

CHAPTER 49

HEALTH AND ENVIRONMENT

HOUSE BILL 97-1113

BY REPRESENTATIVES Sullivant, Entz, and Young;
also SENATORS Norton, Hopper, and Rupert.

AN ACT

CONCERNING INDIVIDUAL SEWAGE DISPOSAL SYSTEMS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 10 of title 25, Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended, WITH THE RELOCATION OF PROVISIONS, to read:

ARTICLE 10
Individual Sewage Disposal Systems Act

25-10-101. Short title. This article shall be known and may be cited as the "Individual Sewage Disposal Systems Act".

25-10-102. Legislative declaration. In order to preserve the environment and protect the public health AND WATER QUALITY; to eliminate and control causes of disease, infection, and aerosol contamination; and to reduce and control the pollution of the air, land, and water, it is declared to be in the public interest to establish minimum standards AND rules ~~and regulations~~ for individual sewage disposal systems in the state of Colorado and to provide the authority for the administration and enforcement of such minimum standards AND rules. ~~and regulations.~~

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 individual sewage disposal system by means of absorption into the ground.

(2) "Applicant" means any person who submits an application for a permit for an

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

individual sewage disposal system.

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

(4) "Dispersal system" means a system for the disposal of effluent, after final treatment in an individual sewage disposal system, by a method ~~which~~ THAT does not depend upon or utilize the treatment capability of the soil.

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

(6) "Effluent" means the liquid waste discharge from an individual sewage disposal system.

(7) "ENVIRONMENTAL HEALTH SPECIALIST" MEANS A PERSON WHO IS TRAINED IN PHYSICAL, BIOLOGICAL, OR SANITARY SCIENCE TO CARRY OUT EDUCATIONAL AND INSPECTIONAL DUTIES IN THE FIELD OF ENVIRONMENTAL HEALTH.

(8) "GUIDELINES FOR RULES" MEANS GUIDELINES FOR INDIVIDUAL SEWAGE DISPOSAL SYSTEMS ADOPTED AND REVISED BY THE STATE BOARD PURSUANT TO THE AUTHORITY GRANTED TO THE STATE BOARD UNDER THIS ARTICLE.

~~(7)~~ (9) "Health officer" means the chief administrative and executive officer of a local health department, or the appointed health officer of the local board of health.

~~(8)~~ (10) "Individual sewage disposal system" OR "ISDS" and the term "system" where the context so indicates mean an absorption system of any size or flow or a system or facility for treating, neutralizing, stabilizing, or disposing of sewage ~~which~~ THAT is not a part of or connected to a sewage treatment works.

~~(9)~~ (11) "Local board of health" means any local, county, district, or regional board of health.

~~(10)~~ (12) "Local health department" means any city, county, city and county, district, or regional health department and may include a local board of health OR LOCAL AGENCY DELEGATED BY A LOCAL BOARD OF HEALTH TO OVERSEE ISDS PERMITTING AND INSPECTION OR AN ISDS PROGRAM.

~~(11)~~ (13) "Percolation test" means a subsurface soil test at the depth of a proposed absorption system or similar component of an individual sewage disposal 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.

~~(12)~~ (14) "Permit" means a permit for the construction or alteration, installation, and use or for the repair of an individual sewage disposal system.

~~(13)~~ (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.

~~(14)~~ (16) "Registered professional engineer" means an engineer licensed in

accordance with part 1 of article 25 of title 12, C.R.S.

~~(15)~~ (17) "Sanitarian" means a person who is trained in physical, biological, and sanitary sciences to carry out inspectional and educational duties in the field of environmental sanitation.

(18) "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 SUCH MATERIAL MEETS THE DEFINITION FOR SEPTAGE SET FORTH IN THIS SUBSECTION (18). "SEPTAGE" DOES NOT INCLUDE CHEMICAL TOILET RESIDUALS.

~~(16)~~ (19) "Sewage" means a combination of liquid wastes ~~which~~ THAT may include chemicals, house wastes, human excreta, animal or vegetable matter in suspension or solution, and other solids in suspension or solution, and ~~which~~ THAT is discharged from a dwelling, building, or other establishment.

~~(17)~~ (20) "Sewage treatment works" means a system or facility for treating, neutralizing, stabilizing, or disposing of sewage, which system or facility has a designed capacity to receive more than two thousand gallons of sewage per day. The term "sewage treatment works" includes appurtenances such as interceptors, collection lines, outfall and outlet sewers, pumping stations, and related equipment.

~~(18)~~ (21) "State board" means the state board of health created by section 25-1-103.

~~(19)~~ (22) "State waters" means any and all surface and subsurface waters ~~which~~ THAT are contained in or flow in or through this state, except waters in sewerage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all waters withdrawn for use, until all uses and treatment have been completed.

~~(20)~~ (23) "Systems cleaner" means a person engaged in and who holds himself OR HERSELF out as a specialist in the cleaning and pumping of sewage disposal systems and removal of the residues deposited in the operation thereof.

~~(21)~~ (24) "Systems contractor" means a person engaged in and who holds himself OR HERSELF out as a specialist in the installation, renovation, and repair of sewage disposal systems.

25-10-104. Regulation of individual sewage disposal systems. (1) The division shall develop and the state board shall adopt guidelines for rules ~~and regulations not later than August 1, 1973;~~ providing minimum standards for the location, construction, performance, installation, alteration, and use of individual sewage disposal systems within the state of Colorado. THE STATE BOARD IS AUTHORIZED TO ESTABLISH CRITERIA FOR ISSUING VARIANCES IN SUCH GUIDELINES. Such guidelines shall comply with the provisions set forth in section 25-10-105, and shall be the basis for the adoption of detailed rules ~~and regulations~~ by local boards of health pursuant

to subsection (2) of this section.

(2) Every local board of health in the state shall develop and adopt rules ~~and regulations~~ for individual sewage disposal systems within their respective areas of jurisdiction. ~~not later than October 1, 1973.~~ Such rules ~~and regulations~~ shall comply with the guidelines adopted by the state board pursuant to subsection (1) of this section and with the minimum requirements set forth in sections 25-10-105 and 25-10-106. Before finally adopting such rules ~~and regulations~~, or any amendment thereto, the local board of health shall hold a public hearing on the proposed rules ~~and regulations~~, or amendments thereto. Notice of the time and place of such hearing shall be given at least once, at least twenty days in advance thereof, in a newspaper of general circulation within its area of jurisdiction. The local board of health may make changes or revisions in the proposed rules ~~and regulations~~, or amendments thereto, after the public hearing and prior to final adoption, and no further public hearing shall be required regarding such changes or revisions. All rules ~~and regulations~~, and amendments thereto shall be transmitted to the department not later than five days after final adoption and shall become effective forty-five days after final adoption unless the department has sooner notified the local board of health that the rules ~~and regulations~~, or amendments thereto are not in compliance with sections 25-10-105 and 25-10-106.

(3) If a local board of health has not adopted rules ~~and regulations~~ in compliance with this section and submitted them to the state board, ~~by October 8, 1973,~~ the state board shall then promulgate rules ~~and regulations~~ for such areas of the state for which no complying rules ~~and regulations~~ have been adopted, except for such areas as are serviced exclusively by a sewage treatment works. Rules ~~and regulations~~ promulgated by the state board shall comply with the guidelines and minimum requirements set forth in sections 25-10-105 and 25-10-106 and shall be the same for all the areas of the state for which the state board promulgates such rules ~~and regulations~~ except as may be appropriate to provide for differing geologic conditions.

(4) Rules ~~and regulations~~ may be adopted by a local board of health after action by the state board under subsection (3) of this section, if such rules ~~and regulations~~ are adopted in compliance with the procedural requirements of subsection (2) of this section and are no less stringent than those promulgated by the state board. Rules ~~and regulations~~ of the local board so adopted shall then become effective only after they are transmitted to the division and are found to be in compliance with the provisions of this subsection (4) and of sections 25-10-105 and 25-10-106.

(5) Rules ~~and regulations~~ pertaining to individual sewage treatment systems in effect on July 1, 1973, shall remain in effect until superseded by rules ~~and regulations~~ adopted pursuant to this article.

(6) Fees authorized in this article shall be set at such amounts as are deemed necessary to cover the ~~operation expenses~~ ACTUAL AND DIRECT COSTS of the ~~several agencies~~ OPERATION OF THE ISDS PROGRAM.

25-10-105. Minimum standards for individual sewage disposal systems.

(1) Rules ~~and regulations~~ adopted by local boards of health under section 25-10-104 (2) or (4) or promulgated by the department under section 25-10-104 (3) shall govern all aspects of the performance, location, construction, alteration, installation, and use

of individual sewage disposal systems and shall include, as a minimum, provisions regarding the following matters:

(a) ~~Performance of soil percolation tests OR OTHER SOIL EVALUATION; in at least three test holes in the area in which the absorption field of a proposed system is to be located. A test hole must be drilled in each twelve hundred square foot area of the leach field, and one test hole must be drilled to a maximum of eight feet deep or to bedrock, and must be drilled to give a fair indication of the soil condition. The tests shall be performed by a registered professional engineer or a competent technician of the local health department, unless the tests were previously performed by a registered professional engineer and the results thereof submitted with the application for the permit. If an application is for a system which does not utilize a soil absorption system, but which employs a dispersal system, the local board of health may waive the requirement of percolation tests upon request by the applicant supported by an adequate subsoil and bedrock report and by a showing that the tests are not essential to the proper design of the system and that the absence of test data involves no danger to the public health.~~

(b) Methods for calculating the maximum daily sewage flow, which shall not exceed the capacity for which the system is designed;

(c) Design criteria, including, where applicable, minimum capacities based on daily sewage flow, and construction standards for septic tanks, other types of holding or pretreatment tanks, building sewers and sewer lines, greasetraps, distribution boxes, and serial distribution systems;

(d) Minimum distances from the various components of a system to pertinent ~~terrain~~ features, including: Streams, lakes, watercourses, springs, wells, subsoil drains, cisterns, water lines, suction lines, gulches, dwellings, other occupied buildings, ~~and~~ property lines, GROUNDWATER, AND BEDROCK;

(e) For systems treating and disposing of effluent through an absorption system: ~~Methods for calculating minimum absorption area for various types of absorption systems INDIVIDUAL SEWAGE DISPOSAL SYSTEMS and design criteria and construction standards for such types of absorption systems; as the department and the local board of health authorize, which may include absorption trenches, seepage beds, seepage pits, sand filter trenches, and subsurface sand filters. Unless designed by a registered professional engineer and approved by the local board of health, no such system may be permitted in areas in which the soil percolation rate is slower than one inch in sixty minutes or faster than one inch in five minutes; in which the maximum seasonal level of the groundwater table is less than four feet below the bottom of the proposed absorption system; in which bedrock exists less than four feet below the bottom of the proposed absorption system; or which has a slope in excess of thirty percent.~~

(f) ~~PROVISIONS INDICATING WHEN AN INDIVIDUAL SEWAGE DISPOSAL SYSTEM MUST BE DESIGNED BY A REGISTERED PROFESSIONAL ENGINEER AND APPROVED BY THE LOCAL HEALTH DEPARTMENT;~~

~~(f)~~ (g) For systems disposing of effluent into state waters: In cooperation and coordination with the water quality control commission, procedures for obtaining site location approval and discharge permits; general design criteria; adoption of effluent

standards; requirement of design by a registered professional engineer; and mandatory review by the local ~~board of health~~ DEPARTMENT of each application for such a system;

~~(g)~~ (h) For systems disposing of effluent by discharge upon the surface of the ground: Specific performance criteria to insure that such surface discharge does not drain from the property on which the system is located, except by permit from the local board of health, and does not otherwise create a hazard to public health OR WATER QUALITY or constitute a nuisance or undue risk of pollution; requirement of design by a registered professional engineer; and mandatory review by the local ~~board of health~~ DEPARTMENT of each application for such a system;

~~(h)~~ (i) Design criteria and construction standards for vaults; for privies and slit trenches, either of which may be prohibited at the option of the local ~~board of health~~ DEPARTMENT; for incineration toilets, and chemical toilets; and for ~~minisystems~~ GRAYWATER limited to disposal of waste water from sinks, lavatories, tubs, and showers;

~~(i)~~ (j) Performance criteria and construction standards for evapotranspiration systems ~~which~~ THAT dispose of effluent into the air by evaporation from a soil surface or transpiration of plants;

~~(j)~~ (k) Performance criteria and construction standards for systems ~~which~~ THAT dispose of effluent by means of dispersal systems;

~~(k)~~ (l) Performance criteria and construction standards for systems ~~which~~ THAT service commercial, business, institutional, or industrial property or multifamily dwellings; requirement of design by a registered professional engineer; and mandatory review by the local ~~board of health~~ DEPARTMENT of each application for such a system.

(m) IF A LOCAL BOARD OF HEALTH IS A SEPARATE GOVERNMENTAL ENTITY FROM ANY GENERAL PURPOSE GOVERNMENT, A PROVISION:

(I) REQUIRING THE LOCAL BOARD OF HEALTH TO NOTIFY THE LOCAL GENERAL PURPOSE GOVERNMENT RESPONSIBLE FOR ISSUING BUILDING PERMITS WHENEVER THE LOCAL BOARD OF HEALTH INTENDS TO APPROVE AN APPLICATION FOR AN INDIVIDUAL SEWAGE DISPOSAL SYSTEM; AND

(II) REQUIRING THE LOCAL BOARD OF HEALTH TO PROVIDE AN OPPORTUNITY FOR COMMENT BY SUCH LOCAL GENERAL PURPOSE GOVERNMENT.

(2) (a) ~~The guidelines and regulatory provisions adopted by the state board and by the local boards pursuant to subsection (1) of this section shall conform to or exceed the minimum standards and criteria set forth in the "manual of septic tank practice", United States public health service publication no. 526, revised 1967, where applicable.~~ A LOCAL BOARD OF HEALTH SHALL HAVE AUTHORITY TO GRANT VARIANCES TO ISDS RULES IN ACCORDANCE WITH THE GUIDELINES FOR RULES ADOPTED AND REVISED BY THE STATE BOARD PURSUANT TO THE AUTHORITY GRANTED TO THE STATE BOARD UNDER THIS ARTICLE.

(b) APPLICANTS FOR A VARIANCE FROM THE PROVISIONS OF ISDS RULES SHALL HAVE THE BURDEN OF SUPPLYING THE AGENCY WITH INFORMATION DEMONSTRATING THAT CONDITIONS EXIST THAT WARRANT THE GRANTING OF A VARIANCE.

25-10-106. Basic rules for local administration. (1) Rules ~~and regulations~~ adopted by local boards of health under section 25-10-104 (2) or (4) or promulgated by the department under section 25-10-104 (3) shall govern all aspects of the application for and issuance of permits, the inspection, testing, and supervision of installed systems, the issuance of cease and desist orders, the maintenance and cleaning of systems, and the disposal of waste material, and shall, as a minimum, include provisions regarding the following matters:

(a) Procedures by which application may be made for the issuance of a permit for an individual sewage disposal system. ~~A fee not to exceed one hundred fifty dollars may be charged by local health departments for accepting and processing such applications. Such fee shall be based on the average cost in the county of processing said applications during the preceding calendar year.~~ The application for a permit shall be in writing and shall include such information, data, plans, specifications, statements, and commitments as may be required by the local board of health in order to carry out the purposes of this article.

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

(c) Specification of mandatory tests to be performed by the local health department OR UNDER THE SUPERVISION OF A REGISTERED PROFESSIONAL ENGINEER, including percolation tests unless excused or previously performed by a registered professional engineer;

(d) Specification of additional tests to be performed and reports to be made by the applicant and the circumstances under which such tests or reports may be required by the local health department;

(e) Determination on behalf of the local health department by a sanitarian, AN ENVIRONMENTAL HEALTH SPECIALIST, or a registered professional engineer after review of the application, site inspection, test results, and other required information, whether the proposed system is in compliance with the requirements of, and the rules ~~and regulations~~ adopted under, this article; and the issuance of a permit by the health officer or ~~his~~ THE HEALTH OFFICER'S designated representative if the proposed system is determined to be in compliance with the requirements of this article and the rules ~~and regulations~~ adopted under this article;

(f) Review by the local board of health, upon request of an applicant, of applications denied by the health ~~officer~~ DEPARTMENT;

(g) The circumstances under which ALL applications ~~for certain types of systems, in addition to those specified in section 25-10-105 (1) (f), (1) (g), and (1) (j) and in section 25-10-107 (2);~~ shall be subject to mandatory review by the local ~~board of~~ health DEPARTMENT to determine whether a permit shall issue;

(h) Final inspection of a system to be made by the local health department OR ITS

DESIGNATED REGISTERED 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 ~~and regulations~~ 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 ~~and regulations~~ adopted under this article. Officials of the local health department shall be permitted to enter upon private property for purposes of conducting such inspections.

(j) Issuance of a repair permit and an emergency use permit to the owner or occupant of property on which a system is not ~~functioning properly~~ IN COMPLIANCE. Application for a repair permit shall be made by such owner or occupant to the local health department within two business days after receiving notice from the local health department that the system is not functioning in compliance with this article or the rules ~~and regulations~~ 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 repairs shall be made, at the end of which period the system shall be inspected by the local health department to insure that it is functioning properly. Concurrently with the issuance of a repair permit, the local health department may issue an emergency use permit authorizing continued use of a malfunctioning system on an emergency basis for a period not to exceed the period stated in the repair permit. Such an emergency use permit may be extended, for good cause shown, in the event repairs may not be completed in the period stated in the repair permit, through no fault of the owner or occupant.

(k) Issuance of an order to cease and desist from the use of any system ~~which~~ THAT is found by the health officer not to be ~~functioning~~ in compliance with this article or the rules ~~and regulations~~ adopted under this article or otherwise to constitute a nuisance or a hazard to public health OR WATER QUALITY OR WATER QUALITY and ~~which~~ THAT has not received timely repairs in accordance with the provisions of paragraph (j) of this subsection (1). Such an order may be issued only after a hearing ~~which~~ THAT shall be conducted by the health officer not less than forty-eight hours after written notice thereof is given to the owner or occupant of the property on which the system is located and at which the owner and occupant may be present, with counsel, and be heard. The order shall 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 shall be reviewable in the district court for the county wherein the system is located, and upon a petition filed not later than ten days after the order is issued.

(l) Reasonable periodic collection and testing by the local health department of effluent samples from individual sewage disposal systems for which monitoring of effluent is necessary in order to insure compliance with the provisions of this article or the rules ~~and regulations~~ adopted under this article. Such 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). A fee not to exceed ~~twenty-five dollars~~ ACTUAL COSTS, plus ~~ten cents~~ LOCALLY

ESTABLISHED MILEAGE REIMBURSEMENT RATES for each mile traveled from the principal office of the local health department to the site of the system and return, may be charged by the local health department 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 individual sewage disposal system is located may request the local health department to collect and test an effluent sample from the system. The local health department may, at its option, perform such collection and testing services, and it shall be entitled to charge a fee not to exceed ~~twenty-five dollars~~ ACTUAL COSTS, plus ~~ten cents~~ LOCALLY ESTABLISHED MILEAGE REIMBURSEMENT RATES for each mile traveled from the principal office of the local health department to the site of the system and return, for each such sample so collected and tested.

(m) AT THE OPTION OF THE LOCAL BOARD OF HEALTH, maintenance and cleaning schedules and practices adequate to insure proper functioning of various types of individual sewage disposal 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 health department by the owner of the system.

(n) Disposal of ~~waste materials, removed from systems in the process of maintenance or cleaning~~, SEPTAGE at a site and in a manner ~~which~~ 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 AND DIRECT COST OF THE LOCAL HEALTH DEPARTMENT'S SERVICES. WITH RESPECT TO ANY PERMIT, THE FEE FOR SUCH PERMIT SHALL BE SET SO AS TO RECOVER, AS NEARLY AS CAN BE PRACTICALLY ESTABLISHED, THE COSTS ASSOCIATED WITH THAT PERMIT, AND MAY NOT 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 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 HEALTH DEPARTMENT. THE FEES MAY BE NO GREATER THAN REQUIRED TO OFFSET THE ACTUAL AND DIRECT COST OF SUCH SERVICES.

25-10-108. [Formerly 25-10-107.] Performance evaluation and approval of systems employing new technology. (1) Upon application by a systems contractor, a registered professional engineer, or a manufacturer of individual sewage disposal systems, the division may hold a public hearing to determine whether a particular design or type of system, based upon improvements or developments in the technology of sewage disposal and not otherwise provided for in paragraphs (e) to (j) (k) of subsection (1) of section 25-10-105, has established a record of performance reliability ~~which~~ 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 such reliability has been established, the division shall so notify each local board of health, and applications for permits for such systems may thereafter be acted upon by the

health officer, ~~or his~~ 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 25-10-105 (1) (e). The division shall not arbitrarily deny any person the right to a hearing on an application for a determination of reliability under the provisions of this section.

(2) Except for designs or types of systems ~~which~~ THAT have been approved by the division pursuant to subsection (1) of this section, the local ~~board of~~ health DEPARTMENT may approve an application for a type of system not otherwise provided for in paragraphs (e) to ~~(j)~~ (k) of subsection (1) of section 25-10-105, only if the system has been designed by a registered professional engineer, and only if the application provides for the installation of a backup system, of a type described in said paragraphs or previously approved by the division under subsection (1) of this section, in the event of failure of the primary system. A local ~~board of~~ health DEPARTMENT 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 such an application.

25-10-109. [Formerly 25-10-108.] Licensing of systems contractors and systems cleaners. (1) The local board of health may adopt rules ~~and regulations~~ ~~which~~ THAT provide for the licensing of systems contractors. A fee not to exceed ~~twenty-five dollars~~ ACTUAL COSTS may be charged by the local health department for the initial license of a systems contractor. A fee not to exceed ~~ten dollars~~ ACTUAL COSTS may be charged by the local health department 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 the applicable provisions of this article or the rules ~~and regulations~~ 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 ~~and regulations~~ ~~which~~ THAT provide for the licensing of systems cleaners, PURSUANT TO SECTION 25-10-106 (1). A fee not to exceed ~~twenty-five dollars~~ ACTUAL COSTS may be charged by the local health department for the initial license of a systems cleaner; a fee not to exceed ~~ten dollars~~ ACTUAL COSTS may be charged 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 the applicable provisions of this article or the ~~regulations~~ 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 department and local board of health. The primary responsibility for the enforcement of the provisions of this article and the ~~regulations~~ RULES adopted under this article shall lie with local health departments and local boards of health. In the event that a local health department or local board of health substantially fails to administer and enforce the provisions of this article and the rules ~~and regulations~~ adopted under this article, the department may assume such of the functions of the local health department or board of health as may be necessary to protect the public health AND WATER QUALITY.

25-10-111. Prohibition of individual sewage disposal systems in unsuitable areas. The local board of health may conduct a public hearing, after written notice to all affected property owners as shown in the records of the county assessor and publication of notice in a newspaper of general circulation, at least ten days prior to the hearing, to consider the prohibition of permits for individual sewage disposal systems in defined areas ~~which~~ THAT contain or are subdivided for a density of more than two dwelling units per acre. The local board of health may order such prohibition upon a finding that the construction and use of additional individual sewage disposal systems in the defined area will constitute a hazard to the public health OR WATER QUALITY. In such a hearing, the local board of health may request affected property owners to submit engineering and geological reports concerning the defined area and to provide a study of the economic feasibility of constructing a sewage treatment works.

25-10-112. General prohibitions. (1) No city, county, or city and county shall issue to any person a permit to construct or remodel a building or structure ~~which~~ THAT is not serviced by a sewage treatment works, until a permit for an individual sewage disposal system has been issued by the local health department.

(2) No city, county, or city and county occupancy permit shall be issued to any person for the use of a building ~~which~~ THAT is not serviced by a sewage treatment works until a final inspection of the individual sewage disposal system has been made by the local health department, as provided for in section 25-10-106 (1) (h), and the installation has received the approval of the local health department.

(3) No individual sewage disposal system presently in use ~~which~~ THAT does not comply with the provisions of section 25-10-105 (1) (e) regarding minimum separation between the maximum seasonal level of the groundwater table and the bottom of an absorption system shall be permitted to remain in use without compliance with this article and the rules ~~and regulations~~ adopted under this article. ~~later than October 1, 1975.~~

(4) Construction of cesspools, defined as covered underground receptacles ~~which~~ THAT receive untreated sewage from a building and permit the untreated sewage to seep into surrounding soil, is prohibited.

(5) Not more than one dwelling, commercial, business, institutional, or industrial unit shall be connected to the same individual sewage disposal system unless such multiple connection was specified in the application submitted and in the permit issued for the system.

(6) No person shall construct or maintain any dwelling or other occupied structure ~~which~~ THAT is not equipped with adequate facilities for the sanitary disposal of sewage without endangering the public health OR WATER QUALITY.

(7) 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 any of the provisions of this article commits a class 1 petty offense, as

defined in section 18-1-107, C.R.S.:

(a) Constructs, alters, installs, or permits the use of any individual sewage disposal system without first having applied for and received a permit as provided for in section 25-10-105 (1) ~~(f)~~ (g) or section 25-10-106;

(b) Constructs, alters, or installs an individual sewage disposal system in a manner ~~which~~ THAT involves a knowing and material variation from the terms or specifications contained in the application or permit;

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

(d) Conducts a business as a systems contractor without having obtained the license provided for in section ~~25-10-108 (1)~~ 25-10-109 (1) in areas in which the local board of health has adopted licensing regulations pursuant to said section;

(e) Conducts a business as a systems cleaner without having obtained the license provided for in section ~~25-10-108 (2)~~ 25-10-109 (2) in areas in which the local board of health has adopted licensing regulations pursuant to said section;

(f) FALSIFIES OR MAINTAINS IMPROPER RECORD KEEPING CONCERNING SYSTEM CLEANING ACTIVITIES NOT PERFORMED OR PERFORMED IMPROPERLY; OR

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

(2) UPON A FINDING BY THE LOCAL BOARD OF HEALTH THAT A PERSON IS IN VIOLATION OF THE PROVISIONS OF THIS ARTICLE OR THE 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. SUCH A REQUEST SHALL BE FILED WITHIN THIRTY DAYS AFTER THE PENALTY ASSESSMENT IS ISSUED. A HEARING BEFORE THE LOCAL BOARD OF HEALTH PURSUANT TO THIS SUBSECTION (3) SHALL BE CONDUCTED IN ACCORDANCE WITH SECTION 24-4-105, C.R.S.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 1997, and shall apply to offenses committed on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 28, 1997