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BENTON COUNTY MINNESOTA  
MARILYN J NOVAK  
COUNTY RECORDER

By: BN

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## DOCUMENT COVER SHEET

Document Name: **ORDINANCE NO. 457**

**Benton County of**

**The Public**

Document Date:

This cover sheet is being attached to this document to provide room for recording information and is considered part of this document

*Dept of Development  
Foley  
no fee*

## BENTON COUNTY ORDINANCE NO. 457

WHEREAS, the Benton County Department of Development instituted proceedings to amend the Benton County Ordinance 185; and,

WHEREAS, on January 26, 2016 and January 27, 2016, Notice of Public Hearing and intent to amend Benton County Ordinance was published in the official newspapers of the county; and,

WHEREAS, on February 11, 2016 and March 10, 2016 the Benton County Planning Commission held a public hearing; and,

WHEREAS, on April 5, 2016 the Benton County Board of Commissioners held a public hearing and approved the proposed ordinance amendment; and,

NOW PURSUANT TO THE AUTHORITY VESTED BY MINNESOTA STATUTES SECTION 394.25, THE BENTON COUNTY BOARD OF COMMISSIONERS ORDAINS:

That the following be amended as follows:

### **9.6 SUBSURFACE SEWAGE TREATMENT SYSTEMS (SSTS)**

(Ord. #432, effective 1/2/09, amended)

#### **9.6.1 PURPOSE, OBJECTIVE AND AUTHORITY**

##### **A. Purpose**

The purpose of this ordinance is to establish minimum requirements for regulation of individual sewage treatment systems (ISTS) and mid-size subsurface sewage treatment systems (MSTS) collectively referred to as subsurface sewage treatment systems (SSTS) for the treatment and dispersal of sewage within the applicable jurisdiction of the County to protect public health and safety, groundwater quality, and prevent or eliminate the development of public nuisances. It is intended to serve the best interests of the county's citizens by protecting its health, safety, general welfare, and natural resources.

##### **B. Objectives**

1. The protection of lakes, rivers and streams, wetlands, and groundwater in Benton County is essential to the promotion of public health, safety, welfare, socioeconomic growth and development of the County.
2. Given the extensive resources and numerous supplies of surface water and groundwater and their susceptibility to contamination, the regulation of proper SSTS construction, reconstruction, repair and maintenance is necessary to prevent

the entry and migration of contaminants, thereby protecting the degradation of surface water and groundwater quality.

3. The establishment of minimum standards for SSTS placement, design, construction, reconstruction, repair and maintenance is necessary to prevent contamination and, if contamination is discovered, the identification and control of its consequences and the abatement of its source and migration.
4. The appropriate utilization of privy vaults and other non-water carried sewage collection and storage facilities.
5. The provision of technical assistance and education, plan review, inspections, SSTS surveys and compliance investigations to prevent and control water-borne diseases, lake degradation, groundwater related hazards, and public nuisance conditions.

**C. Authority**

This Ordinance is adopted pursuant to Minnesota Statute§ 115.55; Minnesota Statute §§145A.01 through 145A.08; Minnesota Statute §375.51; or successor statutes, and MN. Rule Ch. 7080, Ch. 7081, Ch.7082; Ch. 7083; or successor rules.

**9.6.2 GENERAL PROVISIONS**

**A. Scope**

This Ordinance regulates the siting, design, installation, alterations, operation, maintenance, monitoring, and management of all SSTS within the County's applicable jurisdiction including but not necessarily limited to individual SSTS and 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 system that has been permitted by the Minnesota Pollution Control Agency (PCA).

**B. Jurisdiction**

The jurisdiction of this Ordinance shall include all lands of the County except for incorporated areas or areas under an annexation or joint powers agreement that administer a Subsurface Sewage Treatment System (SSTS) program by Ordinance within their jurisdiction, which is at least as strict as this Ordinance and has been approved by the County. The County Department of Development shall keep a current list of local jurisdictions within the County administering a SSTS program.

**C. County Administration**

The Department of Development shall administer the SSTS program and all provisions of this Ordinance. At appropriate times, the County shall review this and revise and update this Ordinance as necessary. The County shall employ or retain under contract qualified and appropriately licensed professionals to administer and operate the SSTS program. The Department shall have the following duties and responsibilities:

1. To review all SSTS applications;
2. To issue all permits required by this Ordinance;
3. To inspect work in progress and to perform the necessary tests to determine its conformance with this Ordinance
4. To investigate complaints regarding SSTS and septic disposal;
5. To issue cease and desist orders and notices of violation, pursuant to this Ordinance;
6. To maintain proper records for SSTS and septic disposal including site evaluation records, design records including calculations and summaries for all system component sizing and as-builts.
7. To submit annual reports to the PCA to demonstrate enforcement of the local Ordinance per Minn.. R. 7082.0040, subp. 5.
8. Provide programs by the Department and/or others to increase public awareness and knowledge of SSTS. Programs may include distribution of educational materials through various forms of media and SSTS workshops focusing on SSTS planning, construction, operation, maintenance, and management.

D. State of Minnesota

1. Where a single SSTS or group of SSTS existing or proposed under common ownership are within one-half mile of each other, have a combined design flow greater than 10,000 gallons per day, the owner or owners must obtain a State Disposal System (SDS) permit from PCA according to Chapter 7001.
2. SSTS serving establishments or facilities licensed or otherwise regulated by the State shall conform to the requirements of this Ordinance including, but not limited to, campgrounds, resorts, mobile home parks, and eating and drinking establishments.
3. For dwellings including apartments, townhouses, resort units, rental cabins and condominiums, the sum of the flows from all existing and proposed sources under single management or ownership will be used to determine the need for a SDS permit.

4. Any SSTS requiring approval by the State of Minnesota shall also comply with this Ordinance.
5. Plans and specifications must receive appropriate state and local approval before construction is initiated.

**E. Plumbing Code Administration**

1. The plumbing code shall be administered by the local building code official as it relates to the hook-up of the water using device to the septic tank or system.
2. Verification that the septic system hook-up is compliant with the plumbing code shall be provided by the building code official prior to issuance of a certificate of compliance.

**9.6.3 GENERAL REQUIREMENTS**

**A. Standards Adopted by Reference**

The County hereby adopts by this reference Minn. R. Chs. 7080 through 7083 in their entirety as now constituted and from time to time amended. This adoption does not supersede the County's right or ability to adopt local standards that are in compliance with Minn. Stat. §115.55, subd. 7.

**B. Retroactivity**

Except as explicitly set forth in Sect. 9.6.3 paragraph C below, all provisions of this Ordinance shall apply to any SSTS regardless of the date it was originally permitted.

**C. Existing Permits**

Unexpired permits which were issued prior to the effective date shall remain valid under the terms and conditions of the original permit until the original permit expiration date.

**D. Existing SSTS without Permits**

Existing SSTS, including those with no permits of record, shall require a permit for new construction/replacement and the portion being replaced or upgraded shall be brought into compliance with the requirements of this Ordinance regardless of the date they were originally constructed. The portion of the SSTS that is not being replaced or upgraded is not required to be brought into compliance with this Ordinance unless it is failing or in the opinion of the designer is required to be upgraded.

**E. Sewerability Requirements**

1. All newly created lots, vacant lots and/or vacant lot of records shall have a minimum of two Type I septic sites. A site without a septic system or a septic system that has not been in operation for more than five years shall be considered a vacant lot. (Ord.#436, adopted 4/7/09)
2. A Type III system for new construction, shall be known as a "Local Alternative Septic System" and may be permitted for newly created lots, vacant lots and/or vacant lot of records when:
  - a. One Type I site is found, or no Type I sites are found
  - b. Said system is not located within shoreland areas, wellhead protection areas or systems serving food, beverage, or lodging establishments;
  - c. Said system is for a single-family dwelling unit;
  - d. Said system is not within a wetland as determined by a Certified Wetland Delineator; and
  - e. Said system is designed in accordance with 9.6.7 (C) of this ordinance.

**F. Sewerability Exceptions**

Any newly created lot which is deed restricted for agricultural/recreational use, is exempt from demonstrating Type I septic sewerability requirements of Sect. 9.6.3 (E) (1) and Type III septic sewerability requirements of Sect. 9.6.3 (E)( 2). Type I sewerability requirements are not required for a replacement sewage treatment system in which a dwelling or other establishment is removed, and a new dwelling or other establishment is built within five years of the date of the removal of the existing dwelling or other establishment.

**9.6.4 PROHIBITIONS**

**A. 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 that is not provided with a SSTS that disposes of wastewater in a manner consistent with the provisions of this Ordinance.

**B. Sewage Discharge to Ground Surface or Surface Water**

It is unlawful for any person to construct, maintain, or use any SSTS under this Ordinance that results in raw or partially treated wastewater 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 (NPDES) program by the PCA.

**C. Sewage Discharge to a Well or Boring**

It is unlawful for any person to discharge raw or treated wastewater into any well or boring as described in Minn. R. 4725.2050, or any other excavation in the ground that is not in compliance with this Ordinance.

**D. Discharge of Hazardous/Commercial or Deleterious Materials**

It is unlawful for any person to discharge into any treatment system regulated under this Ordinance any hazardous, commercial or deleterious material that adversely affects the treatment or dispersal performance of the system or groundwater quality. (Ord. #436, adopted 4/7/09)

**E. Wetlands**

It is prohibited to construct or place an SSTS, or any part thereof, in a wetland as defined in Minn. Stat. §103G.005; except replacement systems with no other alternative may under 8420.0420 exception standards subpart 6A(2).

**9.6.5 SSTS PRACTITIONER LICENSING**

**A. Licensing Requirement**

No person shall engage in site evaluation, inspection, design, installation, construction, alteration, extension, repair, maintenance, or pumping of SSTS without an appropriate and valid license issued by PCA in accordance with Minn R. Ch. 7083, except as exempted in Minn. R. 7083.0700.

**B. Indemnification Agreement**

Unlicensed persons installing a Type I Septic System or Holding Tank on their property for their dwelling as permitted by Minn. R. 7083.0700 shall provide an executed agreement to the Department which indemnifies and saves the County, holding it harmless from all losses, damages, costs, including attorney's fees, and charges that may be incurred by Benton County due to the failure of the permittee to conform to and comply with the provisions of this Ordinance.

**9.6.6 SSTS PERMITTING**

**A. Permits Required**

It is unlawful for any person to construct, install, modify, replace, rejuvenate, remediate, or operate a subsurface sewage treatment system without the appropriate permit from Benton County. The issuing of any subdivision, permit, variance, or conditional use under the provisions of this Ordinance shall not absolve the applicant's responsibility to obtain any other required permit. The purpose of this permit is to ensure that the proposed construction activity is sited, designed, and constructed in accordance with the provisions of this Ordinance by an appropriately

certified and/or licensed practitioner(s). A septic permit is not required for minor repairs or replacements of system components 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 as determined by the Department. (Ord. #436, adopted 2/7/09)

**B. Septic Permit Required to Obtain Building or Land Use Permit**

For any property where a SSTS permit is required, approval and issuance of a valid SSTS septic permit must be obtained before a building or land use permit will be issued by the Department or Building Official.

**C. Permit Application Requirements**

Septic permit applications shall be made on forms provided by the Department of Development and signed by the applicant/owner and an appropriately certified practitioner including the practitioner's license number and date of expiration. The applications shall include the Site Evaluation Report as described in Minn.

R. 7080.1730, Design Report as described in Minn. R. 7080.2430, a Management Plan as described in Minn. R. 7082.0600. Applications shall be considered incomplete if they are not on the County forms, do not include a management plan and, when applicable, a monitoring plan, mitigation plan, pumping agreement or deed restriction. Applications shall also be considered incomplete if they are not signed by the owner/applicant and designer. (Ord. #436, adopted 2/7/09)

**D. SSTS Designer Responsibilities**

1. Upon completion of any SSTS design, the SSTS designer shall review the proposed SSTS design with the applicant/owner. At that time, the designer shall have the applicant/owner sign the SSTS application, and any other required management plan or operational agreement before the design is released to the applicant/owner or installer.
2. If a proposed SSTS design cannot meet a technical requirement of Minn. R. Chs. 7080 through 7083 or Benton County Development Code Section 9.6, it is the responsibility of the SSTS designer to contact the Department of Development before releasing the proposed SSTS design to the applicant/owner.
3. If it is determined by the designer and the Department of Development, that the proposed SSTS design would require a variance, the designer shall discuss this finding with the applicant/owner. The need for a variance shall be clearly indicated on a separate sheet of paper and attached to the proposed SSTS design. A variance application shall accompany the septic permit application. The septic application shall be considered incomplete until the variance is approved.

**E. Application Review and Response**

The Department shall review a permit application and supporting documents in accordance with Minn. Stat. §15.99. Upon satisfaction that the proposed work will conform to the provisions of this Ordinance, the Department shall issue a written permit authorizing construction of the SSTS as designed. In the event that the applicant makes a change to the approved application, the applicant must resubmit an amended application to the Department detailing the changed conditions prior to initiating or continuing construction, modification, or operation. The Department may approve or deny the amended application. If the permit application is incomplete or does not meet the requirements of this Ordinance the Department shall deny the application or request additional information. A notice of denial or request for additional information shall be provided to the applicant with the reason for the denial or request for additional information. Applications shall be considered incomplete if they are not on County forms, do not include the required signatures, do not include a management plan, and when applicable a monitoring plan, mitigation plan, pumping agreement or appropriate deed restrictions.

**F. Fees**

The County Board shall establish fees for permits and reviews required by this Ordinance. All fees shall be paid prior to the issuance of the septic permit or certificate of compliance whichever shall apply.

**G. Appeal**

The applicant may appeal the Department's decision to deny the septic permit in accordance with the County's established policies and appeal procedures in accordance with Section 11.4.7 of the Development Code. (Ord. #436, adopted 2/7/09) If a septic permit is denied based on a failure to obtain a variance to a requirement of 9.6, then the variance denial shall be appealed in accordance with Minn. Stat. §394.27 and not Section 11.4.7 of the Development Code.

**H. Permit Expiration**

The septic permit is valid for a period of no more than one year from its date of issue or satisfactorily completion, whichever is shorter. The Department may, at its sole discretion, provide an expiration of the permit shorter than one year. Satisfactory completion of construction shall be determined by receipt of final record drawings and a signed certification that the construction or installation of the system was completed in substantial conformance to the approved design documents by a qualified employee of the Department. The Department may at its sole discretion grant an extension of the septic permit if requested in writing by the owner prior to the expiration of the permit.

**I. Suspension or Revocation**

The Department may suspend or revoke a septic permit issued under this section when issuance of the permit was based on false statements or misrepresentations of facts made by the applicant. The Department may suspend or revoke a septic permit issued under this section when there have been unauthorized changes to the system design that alter the original function of the system, change to the treatment capacity of the system, change to the location of the system, or otherwise change to 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 permit holder. If the permit is suspended or revoked, installation or modification of a treatment system may not commence or continue until a valid septic permit is obtained.

J. Posting

The septic permit should be posted on the property in such a location and manner so that the permit is visible and available for inspection until construction is completed and certified.

9.6.7 SSTS STANDARDS

A. Benton County Standards:

The County hereby adopts by reference Minn. R. Chs. 7080 through 7083 as amended from time to time. In accordance with Minn. Stat. §115.55, subd. 7, Benton County has adopted more restrictive standards than required by Minn. R. Chs. 7080 through 7083.

B. Additional SSTS Design Requirements

In addition to the design requirements contained in Minn. R. Chs. 7080 through 7083, the following more restrictive requirements shall be required for all SSTS designs submitted to the Department. (Ord. #436, adopted 2/7/09)

1. A minimum of three soil borings are required in the primary site and a minimum of one boring is required for the secondary site; however, if the primary and secondary site do not adjoin each other a minimum of two soil borings are required in both the primary and secondary locations. Soil borings must be representative of the soil conditions throughout the absorption area and shall be verified by staff.
2. SSTS for new construction shall have a minimum of three feet of separation to the periodically saturated soils, bedrock or other restrictive layer, including one foot in the original soil.
3. The depth of each soil boring shall be to the water table, bedrock or three feet below the proposed depth of the system, whichever is less.

4. An authorized representative from the Department of Development shall verify the soil borings prior to issuance of the certificate of compliance for any new or replacement system.
5. The proposed location of the soil treatment area shall be roped or staked upon completion of the SSTS design.
6. The application shall provide a fixed reference point and distances from the proposed sites and/or borings to that reference point including a benchmark with an assumed elevation.
7. All SSTS or part thereof that will no longer be used and/or are found out of compliance shall be identified on the SSTS design.
8. Classification I flows shall be used to determine the average design flow for any SSTS design.
9. If the map unit name of the soil listed in the Benton County Soil Survey states "fine sand," the SSTS designer shall conduct a sieve analysis, or size the soil treatment area using the loading rates in Table IXa in Minn. R. 7080.2150.
10. The absorption area of mounds shall be based upon Table IXa in Minn. R. 7080.2150 from either the percolation rate or the heaviest soil texture encountered.
11. Table IX entitled "Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Detail Soil Descriptions" and Table IXa entitled "Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Percolation Tests" from Minnesota Rules, Chapter 7080.2150, Subp. 3(E) are herein adopted by reference and either shall be used to size SSTS infiltration areas for SSTS design.
12. All newly created lots, vacant lots and/or vacant lots of record shall have a minimum of two Type I septic sites. A site without a septic system or a septic system that has not been in operation for more than five years shall be considered a vacant lot.

C. Additional Local Alternative Septic System Requirements.

In addition to the design requirements contained in Minn. R. Chs. 7080 through 7083, the following requirements shall be required for all Local Alternative Septic System Requirements. (Ord.# 457, adopted 04/05/16)

1. A minimum of three soil borings are required in the primary site and a minimum of two borings are required in the three secondary sites. These will be verified by county staff or designee to determine the depth to the limiting layer.
2. Designers shall determine the linear contour loading rate for the drain field locations based upon Table A.

Table A. Effluent absorption and contour loading rates for determining absorption area size and configuration using detailed soil descriptions.\*

USDA Soil Classification	Soil Structure and Grade	Effluent Treatment Level	Absorption Loading Rate (gpd/ft <sup>2</sup> ) <sup>†</sup>			Contour Loading Rate (gpd/ft <sup>2</sup> ) <sup>†</sup>		
			0-3% Slope	4-7% Slope	>10% Slope	0-3% Slope	4-7% Slope	>10% Slope
Texture								
very coarse sand, coarse sand, loamy very coarse sand, or loamy coarse sand	≥ 35% coarse fragments	single grain <sup>‡</sup>	1.0	1.0	1.0	24-36	24-36	24-36
	< 35% coarse fragments	single grain <sup>‡</sup>	LR	2.0	6	8	10	10
sand, loamy sand	≥ 35% coarse fragments	single grain <sup>‡</sup>	0.5 <sup>§</sup>	1.0	5	6	7	9
	< 35% coarse fragments	single grain or weak <sup>¶</sup>	0.8	1.6				
fine sand, loamy fine sand, very fine sand, loamy very fine sand	weak to strong non-platy <sup>¶</sup>	0.6	1.0	3.5	4	5	4.5	6
	massive <sup>¶</sup>	0.4	0.8	3	3.5	4	5	3.5
coarse sandy loam, sandy loam	moderate to strong non-platy <sup>¶</sup>	0.6	1.0	4.5	5.5	6	9	5.5
	moderate or weak <sup>¶</sup>	0.5	0.8	4	4.5	5.5	6	4.5
fine sandy loam, very fine sandy loam, loam	moderate to strong non-platy <sup>¶</sup>	0.6	0.8	3.5	4	5	7	5.5
	moderate or weak <sup>¶</sup>	0.4	0.6	3	3.5	4	5	4
silt loam	moderate to strong non-platy <sup>¶</sup>	0.5	0.8	3.5	4	4	5	7
	moderate or weak <sup>¶</sup>	0.4	0.6	3	3.5	4	5	5.5
sandy clay loam, clay loam, silty clay loam	moderate to strong non-platy <sup>¶</sup>	0.4	0.6	3	3.5	4	3	3.5
	moderate to strong non-platy <sup>¶</sup>	0.2	0.3	3	3.5	3	3.5	3.5

\* Only applies to original soil horizons with < 50% coarse fragments (particle sizes having > 2.00 mm nominal diameters, i.e., gravel or coarser). Absorption area surfaces must not be in contact with soil horizons having ≥ 50% coarse fragments.

† Estimated rates for STS. For soil conditions not included in the table, e.g., non-original soil, <6 in., ≥ 50% coarse fragments, firmer consistency, etc., evaluation of soil morphology and contour loading rate by a licensed Professional Soil Scientist (PSS) who is also an MPCA-licensed STS designer is required. Rates projected using hydraulic conductivities measured by a licensed PSS designer supersede table estimates.

‡ Pressure distribution required.

<sup>§</sup> Unsaturated.

<sup>¶</sup> Residential strength septic tank effluent with up to 170 mg BOD<sub>5</sub>/L, 60 mg TSS/L, and 25 mg O&G/L.

<sup>||</sup> Additionally pretreated septic tank effluent with up to 25 mg BOD<sub>5</sub>/L and 30 mg TSS/L.

<sup>\*\*</sup> Non-cemented, loose to very friable consistency.

<sup>\*\*</sup> LR = Liner required. Use clean sand for liner, to separate distribution media from soil, and its associated absorption loading rate (1.0 gpd/ft<sup>2</sup>).

<sup>\*\*</sup> Very friable to friable consistency.

<sup>¶</sup> Very friable to firm consistency.

3. Designer shall verify that said system is not located within shoreland areas or wellhead protection areas or systems serving food, beverage, or lodging establishments.
4. A minimum of six inches of unsaturated soil is required
5. The System shall be time dosed according to linear contour loading rates.
6. The Designer shall sign the design.
7. The County shall allow additional perforation spacing (3.5 to 5ft), Minnesota Rules, Chapter 7080.2050 Subp. 4E Table VI: Maximum Number of Perforations Per Pressure Distribution Lateral .

**D. Septic Tank Setback Requirements**

Sewage tanks, aerobic tanks, holding tanks, and sealed privies and any part thereof shall be located no closer to the following features than the minimum horizontal separation distances as stated in Table 1.

Table 1.

Source	Septic Tank Setback
Structures	10 ft.
Property Lines	10 ft.
Road right-of-way	5 ft.
Road right-of-way in Shoreland	0 ft.

**E. Soil Treatment System (Drainfield) Setback Requirements**

All soil treatment systems of an SSTS shall be set back the following minimum horizontal separation distances from the features given in Table 2.

Table 2.

Source	Drainfield Setback
Structures	20 ft.
Property Line	10 ft.
Road right-of-way	5 ft.
Road right-of-way in Shoreland	0 ft.

**F. Shoreland Setbacks**

All SSTS's shall be located in accordance with the minimum horizontal separation setback distances from Department of Natural Resources designated lakes, rivers and streams as stated in Table 3.

Table 3.

Shoreland District	Septic/Lift Tank Setback	Drainfield Setback
Agricultural/Urban & Tributary Rivers	75 ft.	75 ft.
Bluffs	30 ft.	30 ft.
Recreational Development Lakes	75 ft	100 ft
Natural Environment Lakes & Streams	150 ft.	150 ft.
Transitional/Forested Rivers	100 ft.	150 ft.

#### G. Winter SSTS Designs

A complete SSTS design, including soil borings and percolation tests are required year round. If weather, frost or light conditions do not permit a complete design to be conducted and soils verified by the Department, the design shall be considered incomplete.

#### H. Incomplete SSTS Installations due to Winter/Wet Soil Conditions

If the soil treatment system cannot be installed due to frost or wet soil conditions and the installer agrees to install the septic tank as a temporary holding tank system, the owner shall submit a holding tank pumping agreement with a PCA licensed maintainer to the Department prior to occupancy. Records of the frequency of pumping shall be kept for the Departments review or request for submission. (Ord. #436, adopted 4/7/09)

#### I. Determination of Hydraulic Loading Rate and SSTS Sizing

1. Hydraulic Loading Rate and SSTS Sizing shall be calculated using Table IXa from Minn. R. 7080.2150, subp. 3(E) entitled "Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Percolation Tests" and herein adopted by reference shall be used to determine the hydraulic loading rate and infiltration area for all SSTS permitted under this Ordinance.
2. For all Local Alternative Septic Systems Table A Section 9.6.7 C shall determine the Hydraulic Loading Rate and SSTS sizing based on Contour Loading Rates.

#### J. Holding Tanks

Holding tanks for new residential dwellings are prohibited. Holding tanks may be allowed for replacement SSTS systems only if a drainfield cannot be installed. The

final determination of the need for a holding tank shall be made by the Department. It is the responsibility of the designer to contact the Department before releasing the holding tank design to the applicant. (Ord. #436, adopted 4/7/09)

1. If a holding tank is permitted by the Department, the property owner shall:
  - a. Provide to the Department a holding tank Management Plan with the application; and
  - b. Maintain receipts of all maintenance performed. These records are to be available for submission and/or review by the Department.
  - c. The holding tank shall have a minimum capacity of at least 1,500 gallons or an amount equal to 400 gallons multiplied by the number of bedrooms in the dwelling which the tank will serve, whichever is greater.
  - d. An operating permit shall be required.

2. Low Volume Users

Holding tanks may be allowed for low volume uses subject to meeting the provisions of Section 9.6.7(I)(1)(a)-(d). Low volume users include the following:

- a. An accessory building with no more than two water using devices that may consist of only a sink and/or toilet.
- b. A place of business with no more than three water using devices that may consist of only a sink, toilet, emergency shower and/or washing machine.
- c. A township meeting hall that is not open to the public except when conducting official township business.

#### K. Additional SSTS Construction Requirements

In addition to the construction requirements contained in Minn. R. Chs. 7080 through 7083, the following additional requirements shall be met for the construction of SSTS systems:

1. Schedule 40 sewer pipe shall extend a minimum of 3 feet beyond the last septic tank and/or lift tank.
2. To prevent freezing problems, the sewer line from the lift tank to a pressurized soil treatment area shall be protected from sagging or bending.
3. The final dimensions of an SSTS mound system (the upslope and downslope calculations of the berm) shall be scarified and contain clean sand as defined in Minn. R. 7080.1100 subpart 16 and 7080.2220, subpart 3, item C.
4. Clean sand used in the construction of mound systems shall be landscaped to a minimum of 4 horizontal units to 1 vertical unit for all new construction. Three horizontal units to 1 vertical unit may be used for replacement systems if determined

by the Department that 4 horizontal units to 1 vertical unit cannot be accommodated on-site.

5. Elevation readings (in reference to the design benchmark) shall be required at the time of the Department's inspection of all sewage treatment systems.
6. The top of the sewage tank for a new system shall not be buried more than 4 feet from the final grade unless specifically approved by the Department.

L. Bedroom Addition(s)

1. A bedroom addition requires the submission of a compliance inspection. A compliant system shall require the property owner to develop and comply with a management plan for said system.
2. The addition of two or more bedrooms over the existing septic system's designed capacity will require a new design.
3. If a dwelling has an existing septic system that is not permitted and capacity cannot be determined, a new design shall be required and a new septic system shall be installed.

M. Reporting

Type III, Type IV, Type V, Local Alternative Septic Systems and other establishments that are required to install water meters or event counters shall take readings every day for the first 30 days that the system is in operation and once a month thereafter. The readings shall be submitted to the County on the form provided by the County by the following January 30<sup>th</sup>. After reviewing the readings the Department may request additional readings to be conducted or indicate that additional readings are no longer required to be submitted. Failure to submit the required readings shall be deemed a violation of the management plan. An agreement signed by the applicant shall be submitted with the application acknowledging these requirements. (Ord. #436, adopted 4/7/09)

N. Requirements

The following sections are in Minn. R. Ch. 7080 and are not more restrictive but are highlighted due to their importance.

1. SSTS in Floodplains

- a. SSTS shall not be located in a floodway and wherever possible, location within any part of a floodplain should be avoided. If no option exists to locate a SSTS outside of a floodplain, location within the flood fringe is allowed if the requirements in Minn. R. 7080.2270 are met. If an SSTS is

built in the flood fringe, the bottom of the distribution medium shall be at least as high as 10 year flood elevation. If the SSTS is a mound system, the bottom of the distribution medium shall be at least  $\frac{1}{2}$  foot above the 10 year flood elevation.

- b. If the 10 year flood elevation is not available, the SSTS must be located on the highest feasible area of the lot and must have location preference over all other improvements except the water supply well. The best hydrological information shall be used in determining the elevation of the bottom of the distribution medium. The best available hydrological information shall include, but is not limited to the following:
  - 1. Flood elevations provided from the Benton County Highway Department;
  - 2. Flood elevations provided from the Minnesota Department of Transportation;
  - 3. A flood elevation provided by a certified land surveyor; or
  - 4. A geological topographic/contour map.

## 2. Class V Injection Wells

All owners of new or replacement SSTS that are considered to be Class V injection wells, as defined in the 40 C.F.R. 144, are required by the Federal Government to submit SSTS inventory information to the Environmental Protection Agency as described in 40 C.F.R 144. Further, owners are required to identify all Class V injection wells in property transfer disclosures.

### 9.6.8 OPERATING PERMITS

#### A. SSTS Requiring an Operating Permit

- 1. An operating permit shall be required of all owners of new holding tanks, Type IV systems, Type V systems, Local Alternative Septic Systems, lodging (excluding bed and breakfast facilities unless served of a Type IV or V system), food and beverage facilities or MSTS. Sewage shall not be discharged to a holding tank or MSTS until the Department of Development certifies that the MSTS or holding tank was installed in conformance with the approved plans, receives the final record drawings of the MSTS, and a valid operating permit is issued to the owner. (Ord. #436, adopted 4/7/09)
- 2. The Department shall review the record drawings, operation and maintenance manual, management plan, maintenance and servicing contract, and any other pertinent documents as appropriate for accuracy and completeness. If any deficiencies are identified, the operating permit shall be denied until the deficiencies are corrected to the satisfaction of the Department. If the submitted

documents fulfill the requirements, the Department shall issue an operating permit in accordance with Minn. Stat. §15.99.

3. The Department may not amend an existing permit to reflect changes in this Ordinance until such time the permit term has expired and is renewed unless an amendment is necessary to eliminate an imminent threat to public health or safety.
4. The Department may suspend or revoke any operating permit issued under this section for any false statements or misrepresentations of facts on which the operating permit was issued or if the owner fails to meet the requirements of the operating permit. Notice of suspension revocation and the reasons for revocation shall be conveyed in writing to the owner. If suspended or revoked, the Department may require that the treatment system be removed from service, operated as a holding tank, or abandoned in accordance with Section 9.6.14. At the Department's discretion, the operating permit may be reinstated or renewed upon the owner taking appropriate corrective actions.
5. Systems found to be out of compliance with the operating permit shall be required to bring the SSTS into compliance within 30 days.

B. Compliance Monitoring Type IV Systems, Type V Systems, Food and Beverage Facilities or MSTS

1. Type IV Systems, Type V Systems, Local Alternative Septic Systems, MSTS, food and beverage facilities shall require monitoring performed by licensed service provider hired by the holder of the operating permit in accordance with the monitoring frequency and parameters stipulated in the permit.
2. A report shall be submitted to the Department on a form provided by the Department on or before the compliance reporting date stipulated in the operating permit. The report shall contain a description of all maintenance and servicing activities performed since the last compliance monitoring report as described below:
  - a. Owner name and address
  - b. Operating permit number
  - c. Average daily flow since last compliance monitoring report
  - d. Description of type of maintenance and date performed
  - e. Description of samples taken (if required), analytical laboratory used, and results of analyses
  - f. Demonstrate compliance with Minn. R. 7080.2350. (Type IV Systems)
  - g. The test from the effluent (before discharge into the soil treatment system) as determined by the County in the operating permit.
  - h. Problems noted with the system and actions proposed or taken to correct them
  - i. Name, signature, license and license number of the licensed professional who performed the work

3. Type IV systems, Type V systems, Local Alternative Septic Systems, food and beverage facilities or MSTS operating permits shall expire on January 30<sup>th</sup>. The owner of the operating permit shall apply for renewal of their operating permit by December 30<sup>th</sup>. The operating permit renewal period shall be determined by the County. (Ord. #436, adopted 4/7/09)

C. Holding Tanks

Owners of holding tanks shall provide to the Department of Development a copy of a valid monitoring and disposal contract executed between the owner and a licensed maintenance business, which guarantees the removal of the holding tank contents in a timely manner and that prevents an illegal discharge. A monitoring and disposal contract is not required for a farmer who is exempt from licensing pursuant to Minn. R. 7083.0700 (D). The owner of the operating permit shall apply for renewal of their operating permit by December 30<sup>th</sup>. (Ord. #436, adopted 4/7/09)

### 9.6.9 MANAGEMENT PLANS

#### A. SSTS Requiring Management Plans

Management plans are required for all new or replacement SSTS, including Local Alternative Septic Systems. The management plan shall be submitted to the Department with the septic permit application for review and approval. The purpose of management plans is to describe how a particular SSTS is intended to be operated and maintained to sustain the performance required. The plan is to be provided by the certified designer to the system owner when the treatment system is commissioned. The Department shall be notified of any system modifications made during construction and the management plan revised and resubmitted at the time of final construction certification. (Ord. #436, adopted 4/7/09)

#### B. Required Contents of a Management Plan

Management plans shall include:

1. Signature of the designer and owner detailing that the plan has been reviewed and understood by both parties;
2. Operating requirements describing tasks that the owner can perform and tasks that a licensed service provider or maintainer must perform;
3. Monitoring requirements;
4. Maintenance requirements including maintenance procedures and a schedule for routine maintenance;
5. Statement that the owner is required to notify the Department when the management plan requirements are not being met;
6. Disclosure of the location and condition of the additional soil treatment and dispersal area on the owner's property or a property serving the owner's residence.
7. Require pumping the septic tank(s) at least once every three years and retention of receipts to demonstrate compliance.

#### C. Requirements for Systems not Operated under a Management Plan

SSTS that are not operated under a management plan or operating permit must inspect treatment tanks and remove solids at least every three years and retain the receipts to demonstrate compliance.

### 9.6.10 SOIL VERIFICATION

**A. Soil Borings**

1. Prior to approval of an administrative land split or final plat the Department of Development shall verify the soil borings submitted are compliant with Minn. R. Chs. 7080 through 7083, or compliant with 9.6.3(E)(2) General Requirements for Local Alternative Septic Systems.
2. Prior to issuance of the certificate of compliance for a new or replacement SSTS the County shall verify the soil borings submitted are compliant with Minn. R. Chs. 7080 through 7083, or with Local Alternative Septic System Requirements.

**B. Dispute Resolution**

1. In the event of a dispute between two designers on whether the soil or design meets the minimum requirements of the Ordinance the County shall review the site, upon request, and make the final determination.
2. In the event that a designer and the County have a dispute related to the design or soils meeting the minimum requirements of the Ordinance the County shall meet with the designer on-site to review the soils and design. If the dispute is unresolved the County and designer shall request a mutually agreeable licensed and septic certified soil scientist to review the site or agree upon a representative(s) from extension or MPCA in the SSTS program . The applicant shall provide a deposit in an amount to be determined by the County to cover the cost of the soil scientist and County review. Both parties shall agree in writing that the soil scientist findings shall be final. If the scientist determines the County correctly interpreted the soils the deposit will be retained and used to pay the scientist and County, with any extra money refunded to the applicant. If the soil scientist determines the designer was correct the deposit shall be refunded and the County will pay for the cost of the soil scientist review. If soils are reviewed with the soil scientist that was not previously reviewed by the County the County shall retain the deposit. All reviews with the soil scientist shall be conducted in a pit that is a minimum of 4 feet by 4 feet with a depth of at least 3 feet below the bottom of the proposed system or until bedrock or the water table, whichever is less.

#### 9.6.11 COMPLIANCE INSPECTIONS CONDUCTED BY THE COUNTY

##### A. Department Responsibility

The Department shall inspect all newly constructed SSTS in Benton County. All inspection requests shall conform to the following:

1. All required permit fees shall be paid for prior to issuing the permit or certificate of compliance;
2. The installation and construction of the SSTS shall be in accordance with the permit requirements and application design.
3. The applicant shall notify the Department prior to the completion and covering of the SSTS for an inspection. If any SSTS component is covered before being inspected and approved by the Department, it shall be uncovered upon the direction of the Department;
4. It shall be the duty of the permittee to notify the Department on the workday preceding the day inspection is desired;
5. Proposals to alter the permitted construction shall be reviewed by a designer and the proposed change shall be approved by the Department prior to construction.
6. Inspections shall be conducted at least once during the construction of the SSTS at such time as to assure that the system has been constructed per permit requirements.
7. A designated certified professional shall be on site during the SSTS compliance inspection by the Department.
8. The Department shall be given access to enter a property at any reasonable time to inspect and/or monitor the SSTS system.

##### B. As-Builts Requirements

If the applicant provides proper notice as described above and the Department does not appear for an inspection within 24 hours after the set time, the applicant may complete the installation. The applicant shall then file a signed as-built packet provided by the Department. The as-built packet shall be submitted to the Department within five business days of the date of the SSTS installation. The as-built shall include a certified statement that the work was installed in accordance with submitted design and permit conditions and that it was free from defects. The Certificate of Compliance shall not be released until the as-built packet is submitted.

##### C. New Construction or Replacement SSTS

1. Compliance inspections must be performed on new or replacement SSTS to determine compliance with Minn. R. Chs. 7080 through 7083. SSTS found to be an imminent threat to public health or safety must be repaired or replaced within 120 days. SSTS that are determined to have operation or monitoring deficiencies must within 30 days be maintained, monitored or otherwise managed according to the operating permit or management plan. SSTS found to be noncompliant with other applicable requirements must be repaired or replaced according to the Department's requirements.
2. The certificate of compliance must include a certified statement by qualified employee who conducted the inspection that the SSTS is or is not in compliance with the Ordinance requirements. 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 Ordinance provisions with which the SSTS does not comply.
3. No SSTS shall be placed into operation until a valid certificate of compliance has been issued.

D. SSTS Inspection Reports

A certificate of compliance or notice of noncompliance shall be prepared by the Department following all SSTS inspections or from the review of submitted as-built plans.

1. A certificate of compliance or notice of noncompliance shall include a signed statement by the Department identifying the type of SSTS inspected and whether the SSTS is in compliance with Minn. R. 7080.1500.
2. A copy of the certificate of Compliance or notice of noncompliance shall be provided to the property owner within 15 days of the compliance inspection and a copy kept on file in the Department.
3. A certificate of compliance for a new SSTS is valid for 5 years from the date of issuance unless the Department finds evidence of an imminent threat to public health or safety.
4. The plumbing code shall be administered by the local building code official as it relates to the hook-up of the dwelling to the septic tank or system. Verification that the septic system hook-up is compliant with the plumbing code shall be provided by the building official prior to issuance of a certificate of compliance.
5. Electrical Inspections if needed shall be administered by the state electrical inspector as it relates to electrical connections to the septic system. Verification that the electrical work associated with the septic system is compliant with the electrical

code shall be provided by the state inspector prior to the issuance of a certificate of compliance.

**E. Failing Systems**

The County shall inspect an existing SSTS if there is evidence of a failing system. The County shall issue a notice of noncompliance if the County witnesses evidence of the failing system. The system shall be upgraded in accordance with Section 9.6.13.

**9.6.12 COMPLIANCE INSPECTION CONDUCTED BY A PRIVATE INSPECTOR**

**A. Criteria for Systems Constructed Before April 1, 1996**

SSTS built before April 1, 1996, must have at least 2 feet of vertical separation between the bottom of the dispersal system and seasonal saturation or bedrock. If the SSTS is located within an area designated as shoreland, wellhead protection or serves a food, beverage or lodging establishment the system shall be required to meet the requirements of Section 9.6.12(B).

**B. Criteria for Systems Constructed After March 31, 1996, or in a Designated Area**

SSTS built after March 31, 1996, with the exception of a Type IV or Type V system, shall have a 3 foot vertical separation between the bottom soil infiltrative surface and the periodically saturated soil and/or bedrock. SSTS located in the shoreland, wellhead protection or serving a food, beverage, or lodging establishment regardless of the year constructed shall have a three-foot vertical separation between the bottom soil infiltrative surface and the periodically saturated soil and/or bedrock. Existing systems that have no more than a 15 percent reduction in this separation distance (a separation distance no less than 30.6 inches) to account for settling of sand may be considered compliant under this Ordinance if the inspector states there is evidence of settling, measurement or interpretation of the restrictive layer. The vertical separation measurement shall be made outside the area of system influence but in an area of similar soil.

Type IV and Type V systems shall be reviewed as designed by, and meet the requirements of Minn. R. 7080 to determine compliance of the system.

**C. Compliance Inspection Requirements**

1. Compliance inspections shall be required when any of the following conditions occur:
  - a. When a construction permit is required to repair, modify, or upgrade an existing system;
  - b. Anytime there is an expansion of use of the building being served by an existing SSTS which may impact the performance of the system;

- c. Anytime there is a change in use of the property being served by an existing SSTS which may impact the performance of the system;
  - d. Submission of a variance application for an affected parcel;
  - e. Submission of a conditional/interim use permit for an affected parcel
  - f. Submission of a land use permit in which a dwelling or other establishment is removed and a new dwelling or other establishment is proposed.
  - g. At anytime as required by this Ordinance or the Department deems appropriate such as upon receipt of a complaint or other notice of a system malfunction.
2. Compliance inspections of existing SSTS shall be reported on the inspection report forms provided by the Minnesota Pollution Control Agency. The following conditions must be assessed, or verified:
  - a. Water tightness assessment of all treatment tanks including a leakage report;
  - b. Vertical separation distance between the bottom of the soil treatment and dispersal system and the periodically saturated soil or bedrock including vertical separation verification report unless the vertical separation has been verified by the County or another independent designer/inspector.
  - c. Compliance with the management plan or operating permit if applicable.
3. The entire system is to be evaluated for its compliance status. In evaluating the vertical separation of a soil treatment system found to be in compliance, the compliance inspector shall provide:
  - a. The elevation of the bottom of the rock bed;
  - b. The elevation of the depth to the restricting layer, if applicable, measured outside of the soil treatment system in an area of similar soil; and
  - c. A detailed sketch drawn to scale or dimension showing the location of the SSTS, the soil boring(s), and the bottom of the rock bed in relation to a referenced benchmark.

**D. Certificate of Compliance for Shoreland Areas**

A certificate of compliance on the affected property shall be provided to the Department as part of an application request in the shoreland for a:

1. Land Use Permit;
2. Variance, unless a variance is needed for the septic system or a new dwelling is proposed and the existing system will be required to be upgraded or replaced in which case a compliance inspection will be adequate;
3. Conditional/Interim Use Permit

E. Point of Sale Certification

1. No owner or other person acting with legal authority on behalf of an owner of a tract of land upon which a dwelling is located, or a tract of land upon which a structure is required to have an individual sewage treatment system is located, shall convey to another party said tract of land, unless all of the following requirements are met:
  - a. The seller shall provide a compliance inspection or a Benton County sewage treatment system inspection to the buyer at or before the closing date. The compliance inspection shall be submitted to the County with the property transfer. If the seller does not provide the compliance inspection the buyer shall be responsible for providing the compliance inspection to the County within 30 days of the property transaction. A valid compliance inspection is an inspection, conducted by an MPCA Designated licensed and certified professional, which is three years old or less indicating that the system is in compliance or is out of compliance. A valid Benton County sewage treatment system inspection is an inspection issued by the Department that is 5 years old or less. A compliance inspection shall not be valid if the Department finds evidence of an imminent health threat to public health and safety.
  - b. A Benton County sewage treatment system property transfer form shall be signed by both the buyer(s) and seller(s) and filed with the Benton County Auditor at the time of sale or transfer of the property.
  - c. Failure to submit a compliance inspection for a property transfer shall result in all future permits for the site to be denied until a completed compliance inspection form has been submitted.

2. Exemptions

A compliance inspection or a Benton County sewage treatment system inspection is not required to be filed with the Auditor's office at the time of sale or transfer of property if any of the following conditions exist:

- a. The property to be transferred has no structures usable for human habitations;
- b. The property to be transferred has no buildings with plumbing fixtures.
- c. A public sewer system, a community sewer system or a central sewer system services the dwelling(s) on the property to be transferred;
- d. The sale of land is exempt from the requirements that a certificate of real estate value (CRV) be filed with the County Auditor's office as described in Minn. Stat. §272.115, subd.1; or
- f. The sale or transfer completes a contract for deed or purchase agreement entered into prior to June 18, 2002. This subsection applies only to the original vendor and vendee on such a contract.
- g. The transfer is a foreclosure or tax forfeiture.

### 3. Winter Transfers

If the sale or transfer of property occurs during the winter months of November 15th through April 15th, the buyer shall complete the compliance inspection, if necessary, by the following June 1st. The buyer shall ultimately be held responsible by the County if the septic system is noncompliant and not brought into compliance within the timeframe provided by the Department or if a compliance inspection has not been completed.

### F. Inspection Forms

Upon completion of a compliance inspection of an existing SSTS, the inspector shall submit a certificate of compliance or a notice of noncompliance to the Department and the property owner within 15 days of the date of the compliance inspection. In completing the PCA compliance inspection form for existing sewage treatment systems, the compliance inspector shall complete the entire form, including, but not limited to the following information:

1. The parcel identification number of the property;
2. The reason why the compliance inspection is being performed; and
3. If necessary, the soil boring information which includes the depth of each horizon, the Munsell soil color and the texture of the soil.
4. If any of the above required information is not provided, the compliance inspection report will be considered incomplete.

#### 9.6.13 NOTICE OF NONCOMPLIANCE

A. If an existing SSTS is found to be out of compliance with this Ordinance, the property owner shall complete the following requirements, as applicable:

1. The owner of property on which a septic system is found to be out of compliance shall within 30 days after receipt of a notice of noncompliance submit a completed SSTS design using Department application forms and obtain a sewage treatment system permit from the Department.
2. An SSTS that is determined to be noncompliant shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this Ordinance within 12 months of receipt of a notice of noncompliance, unless it is considered an imminent threat to public health or safety.
3. An SSTS that is determined to be an imminent threat to public health or safety in accordance with Minn. R. 7080.1500 Subp. (4)(a), shall be upgraded, repaired,

replaced or abandoned by the owner in accordance with the provisions of this Ordinance within 120 days of receipt of a notice of noncompliance.

4. An owner/operator with an SSTS found to be out of compliance with its operating permit, management plan or monitoring plan shall bring the system into compliance with the plan within 30 days of the notice of noncompliance.

#### **9.6.14 ABANDONMENT CERTIFICATION**

##### **A. Purpose**

The purpose of the system abandonment certification is to ensure that a treatment system no longer in service is abandoned in a manner that protects public health, safety and water quality.

##### **B. Abandonment Requirements**

1. Whenever the use of a SSTS or any system component is discontinued as the result of a system repair, modification, replacement or decommissioning following connection to a municipal or private sanitary sewer, or condemnation or demolition of a building served by the system, further use of the system or any system component for any purpose under this Ordinance shall be prohibited.
2. Continued use of a treatment tank where the tank is to become an integral part of a replacement system or a sanitary sewer system requires the prior written approval of the Department.
3. An owner of an SSTS must abandon all components of the discontinued treatment system within 30 days of discontinuance.
4. Abandonment shall be completed in accordance with Minn. R. 7080.2500.
5. A report of abandonment certified by the licensed installation business shall be submitted to the Department. The report shall include:
  - a. Owner's name and contact information
  - b. Property address
  - c. System construction permit and operating permit
  - d. The reason(s) for abandonment
  - e. A brief description of the abandonment methods used, description of the system components removed or abandoned in place, and disposition of any materials or residuals, and receipts to document proper disposal.

##### **C. Abandonment Certificate**

Upon receipt of an abandonment report and determination that the SSTS has been abandoned according to the requirements of this Ordinance, the Department shall issue an abandonment certificate. If the abandonment is not completed according the requirements of this Ordinance the County shall notify the owner of the SSTS of the deficiencies, which shall be corrected within 30 days of the notice.

#### 9.6.15 VARIANCES

##### A. Variance Requests

A property owner may request a variance pursuant to county policies and procedures as stated in Section 11.5 of the Development Code. Variances that pertain to the standards and requirements of the State of Minnesota must be approved by the affected state agency pursuant to the requirements of the state agency. (Ord. #436, adopted 4/7/09)

##### B. Board of Adjustment Authority

The Board of Adjustment shall have the authority only to consider variances to horizontal setbacks from property lines, ordinary high water level, rights-of-way, structures, or buildings. The Board of Adjustment may also grant variances to permit a Type II-V system for new construction or creation of a new lot. Variance requests to deviate from the design flow determination procedures in Minn. R. 7081.0110 must be approved by Minnesota Pollution Control Agency if the deviation reduces the average daily estimated flow from greater than 10,000 gallons per day to less than 10,000 gallons per day or to provisions in Minn. R. 7080.2150, subp. 2 and 7081.0080, subp. 2 through 5 regarding the vertical separation required beneath the treatment and dispersal soil system and saturated soil or bedrock from the required three feet of unsaturated soil material (except as provided in Minn. R. 7080.1500 subp. 4 (d)) Variances to wells and water supply lines must be approved by the Minnesota Department of Health.

#### 9.6.16 ENFORCEMENT

##### A. 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, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable as defined by Minnesota State Law. Each day that a violation exists shall constitute a separate offense. In the event of a violation of this Ordinance, in addition to other remedies, the County Attorney may institute appropriate actions or proceedings to prevent, restrain, correct or abate such violations. 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. 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. (Ord. #436, adopted 4/7/09)

B. 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:

1. A statement documenting the findings of fact determined through observations, inspections, or investigations;
2. A list of specific violation(s) of this Ordinance;
3. Specific requirements for correction or removal of the specified violation(s);
4. A mandatory time schedule for correction, removal and compliance with this Ordinance.

C. Cease and Desist Orders

Cease and desist orders may be issued when the Department has probable cause that an activity regulated by this or any other County Ordinance is being or has been conducted without a permit or in violation of a permit. When work has been stopped by a cease and desist order, it shall not be resumed until the reason for the work stoppage has been completely satisfied, any administrative fees paid, and the cease and desist order lifted.

D. Costs and Reimbursements

If the Department is required to remove or abate an imminent threat to public health or safety, the Department may recover the costs including, attorney fees, incurred in removal or abatement in a civil action, or at the discretion of the County Board, the cost 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 may extend the cost as assessed and charged on the tax roll against said real property.

E. This Ordinance may also be enforced in accordance with Minn. Stat. §394.37 and Section 11.10 of this Ordinance

This ordinance shall be effective upon publication.

ATTEST:

Montgomery Headley  
Montgomery Headley

Benton County Administrator

Spencer C. Buerkle  
Spencer C. Buerkle, Chair  
Benton County Board of Commissioners