

**Tuscarawas County General Health District
Point of Sale Evaluation
Resolution 25**

A RESOLUTION of the Board of Health of the Tuscarawas County General Health District adopting Board of Health Regulation 25 for Point of Sale Evaluation.

WHEREAS, the Board of Health of the Tuscarawas County General Health District, acting under the authority vested in it by Sections 3707.01 and 3709.21 of the Ohio Revised Code, may adopt regulations necessary for the public health, the prevention and restriction of disease and the prevention, abatement, and suppression of nuisances, and

WHEREAS, Section 3709.09 of the Ohio Revised Code permits the Tuscarawas County General Health District to establish a uniform system of fees to pay the cost of any service provided by the Board of Health, and

WHEREAS, the Board of Health finds it necessary to implement a fee system to support the cost of providing a Point of Sale Evaluation for properties with a sewage treatment system and/or private water supply.

BE IT RESOLVED by the Board of Health of the Tuscarawas County General Health District:

SECTION 1. That the new Board of Health Regulation 25 is adopted to read as follows:

Tuscarawas County General Health District Point of Sale Evaluation

Regulation Number 25

A regulation governing the sale, transfer, or conveyance of any parcel within the Tuscarawas County General Health District (TCHD) served by a private water supply and/or sewage treatment system until a transfer evaluation has been completed and approved by the Tuscarawas County General Health District.

- Section 01. Definitions
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CROSS REFERENCES

Lien for unpaid sewage disposal system permit or inspection fee – ORC 3709.091
Minimum and optimal achievable standards; sewage disposal – OAC 3701-36-13
Orders and regulations of board of general health district – ORC 3709.21
Powers of board; abatement of nuisances – ORC 3707.01
Uniform system of fees; public health council rules – ORC 3709.09
Private Water System Rules – OAC-3701-28
Tuscarawas County, Ohio, General Health District Sewage Disposal Regulation Number 15

ORC Ohio Revised Code OAC Ohio Administrative Code

Section 01. Definitions

The following words and terms used in this Regulation, unless otherwise expressly stated, shall have the following meaning:

- (A) “Conveyance” means the transfer of property from one person to another.
- (B) “Failure” is defined as follows:
- (1) For a Private Water System (PWS):
 - (a) Unsafe water sample, as determined by Ohio Department of Health (ODH) and Tuscarawas County General Health District (TCHD) standards;
 - (b) The PWS is not within substantial conformance with water well construction requirements;
 - (c) The PWS is not within substantial conformance with water well isolation from contamination source requirements.
 - (2) For a Sewage Treatment System (STS):
 - (a) Prohibited discharge of effluent onto the ground surface, into a storm drain or ditch, or discharge into any stream or other body of water when the final water quality does not meet health or environmental standards set by the Ohio EPA NPDES requirements or, in the absence of NPDES requirements, the Board of Health requirements as outlined in TCHD regulation number 15;
 - (b) The backup of sewage into a structure;
 - (c) Structural failure of a septic tank or other components;
 - (d) Or other conditions where the STS is determined not to be in substantial conformance with the STS requirements and is deemed unsafe or unsanitary by the TCHD.
- (C) “Household sewage treatment system” (HSTS) means any sewage treatment system, or part of such a system, that receives sewage from a single-family, two-family, or three-family dwelling and residential dwellings or appurtenances including but not limited to:

- (1) A bed and breakfast, residential facility, or other residence as described in the Revised Code 3717.42 (B)(2), (B)(4), and (B)(13).
 - (2) An ancillary restroom associated with a dwelling in a location such as a barn or personal garage that is not used as an additional dwelling, sleeping area, or business and the users of the ancillary restroom are the same users of the dwelling. An ancillary restroom shall not be available for public use.
 - (3) Vacation rental cabins provided there is a separate HSTS for each cabin.
 - (4) A dwelling with a home business having no access for the general public and does not generate additional sewage as part of its operation.
- (D) "Owner" means any person or entity which has legal title to any premises.
- (E) "Person" means any individual, firm, partnership, party, corporation, company, society, association, or other legal entity.
- (F) "Premises" means any tract of land, or portion thereof, or combination of tracts of land under single or common ownership, operation, or control that contains any type of structure that is, was or will be inhabited either permanently or transiently, water well or septic tank, drains, drain field, underground tank or pipes or similar appurtenances containing sewage or other contaminants or combination thereof.
- (G) "Private Water System" (PWS) means any water system, other than a public water supply system, for the provision of water for human consumption, if the system has fewer than fifteen service connections and does not regularly serve an average of at least twenty-five individuals daily at least sixty days each year. A private water system includes any well, spring, cistern, pond, or hauled water and any equipment for the collection, distribution, transportation, filtration, disinfection, treatment, or storage of water extending from and including the source of the water to the point of discharge from any pressure tank or other storage vessel; to the point of discharge from the water pump where no pressure tank or other storage vessel is present; to where the pressure tank is outside of the building or dwelling; or , in the case of multiple service connections serving more than one dwelling, to the point of discharge from each service connection where the service connection enters the foundation of the dwelling. A private water system does not include the water service line extending from the point of discharge to a structure. (OAC 3701-28-01(ZZ))
- (H) "Sewage Treatment System" (STS) means a home sewage treatment system, a small flow on-site sewage treatment system, or both as applicable.
- (I) "Sewage Treatment System Evaluator" means a person who inspects sewage treatment systems for the purpose of providing all interested parties, which are involved with the sale of a home, information about the functional status of the system and is registered as a TCHD installer or TCHD septic cleaner.
- (J) "Small flow on-site sewage treatment system (SFOSTS)" means a system, other than a household sewage disposal system, that treats not more than one thousand gallons of sewage per day and that does not require a national pollutant discharge elimination system permit issued under section 6111.03 of the Revised Code or an injection well drilling or operating permit issued under section 6111.043 of the Revised Code. A structure or structures served by a SFOSTS shall include but is not limited to:

- (1) Vacation rental cabins with multiple cabins served by an SFOSTS.
 - (2) A dwelling and an ancillary building both served by an SFOSTS where the ancillary building may be open to the public and is used by more than the residents of the dwelling.
 - (3) Two dwellings, including arrangements such as a dwelling and a detached garage with living space.
 - (4) A dwelling with a home business that may be open to the public, generates sewage in excess of the daily design flow or waste strength for an HSTS, and has no wastewater going to the SFOSTS other than sewage as defined in this rule.
- (K) “Substantial Conformance” means there is a minimal likelihood of contamination of the PWS or surrounding PWS’s posed by the improper construction or location of a PWS. Or, for a STS there is minimal likelihood of degradation of groundwater and surface water, or risk to public health caused by improper construction or location of an STS, or a malfunctioning STS.
- (L) “Water System Contractor” means a person who constructs or develops a well for use as or as part of a private water system or otherwise constructs a private water system, installs pumping equipment for a private water system, alters a private water system, repairs a private water system, seals a private water system, or performs any combination of those activities for hire; or, who inspects or evaluates private water systems for hire. (OAC 3701-28-01(OOO))
- (M) “Water System Evaluator” means a person who inspects private water systems for the purpose of providing all interested parties, which are involved with the sale of a home, information about the functional status of the system and is registered as a water system contractor with the Ohio Department of Health.

Section 02. Limitations on Sale, Transfer, or Conveyance of Property

There shall be no sale, transfer, or conveyance of any parcel within the Tuscarawas County General Health District (TCHD) served by a PWS and/or STS until the following are met:

- (A) The seller obtains, and files with the TCHD, a PWS evaluation report by:
 - (1) The TCHD
 - (2) A registered water system contractor;
- (B) The seller obtains, and files with the TCHD, a STS evaluation report by:
 - (1) The TCHD
 - (2) A qualified registered STS Evaluator;
- (C) The seller provides a copy of the completed State of Ohio Department of Commerce Residential Property Disclosure Form:

Section 03. Evaluations

Each PWS or STS in the TCHD shall be inspected and evaluated prior to the sale, transfer, or conveyance of any property upon which a PWS or STS is located.

- (A) Transfers exempt from inspections include:
 - (1) Structures that have had a new or replacement PWS and/or, STS approved by the TCHD submitted within twenty-four (24) months preceding the date of property transfer;
 - (2) Had a point of sale evaluation conducted by TCHD or an approved water system evaluator or sewage treatment system evaluator that submitted the evaluation form to TCHD within twenty-four (24) months preceding the date of property transfer.
 - (3) Any property transfer waived as determined by the Board of Health, or it's authorized agent.
- (B) The property owner must show proof of exemption in order for TCHD to waive a PWS and/or STS transfer evaluation. An exemption application shall be completed and submitted to TCHD prior to closing.
- (C) The owner of a premise containing a PWS shall have the system evaluated by either:
 - (1) An authorized representative of the Tuscarawas County General Health District
 - (2) A water system evaluator meeting the standards in section 05 of this article.
- (D) The owner of a premise containing a STS shall have the system evaluated by either:
 - (1) An authorized representative of the Tuscarawas County General Health District
 - (2) A registered STS Evaluator meeting the standards in section 06 of this article.
- (E) When a system is inspected by a PWS contractor or a STS Evaluator, a report on an approved form shall be submitted to TCHD within three (3) business days of completion of inspection with the required review fee.
- (F) After the report is evaluated, the TCHD shall review the report and issue a certificate of transfer review to the evaluator which may be presented to the buyer and seller. A copy of the private inspectors' evaluation report of a PWS and/or STS shall be provided to the buyer and seller in addition to filing a copy with the TCHD.

Section 04. Performance Standards

The evaluation shall determine whether the system(s) adversely affects the public health or violates any other applicable rules or regulations.

- (A) The evaluation shall determine whether the PWS and/or STS structure and its operational status are in substantial conformance with the standards of this regulation and Tuscarawas County General Health District Regulation 15 and OAC 3701-28.
- (B) Water samples that are collected shall be analyzed at a laboratory certified by the Ohio Environmental Protection Agency (OEPA) to determine the presence of:
 - (1) Coliform bacteria,
 - (2) Nitrates,
 - (3) Other contaminants as determined by the TCHD,
- (C) The process used for collection of potable water samples shall comply with Ohio Department of Health (ODH) rules and regulations as outlined in OAC 3701-28-04 (E).

Section 05. Registration of Water System Evaluators

All private inspectors performing evaluations of PWSs under this regulation must be registered with the Ohio Department of Health as a Water Systems Contractor. (OAC 3701-28-20)

Section 06. Registration of Sewage Treatment System Evaluators

All private inspectors performing evaluations on STSs under this regulation must be registered as a TCHD installer or TCHD septic cleaner.

Section 07. Fees

Fees adopted by the TCHD shall be paid prior to the compliance evaluation by the TCHD. When the inspection has been performed by a private evaluator, the review fee shall be paid when inspection reports are filed with the TCHD.

Section 08. Nuisance (Failure)

The system will fail if the PWS and/or STS meets any requirements as set forth in Section 01(B)

- (A) When a PWS and/or STS fails the owner, agent or other responsible party shall:
 - (1) Contact the TCHD
 - (2) Apply for any applicable Site and Soil Evaluations and/or Installation Permits
 - (3) Shall complete all repairs or system replacement as required by the TCHD.
- (B) If repairs cannot be completed prior to the date of the property transfer:

(1) The TCHD will issue orders for correction to the owner of record for repairs to be completed within a reasonable timeframe.

(C) If as a result of TCHD paper and/or on-site review of the transfer evaluation conducted by a PWS and/or STS Evaluator the TCHD finds that the PWS and/or STS is not in substantial conformance and/or is creating a nuisance:

(1) The TCHD will notify the Evaluator of its findings and order correction by the owner of record.

Section 09. Inspection Notification

If, after conducting the inspection, or receiving a private evaluator's inspection report, the TCHD determines that the PWS and/or STS are/is not in substantial conformance as defined, then the property owner shall be subject to enforcement as provided by TCHD policy.

(A) The TCHD shall notify in writing the owner and/or purchaser or transferee or other person with a legally recognizable interest in the property.

(B) This written notice shall be sent after the determination is made or when the inspection report of the premises is filed and reviewed by the TCHD.

(C) Any party is considered notified if the notice is sent to that party's last known mailing address or to the property address if the party occupies the premises with the non-conforming PWS and/or STS.

Section 10. Corrective Action

All property owner, agent or other responsible party shall make all corrective action:

(A) Upon receiving written notice from the TCHD of noncompliance with this Regulation, the owner, buyer or authorized agent shall within sixty (60) days,:

(1) Schedule a site and soil evaluation with the TCHD

(2) Submit appropriate TCHD applications and fees for alteration or replacement in order to bring the affected system into compliance.

(3) All necessary corrective action shall be completed within the time determined by TCHD.

(B) Once TCHD gives final approval of the completed corrective action, the system shall be deemed in substantial conformance with this Regulation and any affidavit previously filed with the Registrar of Deeds shall be discharged.

(C) If a PWS or STS presents an immediate health hazard, the owner or other responsible party shall take such measures, in cooperation with the TCHD, which will immediately reduce or eliminate the impact of such failure.

Section 11. Enforcement and Compliance

If, after investigation, the TCHD believes that a person is violating these regulations the TCHD shall:

- (A) Attempt to enter a voluntary agreement with the property owner to resolve the violation.
- (B) The owner, transferee or purchaser may voluntarily place funds into an escrow account with the lending institution for the repair and/or replacement of the sewage treatment system. The funds may be utilized for the correction of any and all faulty system components. The timeframe for repairs will be determined by the TCHD.
- (C) If a voluntary agreement cannot be reached; the TCHD may issue a violation notice to the owner.
- (D) If an owner, transferee or purchaser does not comply with the requirements of this regulation, a TCHD enforcement action will be pursued through the Board of Health, and if necessary through prosecution.

Section 12. Assessment against the Property

If an owner does not have his/her property evaluated as specified by this regulation, the TCHD shall cause an inspection to be performed and may charge all costs and fees for the evaluation to the owner of the premises. If the owner or party violating this regulation refuses on demand to pay such expenses incurred by the TCHD to inspect, abate, correct or remove a violation, unsanitary condition or nuisance, the sum shall be assessed against the property and shall be collected and treated in the same manner as taxes assessed under the general tax laws of the State of Ohio, Ohio Revised Code Section 3709.091.

Section 13. Severability

Each provision of this regulation must be interpreted in a way that is valid under Ohio law. If any provision is held invalid, the rest of the regulation shall remain in full effect.

Section 14. Disclaimer

The point of sale evaluation will be compiled from observation of the visible components of the water supply and sewage disposal system and if applicable, information from the owner/ realtor and Health department records. This opinion may be rendered without knowledge of some individual components of the water supply or sewage disposal system and applies to only the date and time of evaluation and/or evaluation approval. Because of these factors the evaluation does not guarantee the future performance of either system.

Section 99. Penalties

Whoever violates or fails to comply with any of the provisions of Regulation 25 shall be in violation of ORC 3707.48, 3709.20, 3709.21 or 3709.22, and subject to penalties provided in ORC 3707.99 and 3709.99.

Section 2: The fees for the Point of Sale Evaluation be set at Two Hundred Dollars.

Section 3: That this Resolution shall an emergency measure necessary for the preservation of the public peace, health, safety and general welfare and shall be effective February 1, 2010.

ADOPTED BY THE TUSCARAWAS COUNTY BOARD OF HEALTH ON THIS

_____ DAY OF _____, 2009.

Dr. Andrea Fanti
President
Board of Health of the Tuscarawas County General Health District

ATTEST:

James G. Hubert, D.O., M.S.
Secretary
Board of Health of the Tuscarawas County General Health District