

Standards for Individual Onsite Water Supply and Individual Onsite Wastewater Treatment Systems

Effective date: 3/16/16

Pursuant to the authority vested in the Commissioner of Health by Section 201(1)(l) of the Public Health Law, Part 75 and Appendix 75-A of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended and a new Appendix 75-C is added to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

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PART 75

STANDARDS FOR INDIVIDUAL ONSITE WATER SUPPLY AND INDIVIDUAL
[SEWAGE] ONSITE WASTEWATER TREATMENT SYSTEMS

(Statutory authority: Public Health Law, Section 201(1)(l))

Sec.

75.1 Statement of Purpose

75.2 Applicability and scope

75.3 Definitions

75.4 Standards for individual onsite water supply systems

75.5 Standards for individual [sewage] onsite wastewater treatment systems

75.6 Waivers; general, specific and local

Section 75.1 Statement of purpose. The rules contained in this Part have been promulgated to protect the health and safety of those persons who must use an individual

onsite water supply system, an individual [sewage] onsite wastewater treatment system, or both, when a municipal or communal system is not available.

75.2 Applicability and scope. This Part shall apply through the entire State of New York and shall represent minimum [requirements] standards for individual onsite water supply and for individual [sewage] onsite wastewater treatment systems.

75.3 Definitions. As used in this Part, the following words and phrases shall have the following meanings:

(a) *Individual onsite water supply system* means [a] an onsite water [supply] system intended to [supply one or more single parcels] serve a single parcel of land, [except when] which is not supplied by a public water supply as defined in Part 5 of this Title.

(b) *Individual [sewage] onsite wastewater treatment system* means [a] an onsite facility serving [one or more parcels] a single parcel of land [or residential household] and treating sewage or other liquid wastes for discharge into the groundwaters of the State [, except where a permit for such a facility is required under the applicable provisions of Article 17 of the Environmental Conservation Law].

(c) *General waiver* means a waiver that exempts any portion of the standards for individual onsite water supply and/or for individual [sewage] onsite wastewater treatment systems because of unique local conditions.

(d) *Specific waiver* means a waiver granted in an individual situation because of a hardship or other circumstance that makes it impractical to comply with a standard for individual onsite water supply or for individual [sewage] onsite wastewater treatment systems.

(e) *Local waiver* [is] means a waiver that allows the routine use of alternative-type [sewage] wastewater treatment system(s) by a municipality.

(f) *Design professional* means a person licensed to practice engineering or architecture in New York State by the State Education Department in accordance with Article 145 or Article 147 of Title VIII of the New York State Education Law, respectively, and who is currently registered with the New York State Education Department.

75.4 [Standards] Minimum standards for individual onsite water supply systems.

(a) Individual onsite water supply systems shall be designed[,] and constructed [and maintained] in accordance with the standards of the State Commissioner of Health as set forth in Appendix 5-B of this Title.

(b) All treatment devices for an individual onsite water supply must be designed, constructed[,] and installed [and maintained] in accordance with standards acceptable to

the State Commissioner of Health as set forth in Appendix 75-B of this Title.

(c) The standards set forth in Appendix 75-C shall represent statewide water quality standards for individual onsite water supply systems. The State or county health department official having jurisdiction may require that individual onsite water supply systems be tested for compliance with the standards set forth in Appendix 75-C, and for such additional contaminants as such official determines are necessary or appropriate to protect public health.

75.5 [Standards] Minimum standards for individual [sewage] onsite wastewater treatment systems.

(a) Individual [sewage] onsite wastewater treatment systems shall be designed and constructed in accordance with the standards of the State Commissioner of Health as set forth in Appendix 75-A of this Title.

(b) Plans for the design of individual onsite wastewater treatment systems shall be prepared directly by or under the supervision of a design professional.

(c) Prior to construction of an individual onsite wastewater treatment system utilizing an alternative system pursuant to 10 NYCRR Appendix 75-A, plans for the design of the system shall be reviewed and approved by the State or county health department official having jurisdiction. A design professional shall supervise the construction of the alternative system and ensure that such construction conforms to the approved plans. After construction is completed, a design professional shall provide the

State or county health department official having jurisdiction with a certification that the construction of the alternative system was supervised by a design professional and that such construction conforms to the approved plans.

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APPENDIX 75-A

Subdivision (e) of Appendix 75-A.9 is repealed.

Subdivision (c) of Appendix 75-A.10 is repealed.

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A new appendix 75-C is added as follows:

APPENDIX 75-C

INDIVIDUAL ONSITE WATER SUPPLY SYSTEMS – STATEWIDE WATER
QUALITY STANDARDS

(Statutory Authority: Public Health Law, 201(1)(1))

TABLE 1

The standards in Table 1 shall not be exceeded:

| Contaminant | Standard (1) |
|-------------------|-------------------------|
| Coliform Bacteria | Any positive result (2) |
| Lead | 0.015 mg/l |
| Nitrates | 10 mg/l as Nitrogen |
| Nitrites | 1 mg/l as Nitrogen |
| Turbidity | 5 NTU (3) |
| Arsenic | 0.010 mg/l |

(1) mg/l means milligrams per liter (parts per million).

(2) A “positive” result means that coliform bacteria are present; a “negative” result means that coliform bacteria are absent or are not present.

(3) NTU means Nephelometric Turbidity Units.

TABLE 2

Exceeding the following standards may necessitate (1) installation and maintenance of

water treatment devices, or (2) limited daily consumption of water by certain persons:

| Contaminant | Standard (1) |
|---------------------|-----------------------------------|
| Iron | 0.3 mg/l (2) |
| Manganese | 0.3 mg/l (2) |
| Iron plus manganese | 0.5 mg/l (2) |
| Hardness | 150 mg/l as CaCO ₃ (2) |
| Alkalinity | 100 mg/l as CaCO ₃ (2) |
| pH | 6.5 – 8.5 (3) |
| Sodium | No designated limit (4) |

(1) mg/l means milligrams per liter (parts per million).

(2) If standards are exceeded options for treatment should be evaluated.

(3) If pH values are outside of this range (i.e., less than 6.5 or greater than 8.5) options for treatment should be evaluated.

(4) Water containing more than 20 mg/l of sodium should not be used for drinking by people on severely restricted sodium diets. Water containing more than 270 mg/l of sodium should not be used for drinking by people on moderately restricted sodium diets.

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Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) § 201(1)(l) authorizes the Department of Health (Department) to regulate the sanitary aspects of water supplies and sewage disposal systems, which includes individual onsite water supply systems and individual onsite wastewater treatment systems.

Legislative Objectives:

The legislative objective of PHL § 201(1)(l) is to ensure that the public health is protected by ensuring the safety and sanitation of individual onsite water supply systems and individual onsite wastewater treatment systems.

Needs and Benefits:

These amendments will protect public health by: updating certain terms to conform with nationally-recognized nomenclature; clarifying the standards and requirements for individual onsite wastewater treatment systems (also known as OWTS or septic systems); ensuring that plans for OWTS systems are prepared by a design professional; and establishing new minimum water quality standards for individual onsite water supply systems (also known as IWS systems).

These amendments retitle 10 NYCRR Part 75, currently “Standards for Individual Water Supply and Individual Sewage Treatment Systems”, to “Standards for Individual Onsite Water Supply and Individual Onsite Wastewater Treatment Systems.” The term “onsite” will be included throughout Part 75 and Appendix 75-C, in reference to IWS and

OWTS systems. Further, consistent with Appendix 75-A, the term “wastewater” will replace the term “sewage” in Part 75, in reference to OWTS systems. These updates better reflect the conventional and nationally-recognized nomenclature for non-public water and wastewater systems.

The definitions of “individual onsite water supply system” and “individual onsite wastewater treatment system” are further amended to remove references to such systems possibly serving more than one parcel. This codifies a long-standing Department policy that these systems should serve only one property. Counties already apply this standard when reviewing these systems.

Additionally, Part 75 is amended to clarify the requirement that the design of an OWTS system be prepared by a design professional. This is already required pursuant to Articles 145 and 147 of the Education Law, pertaining to the professional standards for engineering and architecture, respectively. By ensuring that plans for OWTS systems are prepared and constructed by a design professional, these amendments will reduce premature OWTS failures.

Part 75 will be amended to require that, prior to construction, designs for OWTS systems that utilize “alternative systems”, as described in Appendix 75-A, be reviewed and approved by the State or county health department official having jurisdiction. Further, after construction is completed, a design professional must provide the State or county health department official having jurisdiction with a certification that the

construction of the alternative system was supervised by a design professional and that such construction conforms to the approved plans.

Appendix 75-A is amended to delete subdivision (e) of section A.9, concerning Evaporation-Transpiration (ET) and Evapo-Transpiration Absorption (ETA) Systems. ET and ETA systems require very dry climates, and are therefore not suitable for use in New York State. For this reason, all references to such systems were intended to be removed as part of a 2010 amendment to Appendix 75-A. This amendment would remove this residual reference.

Similarly, Appendix 75-A is amended to delete subdivision (c) of section 75-A.10, concerning Engineered Systems. All references to engineered systems were also intended to be removed in the 2010 amendment, and this amendment would remove a residual reference. Unlike ET and ETA systems, however, engineered systems may still be approved pursuant to Appendix 75-A.11, which provides for specific waivers from the specified design standards under appropriate conditions.

Finally, proposed Appendix 75-C would create a statewide minimum standard for testing IWS system water quality. These regulations do not require that water be tested for compliance with these standards. Rather, counties may choose to require compliance, through their county sanitary codes.

In particular, proposed Appendix 75-C lists IWS water quality standards for: coliform bacteria, lead, nitrate, nitrite, turbidity, arsenic, iron, manganese, iron plus

manganese, hardness, alkalinity, pH and sodium. The State or county health department official having jurisdiction may require testing for additional contaminants based on locally known or suspected water source contamination.

Several of the standards in the proposed Appendix 75-C are derived from preexisting standards. In the past, the Department of Health published a booklet entitled Rural Water Supply, which included water well construction standards and also the U.S. Housing and Urban Development (HUD) mortgage requirement relating to water quality testing parameters list (July 27, 1995). Rural Water Supply was replaced in November of 2005 with 10 NYCRR Appendix 5-B, “Standards for Water Wells” (a water well construction standard); however, Appendix 5-B did not include the HUD water quality testing standards of 1995. The water quality standards proposed in the new Appendix 75-C incorporates those prior standards. Additionally, an arsenic standard is included in Appendix 75-C, based on considerable public and private water system water quality testing data compiled from the past several years.

COSTS:

Costs to Regulated Parties:

No additional costs will be incurred. These amendments clarify regulations and codify existing policies. With respect to the new IWS water quality standards, local health departments may choose whether to require testing to determine compliance. Several LHDs have already codified an IWS water quality minimum standard via county sanitary code or other county policy.

Costs to Local Government:

No additional costs will be incurred. These amendments clarify regulations and codify existing policies. With respect to the new IWS water quality standards, local health departments may choose whether to require testing to determine compliance. Several LHDs have already codified an IWS water quality minimum standard via county sanitary code or other county policy.

Costs to State Government:

There will be no additional costs to the State. The State will provide any necessary training or guidance using existing resources.

Local Government Mandates:

The proposed addition does not impose new program responsibilities on any county, city, town, village, school district, fire district or special district.

Paperwork:

No new reporting requirements are created by the proposal.

Duplication:

This regulation does not duplicate any existing federal, state or local regulation.

Alternatives Considered:

One alternative to the proposed revisions is to take no action. With respect to water quality standards for IWS systems, county health departments could specify their

own water quality standards. This amendment, however, will promote consistency by providing a statewide IWS water quality standard. Additionally, failing to amend Part 75 to clarify that designs for OWTS systems must be prepared by a design professional would mean that there would be a continued lack of awareness of this existing Education Law requirement, which could lead to increased OWTS failures.

Federal Standards:

No federal standards exist.

Compliance Schedule:

These regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

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Regulatory Flexibility Analysis for Small Business and Local Government

Effects on Small Business and Local Government:

No effect on small business and local government is anticipated.

With respect to local governments, no additional costs will be incurred. These amendments clarify regulations and codify existing policies. With respect to the new IWS water quality standards, local health departments may choose whether to require testing to determine compliance.

None of the changes apply directly to small businesses. Although it is possible that some small businesses are served by IWS systems, it remains the county's option whether to apply the minimum water quality standards to such systems.

Reporting and Record Keeping:

No new reporting or record-keeping requirements are created by this rule.

Professional Services:

No new professional services will be required by this rule.

Other Compliance Requirements:

There are no other compliance requirements mandated by this rule.

Costs:

Potential Costs to Homeowners:

There are no additional costs to homeowners mandated by this rule.

Potential Costs to Local Government:

There are no additional costs to local government mandated by this rule.

Economic and Technological Feasibility:

The proposed rule is economically and technologically feasible. With respect to the IWS water quality standards, as discussed, it is the county's option whether to require testing of such systems. Moreover, for many years, the Department's realty subdivision approval program has required similar testing, and there has been no indication that such testing is not feasible. Additionally, several LHDs have already codified an IWS water quality minimum standard via county sanitary code or other county policy.

Minimizing Adverse Economic Impact:

With respect to local governments, no additional costs will be incurred. These amendments clarify regulations and codify existing policies. With respect to the new IWS water quality standards, local health departments may choose whether to require testing to determine compliance. In fact, where counties do choose to require water quality testing for IWS systems, these regulations will have a positive economic impact by ensuring that drinking water from IWS systems meets certain standards.

Small Business and Local Government Participation:

During May and June of 2007, the Department surveyed county health departments to gather information regarding current individual water quality testing requirements. The survey also solicited recommendations for minimum testing requirements and a water quality minimum standard.

Survey results indicated that most county officials support the development of a residential water supply water quality minimum standard. Several counties already have codified a residential water quality minimum standard in their County Sanitary Code or by county policy. The Department studied and considered all survey responses when developing the proposed rule.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

In general, IWS and OWTS systems are used in rural and suburban areas that do not have access to public water distribution mains and sewers. Based upon information from the 1990 U.S. Census, populations in the upstate central New York/Finger Lakes counties, north-country/Adirondack counties, Catskill region counties, east-of-Hudson counties, and eastern Long Island are more likely to rely on IWS than other types of supplies.

Reporting and Record Keeping:

No new reporting or record keeping requirements are created by this rule.

Professional Services:

No additional requirement for professional licensing, certification, or registration is required under the proposed rule.

Other Compliance Requirements:

There are no other compliance requirements mandated by this rule.

COSTS:

Projected Costs of Compliance:

No additional costs will be incurred by this rule.

Potential Costs for End Users:

No additional costs will be incurred by this rule.

Potential Costs to Local Government:

There are no additional costs to local government mandated by this rule.

Minimizing Adverse Economic Impact on Rural Areas:

For those amendments that simply clarify or codify existing policy, no adverse economic impact is anticipated. With respect to the minimum water quality standards for IWS systems, because counties have the option of whether to require testing, there is not expected to be any adverse economic impact. Moreover, many counties have already adopted similar policies. In fact, where counties do choose to require water quality testing for IWS systems, these regulations will have a positive economic impact by ensuring that drinking water from IWS systems meets certain standards.

Rural Area Participation:

During May and June of 2007, the Department surveyed county health departments to gather information regarding current individual water quality testing requirements. The survey also solicited recommendations for minimum testing requirements and a water quality minimum standard.

Survey results indicated that most county officials support the development of a residential water supply water quality minimum standard. Several counties already have codified a residential water quality minimum standard in their County Sanitary Code or

by county policy. The Department studied and considered all survey responses when developing the proposed rule.

Job Impact Statement

The Department has determined that the rule will not have substantial adverse impact on jobs or employment opportunities. These amendments will protect public health by: updating certain terms to conform with nationally-recognized nomenclature; clarifying the standards and requirements for individual onsite wastewater treatment systems (also known as OWTS or septic systems); ensuring that plans for OWTS systems are prepared by a design professional; and by establishing new minimum water quality standards for individual onsite water supply systems (also known as IWS systems). These changes do not impact jobs or employment opportunities.