

ON-SITE WASTEWATER TREATMENT SYSTEMS ACT

Revised and reproduced by the Colorado Department of Public Health and Environment June, 2012

(PLEASE NOTE: This is an unofficial copy of this statute. The official copy is published as the Colorado Revised Statutes under the supervision and direction of the Committee on Legal Services.)

25-10-101. Short title

This article shall be known and may be cited as the "On-site Wastewater Treatment Systems Act".

25-10-102. Legislative declaration

(1) The general assembly declares it to be in the public interest to establish minimum standards and rules for on-site wastewater treatment systems in the state and to provide the authority for the administration and enforcement of those minimum standards and rules:

- (a) To preserve the environment and protect the public health and water quality;
- (b) to eliminate and control causes of disease, infection, and aerosol contamination; and
- (c) to reduce and control the pollution of the air, land, and water.

25-10-103. Definitions

As used in this article, unless the context otherwise requires:

(1) "Absorption system" means a leaching field and adjacent soils or other system for the treatment of sewage in an on-site wastewater treatment system by means of absorption into the ground.

(2) "Applicant" means a person who submits an application for a permit for an on-site wastewater treatment system.

(3) "Cesspool" means an unlined or partially lined underground pit or underground perforated receptacle into which raw household wastewater is discharged and from which the liquid seeps into the surrounding soil. "Cesspool does not include a septic tank.

(4) "Commission" means the water quality control commission created by section 25-8-201.

(5) "Department" means the department of public health and environment created by section 25-1-102.

(6) "Division" means the division of administration of the department.

(7) "Effluent" means the liquid flowing out of a component or device of an on-site wastewater treatment system.

(8) "Environmental health specialist" means a person trained in physical, biological, or sanitary science to carry out educational and inspectional duties in the field of environmental health.

(9) "Health officer" means the chief administrative and executive officer of a local public health agency, or the appointed health officer of the local board of health. Health officer includes a director of a local public health agency.

(10) "Local board of health" means any local, county, or district board of health.

(11) "Local public health agency" means any county, district, or municipal public health agency and may include a county, district, or municipal board of health or local agency delegated by a county, district, or municipal board of health to oversee OWTS permitting and inspection or an OWTS program.

(12) "On-site wastewater treatment system" or "OWTS" and, where the context so indicates, the term "system", means an absorption system of any size or flow or a system or facility for treating, neutralizing, stabilizing, or dispersing sewage generated in the vicinity, which system is not a part of or connected to a sewage treatment works.

(13) "Percolation test" means a subsurface soil test at the depth of a proposed absorption system or similar component of an on-site wastewater treatment system to determine the water absorption capability of the soil, the results of which are normally expressed as the rate at which one inch of water is absorbed.

(14) "Permit" means a permit for the construction or alteration, installation, and use or for the repair of an on-site wastewater treatment system.

(15) "Person" means an individual, partnership, firm, corporation, association, or other legal entity and also the state, any political subdivision thereof, or other governmental entity.

(16) "Professional engineer" means an engineer licensed in accordance with part 1 of article 25 of title 12, C.R.S.

(17) "Septage" means a liquid or semisolid that includes normal household wastes, human excreta, and animal or vegetable matter in suspension or solution generated from a residential septic tank system. "Septage" may include such material issued from a commercial establishment if the commercial establishment can demonstrate to the department that the material meets the definition for septage set forth in this subsection (17). "Septage" does not include chemical toilet residuals.

(18) "Septic tank" means a watertight, accessible, covered receptacle designed and constructed to receive sewage from a building sewer, settle solids from the liquid, digest organic matter, store digested solids through a period of retention, and allow the clarified liquids to discharge to other treatment units for final disposal.

(19) "Sewage" means a combination of liquid wastes that may include chemicals, house wastes, human excreta, animal or vegetable matter in suspension or solution, and other solids in suspension or solution, and that is discharged from a dwelling, building, or other establishment.

(20) "Sewage treatment works" has the same meaning as "domestic wastewater treatment works" under section 25-8-103..

(21) "Soil evaluation" means a percolation test, soil profile, or other subsurface soil analysis at the depth of a proposed soil treatment area or similar component or system to determine the water absorption capability of the soil, the results of which are normally expressed as the rate at which one inch of water is absorbed or as an application rate of gallons per square foot per day.

(22) "Soil treatment area" means the physical location where final treatment and dispersal of effluent occurs. "Soil treatment area" includes drainfields and drip fields.

(23) "State waters" has the meaning set forth under section 25-8-103.

(24) "Systems cleaner" means a person engaged in and who holds himself or herself out as a specialist in the cleaning and pumping of on-site wastewater treatment systems and removal of the residues deposited in the operation thereof.

(25) "Systems contractor" means a person engaged in and who holds himself or herself out as a specialist in the installation, renovation, and repair of on-site wastewater treatment systems.

25-10-104. Regulation of on-site wastewater treatment systems – state and local rules

(1) The division shall develop and recommend to the commission for adoption, rules setting forth minimum standards for the location, design, construction, performance, installation, alteration, and use of on-site wastewater treatment systems within Colorado. The commission may establish criteria for issuing variances in the rules.

(2) Every local board of health in the state shall develop and adopt detailed rules for on-site wastewater treatment systems within its area of jurisdiction. The rules must comply with the rules adopted by the commission pursuant to subsection (1) of this section and with sections 25-10-105 and 25-10-106. Before finally adopting such rules or any amendment to the rules, the local board of health shall hold a public hearing on the proposed rules or amendments. The local board of health shall give notice of the time and place of the hearing at least once, at least twenty days before the hearing, in a newspaper of general circulation within its area of jurisdiction. After the public hearing and before final adoption, the local board of health may make changes or revisions to the proposed rules or amendments, and no further public hearing is required regarding the changes or revisions. All rules and amendments must be transmitted to the department no later than five days after final adoption and become effective forty-five days after final adoption unless the department notifies the local board of health before the forty-fifth day that the rules or amendments are not in compliance with this section or section 25-10-105 or 25-10-106.

(3) If a local board of health has not adopted rules in compliance with this section and submitted them to the commission, the commission shall promulgate rules for the areas of the state for which no complying rules have been adopted, except for areas serviced exclusively by a sewage treatment works. Rules for such areas of the state promulgated by the commission must comply with the rules adopted under subsection (1) of this section and sections 25-10-105 and 25-10-106. The rules must be the same for all the areas of the state for which the commission promulgates such rules except as may be appropriate to provide for differing geologic conditions.

(4) A local board of health may adopt rules after action by the commission under subsection (3) of this section, if the rules comply with the procedural requirements of subsection (2) of this section and are no less stringent than those promulgated by the commission. Rules of the local board so adopted become effective only after they are transmitted to the division and the division determines that they comply with this section and sections 25-10-105 and 25-10-106.

(5) In promulgating rules under this article, the commission and local boards of health shall give consideration to the protection of public health and water quality.

25-10-105. Minimum standards - variances

(1) Rules adopted by local boards of health under section 25-10-104 (2) or (4) or promulgated by the department under section 25-10-104 (1) govern all aspects of the location, design, construction, performance, alteration, installation, and use of on-site wastewater treatment systems and must include, minimum standards established by the commission.

(2) (a) A local board of health may grant variances to OWTS rules in accordance with the criteria adopted by the commission under this article.

(b) Applicants for a variance from OWTS rules have the burden of supplying the local board of health with information demonstrating that conditions exist that warrant the granting of the variance.

25-10-106. Basic rules for local administration

(1) Local boards of health or the commission, as appropriate, shall adopt rules under section 25-10-104 that govern all aspects of the application for and issuance of permits, the inspection, and supervision of installed systems, the issuance of cease-and-desist orders, the maintenance and cleaning of systems, and the disposal of waste material. The rules must, a minimum, include provisions regarding:

(a) Procedures by which a person may apply for a permit for an on-site wastewater treatment system. The permit application must be in writing and must include any information, data, plans, specifications, statements, and commitments as required by the local board of health to carry out the purposes of this article.

(b) Review of the application and inspection of the proposed site by the local public health agency;

(c) Specification of studies to be performed and reports to be made by the applicant and the circumstances under which the studies or reports may be required by the local public health agency;

(d) Determination on behalf of the local public health agency by an environmental health specialist, or a professional engineer after review of the application, site inspection, test results, and other required information, whether the proposed system complies with the requirements of this article, and the rules adopted under this article;

(e) Issuance of a permit by the health officer or the health officer's designated representative if the proposed system is determined to be in compliance with this article and the rules adopted under this article;

(f) Review by the local board of health, upon request of an applicant, of applications denied by the local public health agency;

(g) The circumstances under which all applications are subject to mandatory review by the local public health agency to determine whether a permit shall issue;

(h) Final inspection of a system to be made by the local public health agency or its designated professional engineer after construction, installation, alteration, or repair work

under a permit has been completed, but before the system is placed in use, to determine that the work has been performed in accordance with the permit and that the system is in compliance with this article and the rules adopted under this article;

(i) Inspection of operating systems at reasonable times, and upon reasonable notice to the occupant of the property, to determine if the system is functioning in compliance with this article and the rules adopted under this article. Officials of the local public health agency are permitted to enter upon private property for purposes of conducting such inspections.

(j) Issuance of a repair permit to the owner or occupant of property on which a system is not in compliance. An owner or occupant shall apply to the local public health agency for a repair permit within two business days after receiving notice from the local public health agency that the system is not functioning in compliance with this article or the rules adopted under this article or otherwise constitutes a nuisance or hazard to public health or water quality. The permit shall provide for a reasonable period of time within which the owner or occupant must make repairs at the end of which period the local public health agency shall inspect the system to ensure that it is functioning properly. Concurrently with the issuance of a repair permit, the local public health agency may authorize the continued use of a malfunctioning system on an emergency basis for a period not to exceed the period stated in the repair permit. The period of emergency use may be extended, for good cause shown, if, through no fault of the owner or occupant, repairs may not be completed in the period stated in the repair permit and only if the owner or occupant will continue to make repairs to the system.

(k) (I) Issuance of an order to cease and desist from the use of any on-site wastewater treatment system or sewage treatment works that is found by the health officer not to be in compliance with this article or the rules adopted under this article or that otherwise constitutes a nuisance or a hazard to public health or water quality. Such an order may be issued only after a hearing is conducted by the health officer not less than forty-eight hours after written notice of the hearing is given to the owner or occupant of the property on which the system is located and at which the owner or occupant may be present, with counsel, and be heard. The order must require that the owner or occupant bring the system into compliance or eliminate the nuisance or hazard within a reasonable period of time, not to exceed thirty days, or thereafter cease and desist from the use of the system. A cease-and-desist order issued by the health officer is reviewable in the district court for the county in which the system is located and upon a petition filed no later than ten days after the order is issued.

(II) For the purposes of this paragraph (k), any system or sewage treatment works that does not comply with any statute or rule of this title constitutes a nuisance.

(III) For the purposes of this paragraph (k), sewage treatment works does not include any sewage treatment facility with a discharge permit issued pursuant to section 25-8-501.

(l) Reasonable periodic collection and testing by the local public health agency of effluent samples from on-site wastewater treatment systems for which monitoring of effluent is necessary in order to ensure compliance with this article or the rules adopted under this article. The sampling may be required not more than two times a year, except when required by the health officer in conjunction with action taken pursuant to paragraph (k) of this subsection (1). The local public health agency may charge a fee not to exceed actual costs, plus locally established mileage reimbursement rates for each mile traveled from the principal office of the local public health agency to the site of the system and return, for each sample collected and tested, and payment of such charges may be stated in the permit

for the system as a condition for its continued use. Any owner or occupant of property on which an on-site wastewater treatment system is located may request the local public health agency to collect and test an effluent sample from the system. The local public health agency may, at its option, perform such collection and testing services, and is entitled to charge a fee not to exceed actual costs, plus locally established mileage reimbursement rates for each mile traveled from the principal office of the local public health agency to the site of the system and return, for each sample collected and tested.

(m) At the option of the local board of health, maintenance and cleaning schedules and practices adequate to ensure proper functioning of various types of on-site wastewater treatment systems. The local board of health may additionally require proof of proper maintenance and cleaning, in compliance with the schedule and practices adopted under this subsection (1), to be submitted periodically to the local public health agency by the owner of the system.

(n) Disposal of septage at a site and in a manner that does not create a hazard to the public health, a nuisance, or an undue risk of pollution.

25-10-107. Fees

(1) A local board of health may set fees for permits. The permit fees may be no greater than required to offset the actual indirect and direct costs of the local public health agency's services. With respect to any permit, the local board of health shall set the fee for the permit so as to recover, as nearly as can be practically established, the costs associated with that permit, not to exceed one thousand dollars. A local board of health may also set fees for soil evaluation and other services as requested by the applicant. Such fees may be no greater than required to offset the actual indirect and direct costs of such services.

(2) Local boards of health may set fees for percolation tests and other soil evaluation services that are performed by the local public health agency. The fees may be no greater than required to offset the actual indirect and direct costs of such services.

(3) In addition to the fees established in this section, the division may assess a fee of twenty-three dollars for each permit authorized for a new, repaired, or upgraded on-site wastewater treatment system. Of that fee, the county in which the on-site wastewater treatment system is or will be located shall retain three dollars to cover the county's administrative costs and twenty dollars shall be transmitted to the state treasurer, who shall deposit that sum in the water quality control fund created in section 25-8-502 (1) (c).

25-10-108. Performance evaluation and approval of systems employing new technology

(1) A systems contractor, a professional engineer, or a manufacturer of on-site wastewater treatment systems that employ new technology may apply to the division for a determination of reliability of the system. The division may hold a public hearing to determine whether the particular design or type of system, based upon improvements or developments in the technology of sewage treatment, has established a record of performance reliability that would justify approval of applications for such systems by the health officer without mandatory review by the local board of health. If the division determines, based upon reasonable performance standards and criteria, that reliability has been established, the division shall so notify each local board of health, and applications for

permits for the systems may thereafter be acted upon by the health officer, the health officer's designated representative, or the local board of health's designated representative, in the same manner as applications for systems described in section 25-10-106. The division shall not arbitrarily deny any person the right to a hearing on an application for a determination of reliability under this section.

(2) Except for designs or types of systems that have been approved by the division pursuant to subsection (1) of this section, the local public health agency may approve an application for a type of system not otherwise provided for in section 25-10-106, only if the system has been designed by a professional engineer, and only if the application provides for the installation of a backup system, of a type previously approved by the division under subsection (1) of this section, in the event of failure of the primary system. A local public health agency shall not arbitrarily deny any person the right to consideration of an application for such a system and shall apply reasonable performance standards in determining whether to approve an application.

25-10-109. Licensing of systems contractors and systems cleaners

(1) The local board of health may adopt rules that provide for the licensing of systems contractors. The local public health agency may charge a fee not to exceed actual costs, for the initial license of a systems contractor and for a renewal of the license. Initial licensing and renewals thereof shall be for a period of not less than one year. The local board of health may revoke the license of a systems contractor for violation of this article or the rules adopted under this article or for other good cause shown, after a hearing conducted upon reasonable notice to the systems contractor and at which the systems contractor may be present, with counsel, and be heard.

(2) The local board of health may adopt rules that provide for the licensing of systems cleaners, pursuant to section 25-10-104 (2). The local public health agency may charge a fee not to exceed actual costs, for the initial license of a systems cleaner and for the renewal of the license. Initial licensing and renewals thereof shall be for a period of not less than one year. The local board of health may suspend or revoke the license of a systems cleaner for violation of this article or the rules adopted under this article or for other good cause shown after a hearing conducted upon reasonable notice to the systems cleaner and at which the systems cleaner may be present, with counsel, and be heard.

25-10-110. Enforcement by local health agencies and local boards of health

The primary responsibility for the enforcement of this article and the rules adopted under this article lies with local public health agencies and local boards of health. If a local public health agency or local board of health substantially fails to administer and enforce this article and the rules adopted under this article, the department may assume any functions of the local public health agency or board of health as may be necessary to protect the public health and water quality.

25-10-111. Authority of local boards of health to deny permits for on-site wastewater treatment systems in unsuitable areas

Nothing in this article preempts or affects the ability of a local board of health to prohibit issuance of OWTS permits, in accordance with applicable land use laws and procedures , for

defined areas in which the local board of health determines that construction and use of additional on-site wastewater treatment systems may constitute a hazard to public health or water quality.

25-10-112. General prohibitions - rules

(1) No city, county, or city and county shall issue to any person;

(a) A permit to construct or remodel a building or structure that is not serviced by a sewage treatment works, until the local public health agency has issued a permit for an on-site wastewater treatment system; or

(b) A city, county, or city and county occupancy permit for the use of a building that is not serviced by a sewage treatment works until the local public health agency makes a final inspection of the on-site wastewater treatment system, as provided for in section 25-10-106 (1) (h), and the local public health agency approves the installation.

(2) Construction of new cesspools is prohibited.

(3) A person shall not connect more than one dwelling, commercial, business, institutional, or industrial unit to the same on-site wastewater treatment system unless such multiple connection was specified in the application submitted and in the permit issued for the system.

(4) No person shall construct or maintain any dwelling or other occupied structure that is not equipped with adequate facilities for the sanitary disposal of sewage.

(5) All persons shall dispose of septage removed from systems in the process of maintenance or cleaning at an approved site and in an approved manner under this article.

25-10-113. Penalties

(1) Any person who commits any of the following acts or violates this article commits a class 1 petty offense and shall be punished as provided in section 18-1.3-503, C.R.S.:

(a) Constructs, alters, installs, or permits the use of any on-site wastewater treatment system without first applying for and receiving a permit as required under this article;

(b) Constructs, alters, or installs an on-site wastewater treatment system in a manner that involves a knowing and material variation from the terms or specifications contained in the application, permit or variance;

(c) Violates the terms of a cease-and-desist order that has become final under section 25-10-106 (1) (k);

(d) Conducts a business as a systems contractor without having obtained the license provided for in section 25-10-109 (1) in areas in which the local board of health has adopted licensing regulations pursuant to that section;

(e) Conducts a business as a systems cleaner without having obtained the license provided for in section 25-10-109 (2) in areas in which the local board of health has adopted licensing regulations pursuant to that section;

(f) Falsifies or maintains improper record keeping concerning system cleaning activities not performed or performed improperly; or

(g) Willfully fails to submit proof of proper maintenance and cleaning of a system as required by rules adopted pursuant to section 25-10-106.

(2) Upon a finding by the local board of health that a person is in violation of this article or of rules adopted and promulgated pursuant to this article, the local board of health may assess a penalty of up to fifty dollars for each day of violation. In determining the amount of the penalty to be assessed, the local board of health shall consider the seriousness of the danger to the health of the public caused by the violation, the duration of the violation, and whether the person has previously been determined to have committed a similar violation.

(3) A person subject to a penalty assessed pursuant to subsection (2) of this section may appeal the penalty to the local board of health by requesting a hearing before the appropriate body. The request must be filed within thirty days after the penalty assessment is issued. The local board of health shall conduct a hearing upon the request in accordance with section 24-4-105, C.R.S.