

## Ohio Department of Health

### Sub. Senate Bill 110 Implementation Information To Local Health Districts

Prepared by Bureau of Environmental Health

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The purpose of this document is to provide information on:

- 1) The provisions of Ohio Revised Code Chapter 3718 that are un-suspended and effective July 1, 2010;
- 2) The provisions of Sub. Senate Bill 110 that will become effective in mid-September, 2010, and the subsequent technical and administrative requirements for local health districts to implement on the effective date;
- 3) An overview of the requirements that will be addressed in the development of administrative rules to be adopted after January 1, 2012.
- 4) The proposed rule development process, and participation and access to information by local health districts and other stakeholders.

#### **Effective Date of Sub. SB 110**

Substitute Senate Bill 110 (Sub. SB 110) was passed by the Ohio Senate and House of Representatives in June, 2010 and signed into law by Governor Strickland on June 18, 2010. This bill becomes effective 90 days after signature by the Governor and filing with the Secretary of State. Some provisions of the bill will be implemented through administrative rules adopted by the Public Health Council. Other provisions of the bill will become effective and must be implemented on or after mid-September, 2010.

#### **Three important dates:**

- **July 1, 2010 – suspended portions of 3718 become unsuspended**
- **Mid-September, 2010 – effective date of Sub. SB 110**
- **After January 1, 2012 – new rules are to be adopted**

#### **Provisions of Ohio Revised Code (ORC) Effective (un-suspended) on July 1, 2010.**

All provisions of the existing ORC Chapter 3718 become effective on July 1, 2010 when the suspension of this chapter is ended. These include:

- 3718.01 Definitions – This section of law was not suspended and remains in effect until changed on the effective date of Sub. SB 110.
- 3718.02 Public Health Council to Adopt Administrative Rules – Under paragraph (A) the Public Health Council is authorized to adopt rules as listed under sections (1) through (13) however, **Sub. SB 110 requires that the Public Health Council may not adopt rules until after January 1, 2012. The current OAC Chapter 3701-29, any special device approvals authorized by the Director, and sewage treatment systems products authorized for use by the Director, will remain effective until new rules are adopted as**

**cited in Section 3 (uncodified portion- lines 1119-1128) of Sub. SB 110.** Paragraph (B) requires the Director to review and approve local board of health more stringent rules, however, since no new state rules will be adopted until January 1, 2012, this paragraph does not apply until such time that state rules are modified. **Local health districts should continue to use their current adopted local rules until new state rules are adopted after January 1, 2012. This includes all standards and operation/maintenance/or current inspection programs being conducted by boards of health.**

- 3718.021 Board of Health may regulate Small Flow On-Site Systems – This section of the law was not suspended and remains in effect.
- 3718.022 Consideration of economic impact in adopting rules – This section of the law was not suspended and remains in effect.
- 3718.03 Sewage Treatment Systems Technical Advisory Committee - This section of law was not suspended and remains in effect until changed on the effective date of Sub. SB 110.
- 3718.04 Application for approval of nonconforming system – standards – notice to applicant - This section of law was not suspended and remains in effect until changed on the effective date of Sub. SB 110.
- 3718.05 Administration and enforcement of the duties of director of health – This section of law is unsuspended on July 1, 2010, however, until new rules are adopted after January 1, 2012, the department will not be implementing paragraph (C) (review and approval of more stringent rules). Paragraph (D) (survey of boards of health) will also not be implemented until new rules are adopted after January 1, 2012. Paragraphs (A) (administer and enforce chapter) and (B) (examine records of boards of health as necessary to determine compliance) are essentially what ODH does daily through state level program implementation. Paragraphs (E) (assist TAC with development of standards and guidelines) and (F) (provide instructions on operation and maintenance) are currently being done through our normal work with the TAC and information on the ODH sewage program website.
- 3718.06 Fees – disposition of proceeds – recommendations regarding amount – This section of law is unsuspended on July 1, 2010. Paragraph (A) allows boards of health to establish fees in accordance with ORC Section 3709.09 for the purpose of carrying out the duties of this chapter. Paragraph (B) allows for the Public Health Council to establish a state fee for installation permits in accordance with ORC Chapter 119, and paragraph (C) permits the Director to submit recommendations and a report regarding the state portion of the fee to the Public Health Council. **Under HB 363, effective 12/22/2009, Section 120.02 (D)(2) which sets the state portion of the installation fee for permits at \$25.00 is continued until new rules are adopted under ORC 3718.02.**
- 3718.07 Survey to determine compliance – approved district list. This section of law is unsuspended on July 1, 2010, however, ODH will not be conducting surveys of local health district programs until after the new rules are adopted after January 1, 2012.
- 3718.08 Violation of chapter, rules or conditions prohibited - This section of law is unsuspended on July 1, 2010 and becomes effective for use by local health districts for enforcement of state and more stringent local rules adopted by boards of health.
- 3718.09 Enforcement orders – emergency orders. - This section of law is unsuspended on July 1, 2010 and becomes effective for use by local health districts for enforcement of state and more stringent local rules adopted by boards of health.
- 3718.10 Prosecution or injunction for violation – civil penalty - This section of law is unsuspended on July 1, 2010 and becomes effective for use by local health districts for enforcement of state and more stringent local rules adopted by boards of health.

- 3718.99 Penalty - This section of law is unsuspended on July 1, 2010 and becomes effective for use by local health districts for enforcement of state and more stringent local rules adopted by boards of health.

#### Other Related Statute

- Am. Sub. HB 1 amended Ohio Revised Code 3709.09 to establish a twenty-five (25%) penalty fee for payment of fees that are submitted after an established due date to a local health district. This section of law is applicable by reference in paragraph (A) to ORC Chapter 3718, therefore, ***effective July 1, 2010, local health districts are limited to charging a 25% penalty fee for late sewage installer, service provider or septage hauler registrations, or permits obtained after installation, replacement or alteration has begun.***
- HB 363 effective on 12/22/2009 continued Sections 120.01 of Am. Sub. H.B. 1 to provide for the suspension of portions of ORC Chapter 3718 through July 1, 2010. **HB 363 also continues Section 120.02 (uncodified law) until new rules are adopted under ORC 3718.02.** Section 120.02 includes provisions in paragraph (B) for boards of health to adopt more stringent rules and require consideration of economic impact when adopting such rules; paragraph (C) approve or deny the use of household and small flow on-sit sewage treatment systems, consider the economic impact on property owners, ensure systems do not create a public health nuisance, sets prohibitions on discharge of sewage, requires all tanks and components to be structurally sound and watertight, and defines economic impact; paragraph (D) provides authority to boards of health to establish fees, sets the state portion of the fee at \$25.00, and requires 25% of the state fee to be deposited in the Sewage Treatment System Innovation Fund; paragraph (E) requires inspections of systems within one year of installation; paragraph (F) provides for injunctive action against boards of health; paragraph (G) allows local boards of health to choose to or not to participate in a MOU with Ohio EPA in implementing the General Household NPDES permit for replacement discharging systems; paragraph (H) continues the authority to regulate small flow on-site sewage treatment systems; paragraph (I) requires the continued implementation of ORC 3718.021; paragraph (J) requires ODH to assess board of health's familiarity with best practices for sewage treatment systems; paragraph (K) defines public health nuisance; and paragraph (M) sets the expiration of this section on the effective date of rules adopted under ORC 3718.02.

#### Provisions of Sub. Senate Bill 110 Effective mid-September, 2010

- 3718.01 – The new definitions for bedrock, gray water recycling, infiltrative surface, soil, vertical separation distance, and water table, and the modifications to the definition of inspection become effective.
- 3718.11 – The definition of public health nuisance for the purpose of this chapter related to board orders and enforcement actions for sewage treatment systems becomes effective. Local health districts may still use the general nuisance authority granted under ORC 3707.01 for non-sewage related complaints and situations.
- 3718.012 – Provides for the continued approval of existing sewage treatment systems that are not creating a public health nuisance. This section allows for repairs to be made to eliminate the public health nuisance.
- 3718.02 – Paragraph (A), subparagraphs (1) through (21) lists the requirements for the adoption of rules by the Public Health Council. The technical and administrative items listed

in these paragraphs will be developed in coordination with a rules advisory committee and be open for review and discussion by stakeholders. The section of this information document titled "Proposed rule development process and information access by stakeholders" provides the details on the process ODH is proposing to develop the rules, obtain stakeholder input and participation and provide easy access to rule drafts, technical references, access to meetings by webinar, and discussion boards. The notice provision in paragraph (A)(18) is technically not in effect until the new rules are adopted, however, ODH encourages local health districts to provide notices to affected property owners in the spirit of the law. Paragraph (B) cites the requirements of, and the process and criteria by which the Director will review and approve/disapprove more stringent local rules proposed by boards of health. ***This section is not applicable until new rules are adopted.***

- 3718.023 – The criteria and requirements for local boards of health to follow when approving or denying the installation, operation or alteration of a sewage treatment system is defined in accordance with the rules adopted in ORC 3718.02.
  - ***Until the rules are adopted, this provision, with the exception of the hearing panel, does not apply.*** Local health districts should continue to use their existing approval or denial process for installation, operation or alteration permits until the new rules are adopted.
  - ***Paragraph (B) of this section is not tied to the new rules and becomes effective.*** This section requires boards of health to ensure that system designs do not create public health nuisances and lists prohibitions on discharges of systems to waterways and ground water unless authorized by a General NPDES permit. *Replacement discharging systems must still obtain coverage under the General Household NPDES permit and follow all applicable requirements.* This section also establishes prohibitions on discharge to dry wells, drainage wells, abandoned wells, sinkholes, cesspools or other connections to ground water. This section identifies the requirements for compliance with Class V injection well regulations for sewage treatment systems where applicable.
  - ***Paragraph (C) defines economic impact pursuant to the adopted rules and does not apply until new rules are adopted.***
  - ***Paragraph (D) is valid on the effective date and states that applications for installation permits accepted prior to January 1, 2012 are valid for three years from the date of submission of a complete application and fee and are effective.***
  - ***Paragraph (E) is valid on the effective date and states that an installation permit issued by a board of health prior to January 1, 2012 is valid through January 1, 2013 unless extended for six months by the board.*** Permits issued after January 1, 2012 will be valid for the period of time specified in the rules.
- 3718.024 - This section requires the Director to assess the capability of local health districts on best management practices related to sewage treatment systems use and conduct training as necessary for local health districts on these practices and new technology systems. ODH will continue to use regional training, conference calls, and direct technical assistance to meet this provision of law until program surveys are established. ***These provisions become valid on the effective date of the bill.***
- 3718.025 – ***This provision becomes valid on the effective date*** and provides the option to local boards of health to enter into a memorandum of agreement with Ohio EPA regarding the site review for obtaining coverage under the General Household NPDES permits, subsequent permitting of a discharging sewage treatment system, and recordkeeping required under the permit.

- 3718.03 – ***This section becomes valid on the effective date*** and makes changes to the composition and management of the Sewage Treatment Systems Technical Advisory Committee (TAC). This section adds three new members – a representative of a statewide organization representing townships, a person with demonstrated experience in the design of sewage treatment systems, and a registered professional engineer with experience in sewage treatment systems. The requirement for the academic member is modified to include a person who is active in teaching or research in the area of on-site systems. The ODH representative is designated as secretary for the TAC and may vote on actions taken by the committee. The TAC is required to develop protocols in addition to standards and guidelines for approving systems, and any guideline requiring the submission of scientific information or testing data shall specify the protocol and format to be used in submitting the data.
- 3718.04 – ***This section becomes valid on the effective date*** and paragraphs (A) through (D) modifies the timeframes for submission, review by the Director and the TAC, and approval or disapproval of applications for systems submitted to the TAC for consideration and to ODH for approval. ODH will have sixty days to complete an application review, and thirty days to provide the application to the TAC. The TAC shall review and make a recommendation within ninety days, and the Director will have an additional sixty days to make a final decision on approval/disapproval of an application. The Director is provided authority to establish and include any terms and conditions associated with approval, design, installation and use of a product. Paragraph (E) defines the process for appeal of a decision issued by the Director regarding an application. Paragraph (F) describes the process for requesting a modification to an existing approval, and paragraph (G) describes the revocation and subsequent appeals process for an approved product.
- 3718.05 – ***Changes to this section become valid on the effective date of the bill.*** Paragraph (G) requires ODH to develop education programs for systems owners regarding proper system operation and maintenance in cooperation with boards of health.
- 3718.06 - ***Changes to this section become valid on the effective date of the bill.*** Changes to paragraph (A) expands the applicable categories for fees to include operation and alteration permits for boards of health and ODH. ODH is limited to use of 75% of the state fees collected for administering and enforcing the program. Not less than 25% of the state fees collected are to fund new technology pilot projects through grants or other agreements. The Director is required to consult with the TAC on the selection of funded projects.
- 3718.09 - ***Changes to this section become valid on the effective date of the bill.*** This section expands the ability of the local health district to issue emergency orders to also include prevention or abatement of imminent and substantial threats to surface or ground water from an improperly operating or failing sewage treatment system.
- 3718.11 – ***This new section becomes valid on the effective date of the bill.*** This section establishes the sewage treatment system appeals board and is an alternative appeals process for those homeowners who want to appeal the decision of a board of health and don't want to go through the court of common pleas process. This section defines the process for an appeal and the duties of the board of health to forward the appeal to the sewage treatment system appeals board. Within 90 days of the effective date of the bill, the members of the sewage treatment systems appeals board shall be appointed and include one member appointed by the health commissioner having jurisdiction in the county, one member appointed by the judge of the probate court of the county having the longest continuous service as probate judge, and one member appointed by the director of health. The terms of appointment are for two years, and the person appointed by the probate judge

serves as chairperson of the board. A majority vote of the board is necessary to take action and members serve without compensation. Boards of health area required to forward all appeals immediately upon filing, and the board is required to issue a written decision within 90 days. The judge of the probate court is required to establish the due process procedures to be used by the appeals board and may include filing fees. An appeal before the appeals board is final and no further appeal may be taken. ODH will propose model due process procedures that probate judges may consider for use for the appeal board process. ODH will also be working with the list of probate judges provided by the Supreme Court, and encourage local health districts to contact the probate judges as well regarding this requirement. Health commissioners should also begin consideration of their appointment to the appeals board. ODH will develop a list of appeals board members and contact information for the boards.

### **Technical and Administrative Requirements of Administrative Rules Adopted by the Public Health Council After January 1, 2012**

ORC Section 3718.02 (A) of Sub. SB 110 specifies the administrative and technical requirements for sewage treatment system design, permitting, installation, inspection, alteration, operation and maintenance. This section authorizes the Public Health Council to adopt rules for statewide application (after January 1, 2012). *The current OAC Chapter 3701-29 and local health district rules will remain in effect until the new rules are adopted.* The following summarizes the primary requirements to be included in the rules by subparagraph in paragraph (A) of ORC 3718.02:

- (1) Requires the board of health to approve or disapprove the installation, operation or alteration of a sewage treatment system.
- (2) Requires a board of health, or other person as established by rule to conduct a site evaluation for a proposed installation of a sewage treatment system.
- (3) Prescribe standards for the siting, design, installation, operation, monitoring, maintenance and abandonment of sewage treatment systems.
  - The rules shall allow for the progressive alteration or repair or installation of a system to replace an existing failing system.
  - The standards must include specifications for soil absorption and vertical separation distances (VSD) and shall identify those soil conditions that present low and high risk settings. For low risk settings, the VSD shall be no greater than 18 inches. For high risk settings, the VSD shall be no greater than 24-36 inches.
  - Reductions for required VSD's, such as the use of soil depth credits, can be authorized by the rules. The rules will establish options to be used by local health districts when approving reductions in the VSD including subsurface drains (perimeter, interceptor or engineered drainage), pretreatment of sewage or soil elevation.
  - Local health districts may petition the Director to approve an increase in the vertical separation distance in high risk areas of their county.
  - Specifications for the quality of sewage discharged to soil shall be established. Effluent quality for discharging systems is required to comply with the General Household NPDES permit established by Ohio EPA.

- Establish requirements for the reasonable maintenance of systems as approved by the Director and recommended by the TAC, or according to accepted standards and practices. The requirements may include standards for service contracts or other arrangements to ensure maintenance of systems.
- (4) No change.
  - (5) Adds the terms “operation and alteration” to the list of permits local boards may issue and directs ODH to work with local health districts on the computerization of permit issuance.
  - (6) The timeframe for inspection of a sewage system after installation was *changed from eighteen months to twelve months*.
  - (7) Requires boards of health to develop a program for the administration of maintenance requirements of systems, to include procedures for demonstrating operation and maintenance, written notice to system owners, inspection authority with probable cause or without notice if there is a threat to public health. The rules require a cost methodology for inspection fees. The rules allow, but do not require a board of health to continue an existing inspection program.
  - (8) Requires statewide bonding for installers, service providers, and septage haulers as a condition of registration, and requires a cost methodology in rules to set the bond and local registration fee amounts.
  - (9) No change.
  - (10) No change.
  - (11) Boards of health may require a copy of a sewage system manufacturer’s instructions to be filed with the board prior to installation in the health district.
  - (12) No change.
  - (13) Authorizes the development of standards for small flow on-site sewage treatment systems.
  - (14) No change.
  - (15) Requires the development of standards for the use of subsurface drainage to include interceptor, perimeter and engineered drainage.
  - (16) Requires standards for the inspection of septage hauling tanks.
  - (17) Establish standards to ensure that all types of septic and related tanks are structurally sound and watertight.
  - (18) Requires boards of health to give notice and opportunity for a hearing regarding board of health actions related to a sewage treatment system decision, and establish standards and procedures for conducting the hearing.
  - (19) Prescribe standards for the regulation of gray water recycling systems.
  - (20) Prohibits sewage treatment systems from causing a public health nuisance.
  - (21) Define economic impact related to system design and installation/replacement costs.

### **Proposed Rule Development Process and Information Access by Stakeholders**

- Sub. SB 110 provides that rules promulgated under this chapter may be adopted no sooner than January 1, 2012. This provides at least 18 months for rules development, however, it is the intent of ODH to spend the amount of time needed to build consensus support for the new rules.

- ODH proposes to establish a Director's rule advisory committee with representation from a wide variety of stakeholders similar to the groups represented in the Household and Small Flows On-Site Sewage Treatment Systems Study Commission. ODH anticipates that organizations such as AOHC, OEHA and OOWA will have multiple representatives to ensure representation from urban, suburban and rural counties, and areas with differing soils and geologic conditions. ODH will be contacting stakeholder groups soon to establish committee representatives. In the meantime, stakeholders are also welcome to contact the Residential Water and Sewage Program to express interest in participating.
- The rule advisory committee will meet a minimum of monthly preferably on a set day of the month, and smaller workgroups may be established to work on different rule sections. ODH is exploring options to offer participation and/or viewing of the committee meetings via webinar, live meeting and/or conference call. The meetings can then be recorded and posted on the sharepoint website for download to view at a later time for those who are unable to participate at the time of the meeting.
- ODH is proposing to establish a sharepoint website to facilitate an open and transparent rules development process. Stakeholders will be able to access the website via login and password to download and view rule drafts, participate in discussion boards, access technical references, and view recorded rules advisory committee meetings. Sharepoint users can set alerts to be notified when new information is posted on the website.
- ODH will follow the rule development process defined under ORC Section 119.03 and will provide a 60 day public comment period as required under Section 3718.02 (A) (lines 591-594) of Sub. SB 110. ODH anticipates that after the rule advisory committee meetings, and initial draft of the rules will be developed and circulated for comment. Based on comments from the first draft, a second draft will be prepared and distributed for comment also. A final draft will then be prepared for submittal to the Public Health Council for adoption.
- The effective date of the rules will be established based on recommendations of the rule advisory committee to ensure adequate time for training of local health districts sanitarians, sewage installers, designers, service providers, septage haulers and soil scientists, and for implementation during the non-construction season.

### **Contact Information**

Questions or comments regarding this guidance and the proposed rule development process should be directed to Residential Water and Sewage staff:

Rebecca Fugitt, Program Manager  
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Email questions and comments should be sent to program staff or to [BEH@odh.ohio.gov](mailto:BEH@odh.ohio.gov). Staff can be contacted via phone at (614) 466-1390, by fax at (614) 466-4556 or by mail at Ohio Department of Health, 246 N. High St., Columbus, Ohio 43215.