

Proposed Rulemaking Report

10 CSR 20-6.030 Disposal of Wastewater in Residential Housing Developments

Pursuant to Section 536.016, RSMo., an agency shall promulgate rules based upon substantial evidence on record. The following information identifies the necessity for the Missouri Department of Natural Resources to propose this rulemaking.

1. What is the purpose of the rulemaking and why is it necessary?
The purpose of this rulemaking is to amend the current residential housing development rule by adding language that will allow developers and lot owners to request an alternative determination for a development that was required to receive written approval from the Department of Natural Resources but had not received it for various reasons. The purpose of the current rule is to determine the method of wastewater treatment and should be used as a planning tool by developers to inform them that they should receive approval prior to the sale, lease or the commencement of construction on any individual lot from the Department. There has been a considerable amount of noncompliance and misunderstanding of the current rule by developers. Lots have been sold without approval allowing onsite wastewater treatment (septic) systems (OWTS) to be installed and permitted by the Department of Health and Senior Services, Onsite Wastewater Treatment Program (DHSS) or the local onsite wastewater authority (commonly the local health department. Unfortunately, a majority of those developments had lots that were not sized or configured with suitable soils and landscape position that would allow an OWTS to function properly, causing the onsite wastewater authority to issue a variance under 19 CSR 20-3.060 Minimal Construction Standards for On-Site Sewage Disposal Systems just so an OWTS could be installed. This practice put the increased cost and liability onto the lot owner along with increasing the potential for adverse effects to public health, and the environment. If the rule is not amended the potential for adverse effects to public health and the environment will not only continue to increase but the cost of the OWTS to overcome the soil and site limitations will continue to be placed on the lot owner. The DHSS or local onsite wastewater authority have regulations that can overcome soil and site limitation when the lots are sized and configured following the methodology within the current rule. This amendment will aid in that.
2. What does the rulemaking require and how does it produce benefits?
This rulemaking will require the addition of a section describing the alternative determination but will not change the methodology already contained within the rule. This amendment will be done in a manner that ensures it continues to work with and promotes the DHSS regulations with respect to the Revised Missouri Statutes, RSMo and 19 CSR 20-3.060 Minimal Construction Standards for On-Site Sewage Disposal Systems. Amending the rule will not only encourage planning but recognizes that OWTS are protective of public health and the environment by reducing the potential for failure of effluent surfacing or unpermitted discharges to waters of the state. As stated within the Report to the General Assembly from the Department of Health and Senior Services and

Department of Natural Resources pursuant to House Bill 89 (2011) regarding Onsite Wastewater Systems, several stakeholders stated their concerns with developers and individuals who were circumventing 10 CSR 20-6.030 by developing and selling undersized lots within their subdivisions for OWTS without being regulated. This amendment will follow the stakeholder's recommendation and allow the onsite wastewater permitting authority to ensure that the proper system is installed without placing a burden on the lot owner while reducing the liability of the developer. It will also assist small businesses and individuals in the planning stages by reducing the potential for misinterpretation while increasing the rate compliance throughout the state by making it easier to understand what is needed to obtain approval for the method of wastewater treatment for a subdivision.

3. Who has or will be involved in the development of the rulemaking?
There are numerous entities who may be involved with the development of this rulemaking at various stages, as follows: Department staff along with external stakeholders, including but not limited to onsite wastewater industry equipment manufacturers (local and national); registered onsite wastewater treatment system installers and inspectors; Missouri realtor associations; Department of Health and Senior Services, Onsite Wastewater Treatment Program and local onsite wastewater permitting authorities; private citizens; professional onsite wastewater treatment organizations; environmental advocacy organizations (Lake of the Ozarks Watershed Alliance, MO Coalition for the Environment, James River Basin Partnership, Ozarks Water Watch, Table Rock Lake Water Quality Association, among others); regional home builders associations, state assessors association; Society of Professional Surveyors; MO recorder's association, MO Chamber of Commerce and Industry; onsite wastewater treatment system (OWTS) consulting engineers and soil scientist, EPA Region 7 staff, USDA-NRCS staff, MO Farm Bureau.

4. Who may I contact to either ask questions or provide input on this rulemaking?
Michael Abbott, Michael.abbott@dnr.mo.gov, 573-526-5781.

5. What is the **tentative** schedule for this rulemaking (in particular the comment period and public hearing)?
Stakeholder meeting – early June 2022
RIR public notice – February 10, 2023 – April 10, 2023
File proposed amendment – September 15, 2023
Public comment period – October 16, 2023 – November 21, 2023
Public hearing November 14, 2023
ORM adoption by Clean Water Commission – January 10, 2024
ORM filed with JCAR – January 12, 2024
ORM filed with Secretary of State – February 13, 2024
Rule effective – April 30, 2024