

Statewide Onsite Wastewater Legislation

Local Public Health Core Principles

A shared vision between MALPH and MALEHA

Approved Date

Association Background:

MALEHA, is the Michigan Association of Local Environmental Health Administrators. The purpose of this organization is to promote and strengthen all facets of environmental health delivery systems. This is accomplished through the promulgation of effective and efficient administrative policies and procedures and the coordination of administrative effort at the local level through close cooperation with other health agencies, associations and individuals having similar objectives.

MALPH, is the Michigan Association of Local Public Health. The purpose of this organization is to represent Michigan's 45 city, county, and district health departments before the state and federal legislative and executive branches of government. MALPH's mission is to strengthen Michigan's system of local public health departments and local governing boards. This is accomplished through being the legislative and policy advocate for Michigan's local public health jurisdictions and the liaison between all Michigan local health departments and jurisdictions, the Michigan Legislature, the Michigan Department of Health and Human Services, the Michigan Department of Environment, Great Lakes and Energy, the Michigan Department of Agriculture and Rural Development, and other state departments and organizations. MALPH also acts as a policy incubator for public health initiatives.

Issue Background:

Over the last 20 years or more, there have been numerous attempts by the State legislature to enact a law that would create a Statewide Sanitary Code. The impetus for such legislation is rooted in the fact that Michigan is the only state in the country that has not established law that regulates onsite wastewater. As a result, each of the 45 LHD jurisdictions have adopted sanitary codes that vary based on local geologic site conditions and community needs. It has been suggested that not all 45 sanitary codes offer the same level of protection of Michigan's water resources. The onsite wastewater program is included as one of the Essential Local Public Health programs and each LHD is reviewed by the State through the accreditation process every three years. Due to the fact that there are no State minimum construction and design standards, the current accreditation process is unable to require that LHD sanitary codes meet a minimum level of wastewater treatment.

Preventing disease, prolonging life and promoting public health is the basic mission of local health departments (LHD). As such, MALPH and MALEHA recognize the potential benefits of a Statewide approach to the management of onsite wastewater. However, support of any such endeavor would require open communication, coordination and collaboration between local health departments,

Michigan Department of Environment Great Lakes and Energy and sponsoring legislators or governing bodies. Additionally, MALPH and MALEHA support the following attached core principles that should be included in any proposed legislation and/or resulting code.

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Funding

- There shall be a mechanism in place to ensure sustained funding is established that will reimburse LHDs, no less than 50% of the cost to administer delegated provisions in a Statewide onsite wastewater law and/or resulting code (as required under Section 2475 of the Public Health Code). In addition, under Section 2444 of the Public Health Code, LHDs have the authority to establish fees to administer programs. This authority is intended to supplement the 50% cost of services to be provided by the State in the essential local public health services comprehensive agreement. This authority shall remain in effect in any legislation that requires LHDs to provide services.
- A law shall include proper funding for the State agency tasked with oversight of any onsite wastewater legislation. Examples of some of the possible functions to be funded include the review and approval of alternative onsite wastewater treatment technologies and the creation and maintenance of a comprehensive statewide web-based data management system related to onsite wastewater systems.
- A law should create a relief fund to assist system owners in financial hardship for the completion of required repairs or replacement.

Alternative Technology

- LHDs support State oversight of alternative onsite wastewater treatment systems. If a law or resulting code includes alternative technology for onsite wastewater it shall include a State department process that would review and approve alternative technology but will not preempt the local health department authority to permit alternative technology within its jurisdiction.
- LHDs support requirements for perpetual operation and maintenance of alternative technology.

Septic System Design

- LHDs support the establishment of minimum performance-based treatment standards for the design of onsite septic systems taking into account statewide variability in Michigan's geologic landscape.

Advisory Boards/Committees

- Any advisory boards, committees or other groups created by an onsite wastewater law shall be made up of a majority of science and regulatory personnel that are not politically appointed. Further, at least 25% of the members shall be comprised of LHD personnel that have expertise in onsite wastewater.

Preemption

- There must be no preemption of LHD authorities in the law or resulting code. Sections 2435(d) and 2441 of the Public Health Code both provide the authority for LHDs to adopt local regulations to protect public health. Specifically, local regulations related to septic system inspections/evaluations required to be completed at the time of property transfer shall be protected. LHDs recognize that locally adopted Sanitary Codes may need to be modified pursuant to the establishment of minimum standards set forth in any statewide law or resulting code.

Evaluations

- LHDs support the evaluation of existing septic systems in an effort to identify failures and cause the correction of those systems in a state of failure. Any evaluation that is performed shall be reported to the designated agency(s) using a Statewide web-based database. Evaluations should be based on event triggers (i.e. Time of Sale, permit applications, etc.). Due to logistical demands of LHDs, evaluations should not be based on temporal triggers (i.e. every 5 or 10 years, etc.).
- A comprehensive definition of failure for an onsite sewage system shall be included in any law.
- A comprehensive definition of an evaluation shall be included in any legislation and/or resulting code.
- A law and/or resulting code that requires a standardized operation and maintenance inspection and/or system evaluation shall determine frequency based on the best available science and data.
- The law and/or resulting code shall allow both local health departments and qualified persons, with proper experience and training, to conduct evaluations; however, only the LHDs can review and approve evaluations. LHDs must retain authority to make the decision of conformance or nonconformance, and make the determination of whether or not an imminent public health danger exists.
- The law must prescribe the process and authority for revocation of certification of fraudulent evaluations or for incompetency.
- The law shall include effective defined enforcement mechanisms including civil and criminal penalties.

Training and Education

- The law shall include minimum training and educational requirements for professional LHD staff working in the onsite wastewater program.
- The law shall include minimum training and experience requirements for septic system evaluators/inspectors. A list of those persons that are qualified shall be maintained in a Statewide web-based database.

Local Control

- LHDs shall maintain the right to grant variances to the law and/or resulting code under the following conditions:
 - a. That no substantial health hazard or nuisance is likely to occur therefrom;
 - b. That strict compliance with regulation and requirements would result in unnecessary or unreasonable hardship;
 - c. That no State statute, or other applicable laws, would be violated by such variance;
 - d. That the proposed variance would provide essentially equivalent protection for public health; and
 - e. The variance is not in significant conflict with the intent and purpose of the Statewide Sanitary Code and the LHD Sanitary Code.

- LHD Sanitary Codes and/or other local onsite wastewater regulations may be more restrictive than the resulting Statewide law and/or resulting code.

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