

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 10:110. Issuance of on-site sewage disposal system permits.

RELATES TO: KRS 211.357, 211.360, 211.370, 211.375, [211.350-]211.380, 211.970, 211.976, 211.990(2)

STATUTORY AUTHORITY: KRS 211.350, 211.355[194.050, 211.090(3), 211.180(1)(d)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.350 provides that no person, firm, or corporation shall construct, install, alter or cause to be constructed, installed, or altered any on-site sewage disposal system subject to administrative regulation by the cabinet without having first obtained an on-site sewage disposal permit from the local health department. KRS 211.355 authorizes a local board of health to establish a schedule of fees reasonably related to the cost of administering programs including inspections incidental to construction, installation, and alteration of on-site sewage disposal systems, and inspections incidental to maintenance and operation of on-site sewage disposal systems. This administrative regulation establishes the~~[cabinet. The purpose of this administrative regulation is to set forth the]~~ requirements for issuance of permits.

Section 1. Definitions. ~~[As used in this administrative regulation the following terms shall have the meanings set forth below:]~~

(1) "Alter" means to make a physical change in the original design, sizing, layout, components, location, or method of operation, either ~~[(]individually or in any combination of changes,)]~~ of an existing on-site sewage disposal system, as a result of necessary repair or a change in wasteload volume or wasteload characteristics.

(2) "Approved" is defined by KRS 211.970(1).

(3) "Cabinet" is defined by KRS 211.970(2).

~~(4)[means the Cabinet for Human Resources and includes its authorized agents.~~

~~(3)] "Certified inspector" means an individual certified under the provisions of~~[a person employed by the cabinet or by a local health department who has met the requirements for certification contained in]~~ KRS 211.360.~~

~~(5)[(4)] "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and 902 KAR 10:140.~~

~~(6)[(5)] "Component" means any device used in the construction, installation or alteration of an on-site sewage disposal system which forms an integral part of that ~~[disposal]~~ system~~[,]~~ and has been approved for that specific use by the cabinet.~~

~~(7) [is necessary to its proper operation and maintenance. It includes, but is not limited to:~~

~~(a) Sewage pretreatment units, holding tanks, grease traps, pump or dosing tanks, and necessary equipment and appurtenances;~~

~~(b) Distribution boxes, alternating valves, filters, and similar devices; and~~

~~(c) Piping, fittings, valves, and leaching chambers.~~

~~(6)] "Construct" or "install" means the physical assembly of various necessary components and materials into an on-site sewage disposal system and includes all necessary design, site layout, excavation, backfilling, and additional site fill work that may be required to produce a finished on-site system. ~~[The term "install" shall be considered to have the same meaning.]~~~~

~~(8)[(7)] "Homeowner" means a specific individual person who actually occupies the single family residence where~~[that]~~ a proposed new on-site sewage disposal system is intended to~~

serve, or ~~where~~that an existing system that is proposed to be altered serves, or who proposes to construct or have constructed a single family residence for ~~his~~ personal use and occupancy ~~where~~that a proposed new on-site system is intended to serve. This term shall not include any person who is a builder or contractor who engages in a business of constructing or rehabilitating residential structures for sale or resale.

~~(9)~~(8) "On-site sewage disposal system", "on-site sewage system", or "~~and~~ on-site system" means~~mean~~ a ~~complete~~ system installed on a parcel of land, under the control or ownership of ~~a~~any person, ~~that~~which accepts sewage for treatment and ultimate disposal under the surface of the ground, ~~including~~Examples of such systems are:

(a) A conventional system consisting of a sewage pretreatment unit~~unit(s)~~, distribution de-~~vice~~box(es), and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of:

1. A conventional system enhanced by shallow~~shallower~~ trench or bed placement;

2..~~;~~ Artificial drainage systems;

3..~~;~~ Dosing;

4..~~;~~ Alternating lateral fields;

5..~~;~~ Fill soil over the lateral field;.~~;~~ or

6. Other necessary modifications to the site, system, or wasteload to overcome site limitations;

(c) An alternative system consisting of:

1. A sewage pretreatment unit;

2. unit(s); Necessary site modifications;

3..~~;~~ Wasteload modifications;.~~;~~ and

4. A subsurface soil treatment and dispersal~~absorption~~ system using ~~other~~ methods and technologies other than a conventional or modified system to overcome site limitations;

(d) A cluster system~~systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design~~; and

(e) A holding tank ~~that~~which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal~~absorption~~ system~~.~~ or connection to a municipal sewer.

~~(10)~~(9) "Person" is defined by KRS 211.970(6)~~means any individual, firm, association, organization, partnership, business trust, corporation, company or governmental unit~~.

Section 2. Issuance of Permits. (1) A certified installer or homeowner meeting the requirements of this administrative regulation shall complete and submit to the local health department certified inspector having jurisdiction:

(a) A DFS-307, On-site Sewage Disposal System Construction Application and Permit;

(b) The on-site sewage disposal permit fee of fifty (50) dollars; and

(c) The required fee as established by the local board of health in accordance with KRS 211.355.

(2) The on-site sewage disposal cluster system plan review shall be:

(a) Submitted to the Environmental Management Branch; and

(b) Accompanied by the \$600 permit fee payable by check or money order to the Kentucky State Treasurer.

(3) Except as otherwise provided by subsection (4)~~(2)~~ of this section, permits to construct, install, or alter on-site sewage disposal systems shall be issued only to certified installers.

~~(4)~~~~(2)~~ Permits to construct, install, or alter on-site sewage disposal systems may be issued to homeowners provided:

(a) Application is made for a permit as specified in 902 KAR 10:085, Section 2(1)(g), (h), and (i)~~3(1)(d)~~ prior to construction of any portion of the proposed on-site sewage disposal system; ~~and~~

(b) All work is performed in compliance with 902 KAR 10:081, 902 KAR 10:085, and this administrative ~~regulation;~~~~regulation(s); and~~

(c) All work is personally performed by the homeowner, except that necessary excavation and backfilling work may be performed by a certified installer if notification of intent is made at the time of application for a permit, and the certified installer's name and certification number are included on the application; ~~and~~

(d) If local electrical codes require electrically operated components of an on-site sewage disposal system to be connected to electrical service only by a certified or licensed professional electrician, and do not permit homeowner performed work, that work shall also be excepted from the requirements of paragraph (c) of this subsection; and

(e) No person shall be issued more than one (1) homeowner permit to construct or alter an on-site sewage disposal system in any five (5) year period, except in instances of necessary repair or alteration of the originally permitted on-site system.

Section 3. Incorporation by Reference. (1) DFS-307, "On-site Sewage Disposal System Construction Application and Permit", (10/20) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 23, 2020

FILED BY LRC: November 2, 2020 at 8:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Cabinet Contacts: Donna Little or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the issuance of a permit to install or alter an on-site sewage disposal system.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that an on-site sewage disposal system is installed and maintained in a safe and sanitary manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.350 requires that no person, firm, or corporation construct, install, alter or cause to be constructed, installed or altered any on-site sewage disposal system without obtaining an on-site sewage disposal permit from the local health department. KRS 211.355 authorizes a local board of health to establish a reasonable fee schedule related to the cost of administering programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all on-site sewage disposal systems are installed or maintained in a safe and sanitary manner and are in full compliance with KRS 211.350.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates the application for a permit to construct or alter an on-site sewage disposal system; adds the fee required to be submitted with the permit application; adds the plan review process, including the fee required, for an on-site sewage disposal cluster plan review; and makes other changes necessary to comply with KRS Chapter 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: As part of the initiative to improve cabinet operations, 902 KAR 10:060, On-site sewage disposal application fee, will be repealed and the fee structure added to this administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.350(10) authorizes the cabinet to fix a schedule of fees for the functions performed by the cabinet related to the regulation of on-site sewage disposal systems. KRS 211.355 authorizes a local board of health acting as an agent of the cabinet for the issuance of permits for on-site sewage disposal systems to set a schedule of fees reasonably related to the cost of administering such programs. The fees established by both statutes shall be set to fully cover the cost of the services but shall not exceed the costs of the services performed. This amendment establishes a reasonable fee structure that does not exceed the costs to the cabinet and a local board of health for the issuance of permits for on-site sewage disposal systems and for the plan review for cluster systems.

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets a reasonable fee structure and will help to ensure any on-site sewage disposal system, whether installed by a certified installer or approved homeowner, is designed, constructed, and maintained in a safe and sanitary manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The changes to this administrative regulation will impact those individuals certified to install on-site sewage disposal systems and homeowners meeting the requirements to install their on-site sewage disposal system. Local health department staff will also be impacted by this administrative regulation. There are approximately 6,300 on-site sewage disposal system permits issued by local health department

staff each year and approximately five (5) cluster plan reviews completed by Department for Public Health staff each year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Certified installers or homeowners seeking to construct, install, or alter an on-site sewage disposal system will need to be aware of the permit application process, including the required fees for permit application and site inspection.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The application permit fee for the certified installer or homeowner will cost the individual fifty (50) dollars; a twenty (20) dollar increase from the current fee amount. The fee for a cluster system plan review is not being changed at this time. The total fee for inspections conducted by local health department staff related to the construction, installation, and alteration of an on-site sewage disposal system or the maintenance and operation of an on-site sewage disposal system cannot be determined. This fee is set by the local board of health and is dependent on the type of system to be constructed, installed, altered, and the location of where the system will be installed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified installers and qualified homeowners will continue to be able to receive a permit for the construction, installation, or alteration of an on-site sewage disposal system.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The total operating costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in initial costs associated with this administrative regulation initially.

(b) On a continuing basis: There is no anticipated increase in costs on a continuing basis for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from the permitting, inspection, and plan review fees are the source of funding for enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in the permit application fee is included in this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The permit application fee is being raised from thirty (30) dollars to fifty (50) dollars in this administrative regulation, an increase of twenty (20) dollars.

(9) TIERING: Is tiering applied? Tiering is applied. While the application permit and plan review fees are applied equally to all applicants, the fee for local health department inspections will vary depending on the location of the on-site system. In addition, only homeowners who meet the requirements of this administrative regulation can be issued a permit to construct, install, or alter an on-site sewage disposal system.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This admin-

istrative regulation impacts all local health departments conducting inspections and the Environmental Management Branch in the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.350 and 211.355.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The current permit application fee of thirty (30) dollars generates approximately \$189,000 in revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The increased permit application fee to fifty (50) dollars will generate approximately \$315,000 in revenue. This represents an increase of approximately \$126,000. This fee has not been updated since 2001.

(c) How much will it cost to administer this program for the first year? The total costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in costs associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated increase in ongoing costs associated with this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: