Proposed 2007 Rule Changes to MN R. change. 7080
- Soil Verification -

Explanation of Intent and Suggested Changes to Noticed Rule
4/19/07

Agency staff have received comments during the official public notice period on proposed parts 7082.0500 subpart 3 and 7082.0700 subpart 4 item B subitem (2) concerning the requirement for soil verification for new and existing systems. It appears from the comments that the proposed language is unclear and does not reflect the Agency's intent and desired outcomes of the proposal. This document offers amended language to match the intent and an explanation of the need and reasonableness of the clarifying changes.

1. Soil Verification for New Construction –

Current Proposed Language – 7082.0500 subpart 3.

Subp. 3. ***Permit approval requirements and procedures.*** *The permit program must include the requirements in items A to C.*

A. A qualified employee or licensed inspection business who is authorized by the local unit of government must review the permit application to determine whether site evaluation procedures, observations, and conclusions are accurate and fulfill applicable requirements, which include an infield verification of the seasonally saturated soil or bedrock at the proposed soil treatment and dispersal sites and any other exhibits, and whether the proposed system will meet applicable requirements. An MSTS inspector is required to perform the duties listed in this item for MSTS. The infield verification of the seasonally saturated soil or bedrock may occur at any point prior to issuance of the certificate of compliance.

Existing SONAR –

This is a major change from current requirements. This requires local governments to send staff or their contracted employee out to the site of a proposed ISTS and examine the soils to ensure that the system design is correct. The benefit of this requirement is significant. If the first time the inspector arrives at the site is to do a construction inspection, there is a chance that the soils errors will have resulted in installation of a system that does not meet code. The site where the "in error" system was installed will have been disturbed and so is no longer usable for an ISTS. This may have been the only site available for the ISTS, and thus, a serious problem for the homeowner. The greater involvement of local officials early in the permitting process will result in better ISTS being installed and fewer lots "spoiled" through error.

Amended Proposed Language –

Subp. 3. ***Permit approval requirements and procedures.*** *The permit program must include the requirements in items A to C.*

A. A qualified employee <u>with jurisdiction</u> or licensed inspection

business who is authorized by the local unit of government must review the permit application and any other exhibits to determine whether site evaluation procedures, observations, and conclusions are accurate and fulfill applicable requirements and whether the proposed system will meet applicable requirements.—An ~~which include an~~ infield verification of the seasonally saturated soil or bedrock at the proposed soil treatment and dispersal sites must be conducted by a qualified employee with jurisdiction or licensed inspection business who is authorized by the local unit of government. ~~and any other exhibits, and whether the proposed system will meet applicable requirements.~~ An MSTS inspector is required to perform the duties listed in this item for MSTS. The infield verification of the seasonally saturated soil or bedrock may occur at any point prior to issuance of the certificate of compliance.

Clarification –

If local permitting programs cannot take-on this additional responsibility due to work load restraints, the soil verification can be conducted by another licensed business if allowed by the local permitting authority. This verification may take place at any point during construction of the system, and does not necessarily need to occur prior to permit approval.

2. Soil Verification for Existing Systems –

Current Proposed Language –7082.0700 subpart 4 item B subitem (2)

(2) The vertical separation distance from the bottom of the soil treatment and dispersal system and the seasonally saturated soil or bedrock must be verified by two independent parties. The system designer's soil borings qualify as one verification. A vertical separation distance report must be completed that includes the method or methods used to make the assessment. The assessment may be made by a licensed inspection business or a qualified employee inspector. If the verification separation report consists of verifications by two independent parties, a subsequent verification is not required unless the inspector has reason to believe a noncompliant condition exists. The allowable verifications for the vertical separation report may be past soil borings used for design purposes or past soil borings from previous compliance inspections, if the verification was conducted by a party independent of the party conducting the previous inspection. In these cases, the past soil borings must be attached to the vertical separation report.

Existing SONAR –

2. **The Vertical Separation Distance Report** – This report documents the verification that the vertical separation distance meets the required standard for that system. The verification is done by two independent certified designers or inspectors. Once this form is completed by two independent professionals,

subsequent verification is not required when the system is inspected. A provision in the proposed language allows the use of previous records on a system. For example, a system that was installed in 1993 and has good records from the original design may be inspected in 2008 by a certified designer and found to meet the required separation. These two assessments can fill the requirements of this report, nullifying the need for subsequent soils determination for this system. The proposed rule does modify this somewhat, however, with the provision that "*a subsequent verification is not required unless the inspector has reason to believe that hydraulic or other site changes have affected the site hydrology.*" In some cases, there may have been changes to the site hydrology (such as a beaver dam that backs water up over the system) that will change the results of the soils determination.

Amended Proposed Language –7082.0700 subpart 4 item B subitem (2)

(2) The vertical separation distance from the bottom of the soil treatment and dispersal system and the seasonally saturated soil or bedrock must be verified. This verification can be achieved by conducting soil borings or by prior verifications by two independent parties. The ~~system designer's~~ soil borings used for system design or previous inspections qualify as a ~~one~~ verification. A vertical separation distance report must be completed that includes the method or methods used to make the assessment and includes any previous soil borings. The assessment may be made by a licensed inspection business or a qualified employee inspector with jurisdiction. If the verification separation report consists of verifications by two independent parties, a subsequent verification is not required unless the inspector has reason to believe a noncompliant condition exists. ~~The allowable verifications for the vertical separation report may be past soil borings used for design purposes or past soil borings from previous compliance inspections, if the verification was conducted by a party independent of the party conducting the previous inspection. In these cases, the past soil borings must be attached to the vertical separation report.~~

Clarification –

The proposed language seems to indicate that at the time of the existing system inspection two verifications are needed. This is not the intent. The options open to the inspector are to conduct a soil boring him/her self, or rely on two past soil evaluations. One of the evaluations can be the original designer's soil assessment. If only one past evaluation has been completed the evaluation now being taken can count as the second verification if another certificate of compliance is needed. There is no intent to require two verifications as part of an existing system inspection.