



# Minnesota Pollution Control Agency

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December 29, 2009

Mr. Ben Oleson, Zoning Administrator  
Corinna Township  
9801 Ireland Avenue Northwest  
Annandale, MN 55302

RE: Letter to Pat Shelito, MPCA, Dated November 13, 2009

Dear Mr. Oleson:

I am responding on behalf of Pat Shelito, at her request. In this letter you ask for clarification on several points relating to the administration of local Subsurface Sewage Treatment System (SSTS) programs. The following is my response to your questions which refer back to Minnesota Rules (Minn. R.) 7082.0040. These answers should not take the place of legal advice from a qualified attorney and are not binding on the county or township.

Your first two questions are related, my answer pertains to both. You asked:

1. Does the MPCA interpret Minn. R. 7082.0040, subp. 2(A) (or any other applicable Rules/Statutes) as allowing for both a Township/City and the county in which they are located to administer SSTS ordinances independently of each other (i.e., a landowner would be required to obtain permits from both jurisdictions)? Or do the Rules/Statutes require that it be one or the other?
2. Does the MPCA interpret Minn. R. 7082.0040, subp. 2(A) (or any other applicable Rules/Statutes) as prohibiting a Township/City from adopting and administering a SSTS ordinance after the County in which they are located has already adopted its own SSTS ordinance?

Minnesota Statute § 115.55, subd. 2 lays out the framework for SSTS regulation at the local level. The provisions of Minnesota Rules chapter 7082 that you cite are based on this law. This law requires that the county administer an SSTS ordinance in all areas where there is not a township or city SSTS program that conforms to the law. This means that the township may opt to develop a program at their own discretion, and that the township program must meet all the requirements of law and rule (i.e., must have an enforceable ordinance that is as restrictive as the county ordinance, must issue permits and conduct inspections, and must enforce provisions of ordinance). The sentence in subpart 2(A), "Ordinances must apply to all land area within the county, except in towns and cities that have adopted ordinances" does not mean that dual regulation is permissive. The statute uses the word "except", which means that county regulation prevails only where the city/town ordinance is not "as strict as the applicable county ordinances." A town/city may always adopt an ordinance, even where the county has done so, but having done so, the town/city becomes the regulating authority.

Your third question relates to zoning ordinances.

3. Does the MPCA interpret Minn. R. 7082.0040, subp. 2(A) (or any other applicable Rules/Statutes) as tying administration of an SSTS ordinance to administration of a Zoning Ordinance? In other words, if a Township/City were to adopt an SSTS ordinance, would they also be required to adopt a Zoning Ordinance?

The SSTS program was intended by the legislature to be administered in all parts of the state, regardless of whether zoning is enforced in the area. A zoning ordinance is not required as part of SSTS regulation, although they are linked in most jurisdictions.

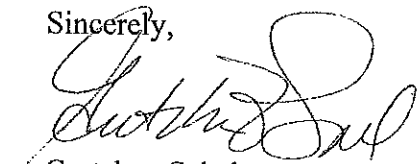
Finally, you ask:

4. Does the MPCA interpret Minn. R. 7082.0040, subp. 2(A) (or any other applicable Rules/Statutes) as tying administration of an SSTS ordinance in Shoreland areas to administration of a Zoning Ordinance in Shoreland areas? In other words, if a Township/City was to adopt an SSTS ordinance, but was not the Shoreland zoning authority, would they be allowed to enforce their SSTS ordinance in Shoreland areas?

This is a special instance that is outside the authority of the SSTS program to answer. I understand that you have been working with Peder Otterson on this issue, and I defer to his answer in this regard. I have copied both Mr. Otterson and Tom Salkowski of Wright County so they are aware of our discussions.

Please let me know if you have additional questions or concerns.

Sincerely,



Gretchen Sabel  
SSTS Coordinator  
Municipal Wastewater Section  
Municipal Division

GS:wgp

cc: Peder Otterson, Minnesota Department of Natural Resources  
Tom Salkowski, Wright County