

KIOWA COUNTY

ON-SITE WASTEWATER TREATMENT SYSTEMS REGULATIONS

I. Title and Authority

These requirements shall be known as the “Kiowa County On-site Wastewater Treatment Systems Regulations”.

These requirements have been adopted by the Kiowa Board of County Commissioners acting as a Board of Health (“BOH”) pursuant to and under authority contained in the On-site Wastewater Treatment System Act, 25-10-101, *et seq.* C.R.S. and has designated Kiowa County Public Health Agency (“KCPHA”) to implement these Regulations on behalf of the Board of Health.

II. Scope and Purpose

A. Declaration

1. This regulation shall apply to On-site Wastewater Treatment Systems (“OWTS”) as defined in section 25-10-103(12), C.R.S.

B. Purpose

1. The purpose of these Regulations is to establish the minimum standards for the location, design, construction, performance, installation, alteration and use of OWTS with a design capacity 2,000 gallons and less per day within Kiowa County

C. Jurisdiction

1. These Regulations apply to all OWTS in the unincorporated areas of the county and over all municipal corporations within the territorial limits of Kiowa County.

D. Prohibition of OWTS Where Public Sewer Service is Available and Feasible

1. No OWTS permit shall be issued to any person when the subject property is located within a municipality or special district that provides public sewer service, except where such sewer service to the property is not feasible in the determination of the municipality or special district, or the permit is otherwise authorized by the municipality or special district.

E. Repeal Clause

1. All “regulations, ordinances, policies, documents, etc” adopted by the Board of Health or the Board of County Commissioners prior to these regulations, re: septic tank and non-municipal sewage disposal systems are hereby repealed.

F. Severability

1. Should any section, clause, or provision of these Regulations be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of these Regulations as a whole, or any part thereof other than the part declared to be invalid.

III. Incorporation of Regulation 43

A. Included By Reference

1. The requirements of the Colorado Water Quality Control Commission’s “On-site Wastewater Treatment System Regulation, Regulation 43, 5 CCR 1002-43, Effective date, June, 30, 2017”, are made a part of these regulations and will apply except where identified as an option of the local public health agency or where these regulations are more stringent than Regulation 43, 5 CCR 1002-43, and included in these regulations. All aspects of an On-site Wastewater Treatment System including, but not limited to,

permits, design, performance, location, construction, alteration, inspection, maintenance and use must be as provided in Regulation 43 and any additional requirements contained in these regulations.

2. Allowable local options identified in Regulation 43 but not identified in this text and the designated decisions for these Regulations are identified in the attached "Appendix A to OWTS Regulations for Kiowa County". Appendix A is made a part of these Regulations.

B. Excluded

1. Reductions in soil treatment area size or separation distances and wide beds for higher level treatment units shall not be allowed under these Regulations. All designs must be based on TL-1 parameters in Regulation 43. . Area or separation distance reductions and wider beds for higher level treatment can only be allowed in the future if these Regulations are amended to include a program of oversight for inspection and maintenance of higher level treatment units, and this amendment is accepted by the Division.

IV. Permits and Fees

A. Permits [43.4(B)]

1. Prior to installing, altering, expanding or repairing an OWTS, the applicant must obtain a permit from KCPHA
 - a. Application forms will be created by KCPHA as approved by or under the direction of the BOH.
2. The permit application must include information identified in section 43.4(B)(3) of Regulation 43.
3. An OWTS permit expires one year after the date of issuance if construction has not commenced. After expiration, a new application shall be required to begin construction.
4. Any change in plans or specifications of the OWTS after the permit has been issued invalidates the permit unless the permittee receives written approval from KCPHA. After a permit is invalidated, a new application shall be required to begin construction.
5. Repair permits must identify a reasonable period of time in which the owner must make repairs.
6. Application for a product development permit may be approved by KCPHA consistent with requirements of section 43.4(I) of Regulation 43.
7. Application for a product development permit may be approved by the Board of Health consistent with requirements of section 43.4(I) of Regulation 43.

B. Board of Health Review [43.4(B)(9)]

1. When an application is denied by KCPHA, an applicant may request review by the Board of Health.
 - a. Request must be filed in writing with the Board of Health within 10 days of the denial.
 - b. Denial shall become final upon expiration of time for filing and appeal, or when final action is taken upon an appeal, whichever is later.

C. Fees [43.4(B)(4) and 43.4(B)(5)]

1. Permit fees and fees for other services and tests associated with OWTS will be set by the Board of Health, in conformance with section 43.4(B)(4) and (5) of Regulation 43 and 25-10-107, C.R.S.
 - a. All fees shall be established by or under the direction of the BOH.

2. The BOH may waive, if just cause is provided, any permit fee normally required for an on-site wastewater treatment system.

D. Surcharge [43.4(B)(5)]

1. Surcharge of \$23.00 will be collected for each permit issued by KCPHA. Of that fee, KCPHA will retain three dollars to cover administrative costs and twenty dollars must be transmitted to the Colorado Department of Public & Environment for use in funding its OWTS program.

V. Inspections [43.4(E)]

A. SepticTank [43.9(B)(3)(c)]

1. The applicant must provide KCPHA or its designee a minimum of 2 business days' notice so KCPHA or its designee can conduct a field inspection of the septic tank before backfilling.

B. OWTS [43.4(F)(3)]

1. The applicant must provide KCPHA or its designee a minimum of 2 working days' notice so KCPHA or its designee can conduct a final field inspection of all related components of the OWTS before backfilling.

VII Variances [43.4(N)]

A. Variances Allowed

1. The Board of Health may approve a variance from a requirement of this Regulation. Variances cannot be granted by staff.
2. Approval of a variance shall be based upon evidence presented by the applicant or their designee, showing that the variance: a) would not be injurious to the public health, water quality, and environment; and b) would prevent a substantial hardship to the applicant.
3. Variances shall not be granted under the items identified in section 43.4(N)(5) of Regulation 43.

B. Variance Procedure

1. Variance requests shall be submitted by the owner or occupant of the property to KCPHA in writing.
 - a. For a new/modified/replacement OWTS the request shall be submitted no less than 60 days prior to the planned construction/installation.
 - b. For repairs the request shall be submitted no more than 2 business days after receiving notice from the local health department that the system is not functioning in compliance with Article 10 of Title 25, C.R.S. or applicable rules and regulations adopted thereunder or otherwise constitutes a nuisance or a hazard to public health.
2. Variance requests shall include all items identified in section 43.4(N)(2)(d) of Regulation 43.
3. The applicant has the burden of proof to demonstrate that the variance is justified and will pose no greater risk to public health and the environment than would a system meeting these Regulations. The Board of Health must determine if this item has been addressed prior to granting a variance.

4. The BOH has the authority to impose site-specific requirements and conditions on any variance granted.

C. Variances Requiring Public Hearings

1. The BOH may require a public hearing for variances related to 43.4(N)(5)(d) or 43.4(N)(5)(f) or 43.4(N)(6) of Regulation 43.
2. The hearing must be the subject of a public notice or notice must be sent via certified mail, with a minimum 20-day reply time from the date of mailing, to all adjacent property owners.
3. All actions of the BOH shall be in writing and shall contain findings of fact and shall include a statement setting forth those factors which the BOH considered controlling factors in reaching its decision. Any variance may be revoked following notice to the variance holder and public hearing, for failure to comply with any of the terms or conditions of the issued variance, following notice to the variance holder and public hearing. Variances granted must be exercised in full or construction started within not more than one (1) year from the date of granting such appeal; otherwise the variance granted becomes null and void.
4. Decisions on variances by the BOH shall be rendered within sixty (60) days after concluding the public hearing on the application. Failure of the BOH to render a decision within the allotted time shall constitute granting of the application. Upon mutual agreement of the BOH and the applicant, the time period within which the BOH shall act shall be extended.
5. In the event a request a variance is denied, no new request shall be made for the same or a substantially similar condition within six (6) months of such denial thereof.
6. The findings and decisions on variances by the BOH shall be final. Appeals to the District Court shall be made within thirty (30) days from the date of the action by the BOH.

VIII Requirement for Soil Profile Test Pits and Percolation Test Holes to Remain Open [43.5(E)]

A. Profile Test Pits

1. Profile test pit holes must remain open until approved for closure by or closed by KCPHA or its designee.

B. Percolation Holes

1. Percolation holes must remain open until approved for closure by or closed by KCPHA or its designee.

Appendix A to OWTS Regulations for Kiowa County*

Attached.

Adoped 4/26/2018