

Regulatory Authority and Responsibilities Pertaining to Community Wastewater Systems Under the Michigan Criteria for Subsurface Sewage Disposal

I. Introduction

Throughout Michigan a significant number of residential and nonresidential developments have been, and are being, proposed that utilize a common onsite wastewater treatment system with subsurface disposal of effluent to soil. Sewerage systems actually used, or intended for use, by the public must be reviewed, approved, and permitted by the Department of Environment, Great Lakes, and Energy (EGLE) under the requirements of Part 41 pursuant to authority as described below. A sewerage system that collects, conveys, transports, treats, or otherwise handles sanitary sewage for more than one individually owned family unit or dwelling or more than one individually owned business meets the definition of “public.” For systems proposed to utilize subsurface disposal of final effluent pursuant to the *Michigan Criteria for Subsurface Sewage Disposal* (MCSSD), these requirements must also be satisfied. The purpose of this guidance document is to outline the authority and responsibility of the local health department (LHD) and EGLE for review and approval of these proposals.

II. Authorities

- **Part 31 NREPA** - Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, Section 324.3103 *et seq.* Section 3103 provides authority to EGLE to control pollution of surface or underground waters of the state that are, or may be, affected by the waste disposal of any person. Section 3103 also provides authority for promulgation of EGLE administrative rules necessary to carry out this duty. Section 3106 requires EGLE to establish pollution standards for waters of the state and to issue permits that will assure compliance.
- **Part 41 NREPA** – Part 41, Sewage Disposal and Waterworks Systems, of the NREPA, 1994 PA 451, as amended, MCL 324.4101 *et seq.* (Part 41). This part establishes the authority for EGLE to review plans and specifications, issue construction permits, and to assure the proper operation and maintenance of sewerage systems used, or intended for use, by the public.
- **Part 22 Groundwater Quality Rules** - 1979 ACS 3, R 323.2201 *et seq.*, as amended (Part 22 Rules), defines the requirements for protection of the ground waters of the state and authorizations required for various types of discharges to the groundwater. The Part 22 Rules authorize onsite wastewater treatment systems utilizing subsurface disposal that are approved by a LHD having jurisdiction. These authorizations include:

Gretchen Whitmer, Governor - Leisl Clark, EGLE Director

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- **Rule 2210. Items permitted to be discharged without permit.**

This rule authorizes subsurface disposal of sanitary sewage in an amount less than 1,000 gallons per day (gpd) from systems approved by a LHD in accordance with the local sanitary code or the MCSSD. It also authorizes subsurface disposal of sanitary sewage in quantities of 6,000 gpd or less that are approved by a LHD in accordance with the MCSSD.
 - **Rule 2211. Permit by rule; notification.**

This rule authorizes subsurface disposal of sanitary sewage where the volume of the septic tank or tanks is greater than 6,000 gallons or where the discharge is more than 6,000 gpd but less than 10,000 gpd. These systems must be approved by a LHD in accordance with the MCSSD. Flow measurement of average daily flow on a weekly basis and annual total flow must be conducted and reported annually to EGLE.
 - **Rule 2216. Permits for specific discharges.**

Subrule 2216 (2) (A) authorizes subsurface disposal of sanitary sewage where the discharge is less than 20,000 gpd into systems approved by a LHD or EGLE in accordance with the MCSSD. Under this subrule, these systems must include a constructed wetland or equivalent pretreatment system preceding the subsurface disposal system.
- **Michigan Criteria For Subsurface Sewage Disposal** – This document establishes minimum uniform criteria for site suitability, design, permitting, construction, and operation and maintenance of subsurface disposal systems treating sanitary sewage in quantities less than 10,000 gpd. The MCSSD does not apply to private single and two family residential sewage systems constructed pursuant to LHD codes.
 - **LHD Sanitary Code** – These codes provide for the establishment of fees and the requirements for review and issuance of construction permits by a LHD.
 - **EGLE Contract** – Annual contract between EGLE and an individual LHD that defines the requirements and responsibilities for a LHD and EGLE in the conduct of the Onsite Wastewater Treatment Management Program including authorizations for subsurface systems generating less than 10,000 gpd pursuant to the MCSSD.

III. EGLE/LHD Relationship and Limits of Authority

A. Permitting

A public sewerage system is composed of a treatment system and a collection system for the purpose of transporting sanitary sewage to the treatment location. The construction of a public sewerage system, or any part thereof, may only proceed after the issuance of a Part 41 construction permit by EGLE.

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LHD review and approval of the treatment and subsurface disposal system under the MCSSD must be obtained in order to secure discharge authorization pursuant to Rules 2210, 2211, and 2216 (2) (a). The only exception is for systems authorized under Rule 2216 (2) (a) where EGLE, itself, may issue approval for the subsurface disposal system pursuant to the MCSSD where the LHD has opted not to conduct the review and approval process.

In addition to establishing discharge authority through approval of the treatment and subsurface disposal system under the MCSSD, Part 41 review and permitting of the collection system must also be accomplished. Review of the collection system is handled, for the most part, as an EGLE responsibility. However where individual septic tanks will be constructed at each home or cluster of homes that discharge into a common collection system, a LHD may have input. A LHD may also be involved in the permitting and inspection of tanks installed at the time that service connection of the individual home or nonresidential structure is made.

B. Variances to the MCSSD

The MCSSD allows for a variance under special circumstances with the concurrence of the LHD and EGLE. Variance requests can relate to any particular provision including such items as acceptable soil texture, water table and design requirements, and the use of alternative treatment devices. The MCSSD variance process includes:

- A written request citing the specific provisions of the MCSSD for which a variance is desired is to be submitted by the applicant. Appropriate supporting documentation must be included with the request.
- The variance request will be given joint consideration by the LHD and EGLE. Support of both the LHD and EGLE is needed as a condition of granting a variance. A formal record of consultation between the LHD and EGLE that confirms protection of public health and the environment shall be provided where a variance is granted.
- The variance may only be granted by the LHD Environmental Health Director, or designated representative, or by EGLE as a provision of the Part 41 construction permit. Where granted by either the LHD or EGLE, variance provisions would be specifically incorporated into both the LHD and Part 41 construction permits.
- A variance granted applies only to the specific project under consideration and does not serve as precedent in other cases.

C. Denial of an Authorization under the MCSSD

If a proposal for a community wastewater system is denied under the MCSSD, other groundwater or surface water discharge treatment and disposal options may be considered for authorization by EGLE. If an applicant wishes to pursue any other treatment and disposal option, they must apply for the appropriate discharge permit from EGLE. A discharge permit must be issued for the project before a Part 41 construction permit can be issued by EGLE. A LHD may not be involved in such projects.

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D. Coordination Between EGLE and a LHD

Clear and frequent communication between EGLE and a LHD is important and necessary when reviewing and permitting proposals to construct public sewerage systems with joint agency involvement. This communication is vital throughout the overall process and needs to involve staff from the respective EGLE Field Operations district office, Onsite Wastewater Program, and Groundwater Permits Unit. Since the Onsite Wastewater Program has statewide responsibility related to the MCSSD, any specific issues pertaining to site suitability, design, construction, or variances for the subsurface disposal system should be directed to staff of that program.