicles (RV's) and fish houses used as RV's being utilized as a dwelling must meet the following criteria:

- A. If the RV/fish house has, or is connected to a pressurized water supply system, it must be connected to a compliant SSTS.

- B. If the RV/fish house does not have, or is not connected to a pressurized water supply system, a compliant outhouse/privy or a toilet waste treatment device must be installed.

Where no feasible alternatives exist as determined by the licensed designer and confirmed by the Department, installation of a Class 1 system creates a practicable difficulty, the Department may administratively authorize a smaller designed and installed system without a variance according to Section 9 of this Ordinance.

## **5.9 Design Flow**

If construction of additional dwellings or bedrooms, the installation of water-using devices, or other factors likely to affect the operation of the SSTS can be reasonably anticipated, the system must be designed to accommodate these factors.

The minimum estimated design flow for any dwelling must provide for at least two (2) bedrooms.

The estimated average design flow for any dwelling shall be determined by Minnesota Rules Chapter 7080.1860.

For multiple or multifamily dwellings with ten (10) or more dwellings or a design flow greater than 5,000 gallons per day, the design flow must be calculated according to part 7081.0120.

For Other Establishments the design flow shall be in accordance with Minnesota Rule Chapter 7081.0130.

## **5.10 Privies and Toilet Waste Treatment Devices**

Privies that meet all of the following criteria may be designed with “ALS” vertical separation; however, the use of a holding tank is the preferred method of treatment or at least utilization of a toilet waste treatment device.

- A. A site design must be submitted by a licensed designer;
- B. The privy is in a remote area with a minimum lot size of one (1) acre;
- C. The privy shall meet appropriate setback distances; and,
- D. If a tank is installed under the privy it shall meet setbacks as specified in Section 5.12 of this Ordinance.

Toilet waste treatment devices are not allowed as the only method of sewage treatment for structures with a pressurized water system. For structures without a pressurized water system, a composting toilet or an incinerating toilet may be allowed as an only method of sewage treatment. Specifications on type of toilet waste treatment device must be submitted with a Land Use Permit application. Photos and receipts must be submitted to the Department as evidence of compliance. Toilet waste devices must meet Minnesota Rules Chapter 7080.2450, Subpart 4, A.

## 5.11 Minimum Setback Distances for Sewage Treatment Systems

| <i>Minimum Setback Distances (feet) for Sewage Treatment Systems</i>         |                                                   |                                        |
|------------------------------------------------------------------------------|---------------------------------------------------|----------------------------------------|
| <b>Feature</b>                                                               | <b>Sewage tank, holding tank, or sealed privy</b> | <b>Absorption area, unsealed privy</b> |
| Water supply Wells (Deep/non-sensitive well)                                 | 50                                                | 50                                     |
| Water supply Wells with less than 50 feet of casing (Shallow/sensitive well) | 100                                               | 100                                    |
| Buried water lines - suction                                                 | 50                                                | 50                                     |
| Buried water lines-under pressure                                            | 10                                                | 10                                     |
| Structure                                                                    | 10                                                | 20                                     |
| Property lines                                                               | 10                                                | 10                                     |
| OHWL of Public Waters                                                        |                                                   |                                        |
| - General Development Lake (Lake of the Woods)                               | 50                                                | 50                                     |
| - Agricultural and Tributary River Segments                                  | 100                                               | 100                                    |
| - Forested River Segments                                                    | 150                                               | 150                                    |
| - Remote River Segments                                                      | 200                                               | 200                                    |

## 5.12 Administrative Allowance

The Department may administratively, without a variance according to Section 8 of this Ordinance, allow a lesser setback in the following circumstances:

- A. A lot line setback where no feasible alternative exists and the landowner and adjacent landowner(s) enter into a Reduced Setback Agreement which attests to the location of the property line or a certified survey establishes the property line. The Reduced Setback Agreement document is available upon request from the Department.
- B. For River Segments, identified in Section 503 of the Lake of the Woods County Zoning Ordinance, where no feasible alternative exists as determined by a licensed designer and confirmed by the Department, the following Ordinary High-Water Mark (OHWM) setback may apply:

| <b>River Segment Classification</b> | <b>Minimum Setback Distance (Feet)</b> |
|-------------------------------------|----------------------------------------|
| Agricultural                        | 75                                     |
| Tributary                           | 75                                     |
| Forested                            | 100                                    |
| Remote                              | 150                                    |

All other deviations from the setback requirements must be approved by a variance according to Section 8 of this Ordinance.

## **SECTION 6 SSTS PERMITS AND PLANS**

### **6.1 SSTS Permits Required**

A SSTS Permit shall be obtained by the property owner or an agent of the property owner from the Department prior to the installation, construction, replacement, modification, alteration, or capacity expansion including the use of advanced treatment components of a SSTS. It is unlawful for any person to construct, install, modify, repair or replace a SSTS without the appropriate Land Use Permit from the Department including 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 issuing of any permit, variance, or conditional use permit under the provisions of this Ordinance shall not absolve the applicant of responsibility to obtain any other required permit.

No Land Use Permits, where a SSTS is required, shall be issued until after the SSTS permit is approved and issued.

### **6.2 Activities Requiring a SSTS Permit**

All contractors, property owners or other persons having charge of the SSTS construction, replacement (including tanks and dispersal systems), repair, or modification of components of SSTS, shall obtain a SSTS Permit from the Department prior to starting construction. SSTS Permits shall be granted upon receipt of a completed application and approved site design.

### **6.3 Activities Not Requiring a SSTS Permit**

A SSTS Permit is not required for minor repairs or replacements of system components, excluding tanks and soil dispersal systems, 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.

### **6.4 SSTS Permit Applications**

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

- A. Name, mailing address, telephone number, and email address if available.
- B. Property Identification Number (PIN), address, or other description of property location.
- C. Site evaluations shall contain all the information as outlined in the 2006 version of Minnesota Rules, Chapter 7080.0110. A minimum of two (2) soil observations per SSTS site shall be conducted.

- D. Design Reports, operating permits if applicable, and any documents described in the 2006 version of Minnesota Rules, Chapter 7080.0110-7080.0115. Design reports shall be made on forms required or approved by the Department.

## **6.5 SSTS Permit Review**

The Department shall review the SSTS Permit application, supporting documentation and site design in order to determine if a complete application has been submitted. The Department shall notify the applicant and/or site designer within fifteen (15) business days if an incomplete application has been submitted and state the reasons of incompleteness.

Upon determining a complete application has been submitted, the Department shall issue a permit in compliance with Minnesota Statute 15.99, authorizing the construction of the SSTS as per the submitted site design. In the event the site designer makes a significant change to the approved site design, the site designer must file an amended site design with the Department detailing the changed conditions for approval prior to initiating or continuing construction, modification, or operation for consideration. The Department shall complete the review of the amended application within fifteen (15) business days of receipt of the amended application and notify the applicant and/or site designer of the approval in compliance with Minnesota Statute 15.99.

If the SSTS Permit application, supporting documents and site design do not meet the requirements of this Ordinance, the Department shall deny the application and state the reason(s) for denial in compliance with Minnesota Statute 15.99.

The Department may suspend or revoke an issued SSTS Permit under this Section for any false statements, misrepresentation of facts on which the permit was issued, or unauthorized changes to the system design that alter the original function, treatment capacity, location, 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 permittee and/or site designer. If suspended or revoked, installation or modification of a system may not commence until a valid permit is obtained.

## **6.6 Permit and Site Design Expiration**

The SSTS Permit and site design shall expire one (1) year from the date of approval unless a written extension is received and granted by the Department. Such extension shall not exceed a period of one (1) year. No more than one (1) extension may be granted.

## **6.7 Transferability**

The approved SSTS Permit may be transferred, as long as it has not expired, to the new property owner provided the site design and conditions of the approved permit are met.

## **6.8 Operating Permits**

An Operating Permit shall be required of all owners of Type IV, Type V and MSTs.

## **6.9 Management Plans**

Management Plans for all new or replacement SSTS shall be provided by a licensed designer with the septic system site design. The plan is to describe how a particular SSTS is intended to be monitored, operated and maintained to sustain the required performance.

For those SSTS without a Management Plan or Operating Permit according to the provisions of this Ordinance, must follow the provisions as outlined in 7080.2450, Subpart 2 and 3.



## **SECTION 7     COMPLIANCE INSPECTIONS**

### **7.1     Compliance Inspection Program**

- A. SSTS Compliance Inspections are performed:
- (1) To ensure compliance with applicable requirements;
  - (2) For all new SSTS construction or replacement (including privies);
  - (3) 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 Chapter 7082.0700 using the SSTS inspection report forms provided by MPCA.
- B. It is the responsibility of the Department, or its agent, to perform installation inspections of new SSTS or upgrades of SSTS to assure that the requirements of this Ordinance are met.
- C. All Compliance Inspections must be performed and signed by licensed inspection businesses or Qualified Employees certified as an inspector.
- D. 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.
- E. 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.
- F. A signed Winter Release of Compliance Inspection form may be accepted in lieu of a Compliance Inspection for issuance of land use permits, variances, interim and conditional use permits between November 1 and April 30, at the discretion of the Zoning Administrator, provided the Compliance Inspection is submitted to the Land and Water Planning Office by the following July 31. During these months, the signed Winter Release of Compliance Inspection form may only be used when frost conditions will not permit for an inspection. Failure to fulfill all of the obligations of the Winter Release of Compliance Inspection form shall be a violation of this Ordinance. A copy of the “Winter Release of Compliance Inspection Form” can be obtained from the Land and Water Planning Office.

### **7.2     New Construction or Replacement**

- A. Compliance inspections must be performed on new or replacement SSTS during construction and installation of a SSTS before it is covered with soil, unless prior approval has been granted by the Department to allow photographs or video documentation to be submitted to the

Department in order to determine compliance with Minnesota Rules Chapters 7080 or 7081 and this Ordinance.

- B. All SSTS, in whole or in part, shall be inspected by the Department. No system shall be covered, in whole or in part, prior to inspection by the Department unless prior approval has been given by the Department. Failure to obtain approval from the Department shall cause the system to be exposed for inspection. The amount of SSTS exposed for inspection shall be determined by the Department at the time of inspection. It shall be the responsibility of the SSTS owner or the owner's agent to notify the Department to arrange for the inspection. The Department shall make inspection(s) within three (3) regular working days, excluding weekends and all holidays, after such notice has been given, provided a SSTS permit has been issued and is still valid.
- C. For systems installed at the NW Angle and Islands, the installer shall submit photographs or video documentation of the entire uncovered system and complete an as-built form with a certified statement that the installation of the SSTS met the design and permit conditions and it is free from defects. The as-built form and photographs must be submitted to the Land and Water Planning Office within ten (10) working days of the installation. The as-built form will be supplied by the Land and Water Planning Office.
- D. The installation and construction of the SSTS shall be in accordance with the permit requirements and site design. Proposals to alter the permitted site design shall be reviewed and the proposed change(s) accepted by the Department.
- E. A Certificate of Compliance for new or replacement SSTS shall be issued by the Department within fifteen (15) business days of the inspection to the landowner if the Department has reasonable assurance the SSTS was constructed in accordance with applicable requirements.
- F. The Certificate of Compliance must include a certified statement by the licensed inspector or Qualified Employee who conducted the inspection that the SSTS is or is not in compliance. 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 requirements with which the SSTS does not comply.
- G. Certificates of Compliance for new construction or replacement SSTS shall remain valid for (5) years from the date of issuance, unless the Department finds evidence of noncompliance.

### **7.3 Existing SSTS**

- A. Compliance inspections shall be required when any of the following conditions occur:
  - (1) When a SSTS Permit is required to repair, modify, or upgrade an existing system;
  - (2) When there is an addition or alteration to, or an expansion of use of the structure being served by an existing SSTS or a new structure is being connected to an existing SSTS;
  - (3) When there is a change in the use of the property being served by an existing SSTS which may impact the performance of the system;

- (4) Prior to issuance of a Land Use Permit, variance, interim or conditional use permit request within the designated shoreland areas;
  - (5) Prior to issuance of a Land Use Permit for a bedroom addition, variance, interim or conditional use permit request outside the designated shoreland areas;
  - (6) As required by this Ordinance, or as deemed appropriate by the Department, such as, upon receipt of a complaint or other reliable 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) Watertightness assessment of all treatment tanks included a tank integrity and safety compliance assessment 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, surface discharge including a hydraulic function report, and operational performance.
- 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 applicable 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 requirements with which the SSTS does not comply.
- D. If the compliance inspection is being performed for a land use permit, interim or conditional use permit application where the size of the SSTS tank(s) and drainfield must be known in order to act on the land use permit or conditional use permit application, then the quantity and capacity of tanks and size of the drainfield must be attached to the Compliance Inspection report form.
- E. The Certificate of Compliance or Notice of Noncompliance must be submitted by the inspector to the property owner or owner's agent and to the Department within fifteen (15) calendar days after the date the inspection was performed.
- F. Certificates of Compliance for existing SSTS shall remain valid for (3) years from the date of issuance unless the Department finds evidence of a failing system or an ITPHS.

#### **7.4 Failing to Protect Groundwater and Imminent Threat to Public Health or Safety SSTS**

A SSTS that is determined to be failing to protect groundwater shall be upgraded, replaced, repaired or abandoned by the owner within two (2) years of the date of issuance of the Notice of Noncompliance.

A SSTS that is determined to be an Imminent Threat to Public Health or Safety (ITPHS) shall be abated within ten (10) days and the SSTS shall be upgraded, replaced, repaired or abandoned by the owner

within ten (10) months of the date of issuance of the Notice of Noncompliance. If the ITPHS is a surface discharge of sewage or sewage tank effluent, the SSTS must be pumped often enough to prevent a surface discharge from reoccurring.

#### **7.5 “ALS” Vertical Separation for Existing SSTS**

A SSTS installed prior to April 1, 1996, outside of the designated shoreland areas, wellhead protection areas, or where the SSTS provides sewage treatment for food, beverage, or lodging establishments shall have at least two (2) feet of vertical separation between the bottom of the dispersal system and seasonal saturation or bedrock. Existing systems with less than two (2) feet vertical separation in these areas are considered failing systems.

#### **7.6 Vertical Separation Flexibility**

A SSTS installed after March 31, 1996, or a SSTS located within the designated shoreland areas, wellhead protection areas, or where the SSTS provides sewage treatment for food, beverage, or lodging establishments shall have at least three (3) feet of vertical separation between the bottom of the dispersal system and seasonal saturation or bedrock. Existing SSTS that have no more than a fifteen (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 measurements shall be made outside the area of system influence, but in an area of similar soil.

A system designed with “ALS” vertical separation is not allowed the fifteen (15) percent reduction.

#### **7.7 Disclaimer**

Neither the issuance of the Land Use 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 noncompliance with the provisions of these standards and regulations.

## **SECTION 8     VARIANCES**

### **8.1     Variance Requests**

An affected property owner may request a variance from the standards and provisions as specified in this Ordinance and may be requested pursuant to the procedures and requirements as outlined in Section 1103 of the Lake of the Woods County Zoning Ordinance. Variances to decrease the vertical separation required beneath the distribution medium and the saturated soil or bedrock must be approved by the MPCA as per the procedures contained in Minnesota Rules Chapter 7083.00040. Variances to wells and water supply lines require approval from the Minnesota Department of Health.

#### **8.1.1 Criteria**

An application may be made, and a variance may be granted by the Lake of the Woods County Board of Adjustment pursuant to the provisions of Minnesota Statute Section 394.27, when the applicant/owner establishes the existence of all the following criteria:

- A. The granting of the variance will be in harmony with the general purpose and intent of this Ordinance and consistent with the comprehensive plan;
- B. The property owner is proposing to use the property in a reasonable manner;
- C. The condition causing the practical difficulty is unique to the property;
- D. The practical difficulty was not caused by the actions of the landowner;
- E. The variance, if granted, will not alter the essential character of the locality;
- F. The granting of the variance is not based solely on economic considerations.

The Board of Adjustment must make finding on all of the six criteria listed above in order to grant or deny a variance. The applicant requesting a variance has the burden of proof to show that all of the criteria listed above have been satisfied.

The Board may impose conditions upon a variance that relate to the purposes and objectives of this Ordinance. If conditions are imposed, the variance shall not be effective until the conditions are fully complied with. A conditional variance shall be in effect only as long as the condition is complied with. If a condition is not complied with, the variance may be revoked by the Board of Adjustment at its next meeting with public notice and the County may pursue the enforcement remedies set forth in this Ordinance.

#### **8.1.2 Expiration**

A variance shall expire and be considered null and void one (1) year after the Board of Adjustment's final decision to grant the variance, unless a longer timeframe is specified as a condition upon approval, if not acted upon by the applicant or his/her assigns within that time.

## **8.2 Board of Adjustment**

The Lake of the Woods County Board of Adjustment has been established by the Lake of the Woods County Zoning Ordinance and is invested with such authority as provided by Minnesota Statute 394.27 and all acts amendatory thereof and as is hereinafter provided:

The Board of Adjustment shall have the exclusive power concerning the following:

- A. To grant variances from the strict enforcement of the standards and provisions prescribed by this Ordinance. Variances shall only be granted upon the criterion prescribed in Section 9.11 of this Ordinance;
- B. To hear and decide any appeal from an order, requirement, decision, or determination made by the Department;
- C. All decisions by the Board of Adjustment in granting variances, or in hearing any appeals from an administrative order, requirement, decision, or determination shall be final except that any aggrieved person, department, agency, Board or Commission shall have the right to appeal to District Court within thirty (30) days after receipt of the notice of decision made by the Board of Adjustment.

## **8.3 Agency Notification**

The County must notify the MPCA at least ten (10) days prior to any public hearing involving a variance request that pertains to the standards contained in this Ordinance.

## **SECTION 9     ENFORCEMENT**

### **9.1     Violations**

#### **9.1.1 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, including the requirements for the system to be upgraded, replaced or its use discontinued, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, may be guilty of a misdemeanor and upon conviction thereof, shall be punished by such penalties and fines provided by law.

#### **9.1.2 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.

#### **9.1.3 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);
- C. A mandatory time schedule for correction, removal and compliance with this Ordinance.
- D. Specific enforcement actions that will be taken if corrective action is not completed.

#### **9.1.4 Cease and Desist Orders**

Cease and Desist Orders (CDO) may be issued when the Department has probable cause that an activity regulated by this Ordinance is being or has been conducted without a SSTS Permit or is in violation of an issued SSTS Permit, or requires a variance or is in violation of the approved variance. When work has been stopped by a CDO, the work shall not resume until the violation has been corrected, any administrative fees paid, and the CDO rescinded.

### **9.1.5 After-the-Fact- Fees**

Any application for a SSTS Permit that is made after the work has commenced and which required a SSTS Permit or is done in violation of a permit shall be charged an “after- the-fact” fee in accordance with the Lake of the Woods County Fee Schedule.

### **9.1.6 Reimbursements for Restoration**

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 SSTS Permit. The Department may recover costs incurred in removal or abatement in a civil action; or at the discretion of the County Board, the costs 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/Treasurer may extend the costs as assessed and charged on the tax roll against said real property.

## **9.2 Prosecution**

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

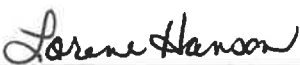
## **SECTION 10 FEES**

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.

## **SECTION 11 ADOPTION AND EFFECTIVE DATE**

The Lake of the Woods County Subsurface Sewage Treatment System Ordinance is hereby adopted by the Lake of the Woods County Board of Commissioners on the 27<sup>th</sup> day of June, 2023.

  
\_\_\_\_\_  
**Chairperson, Lake of the Woods County Board of Commissioners**

ATTEST:   
\_\_\_\_\_  
**County Auditor/Treasurer, Lake of the Woods County**

**EFFECTIVE DATE: July 5, 2023**