

# Straight-Pipe System Law

## Guidance for Local Governments

This fact sheet guides local governmental units (LGUs) seeking the Minnesota Pollution Control Agency's (MPCA) involvement in correcting straight-pipe discharges within the LGUs jurisdiction.

### What is a straight-pipe discharge?

A straight-pipe discharge is a sewage disposal system that transports raw or partially settled sewage directly to a lake or stream, to a drainage system, or onto the ground. Many of these straight-pipe systems are located on properties consisting of either single family homes or business but can also be found in small communities as well.

### What is the law?

The Straight-Pipe Act of 2006, Session Law Chapter 224, was enacted in August 2006. It requires system owners who do not correct straight-pipe discharges within ten months of notification to be subject to penalties of \$500 per month for each month of subsequent noncompliance.

As LGUs are the primary regulators for subsurface sewage treatment systems (SSTS) under Minn. Stat. § 115.55, the Straight-Pipe Act was added to Minn. Stat. § 115.55 to allow local governments to seek an MPCA-issued administrative penalty order (APO) to the system owner to encourage compliance with SSTS regulations.

### What is the intent of the law?

The law provides an additional tool for LGUs to use in correcting straight-pipe discharges within their jurisdiction. It is focused primarily on individual homes; however, the law is not limited to this and could also be applied to community straight-pipe systems or other establishments.

The MPCA recognizes that solutions for communities may require more time to implement than ten months. In some cases, rather than imposing penalties, the MPCA may require that the community minimize the discharge first, then move steadily toward a permanent solution. Minimizing discharges may mean installing holding tanks or another solution that is mutually agreeable to both the MPCA and the LGU. The temporary solutions can be incorporated into a Memorandum of Understanding (MOU) between the MPCA, the community, and the LGU. This will allow additional time past the ten-month compliance period for the community to find the solution that works best for their wastewater needs.

### How has the prior law changed?

Minn. Stat. § 115.55 was amended to include:

"Subdivision 1. Definitions

(s) "Straight-pipe system" means a sewage disposal system that transports raw or partially settled sewage directly to a lake, a stream, a drainage system, or ground surface."

"Subdivision 11. Straight-pipe systems; noncompliance. An inspector who discovers the existence of a straight-pipe system issue a noncompliance notice to the owner of the straight-pipe system and forward a copy of the to the agency. The notice must state that the owner must replace or discontinue the use of the straight-pipe system within ten months of receiving the notice. If the owner does not replace or discontinue the use of the

straight-pipe system within ten months after the notice was received, the owner of the straight-pipe system shall be subject to an administrative penalty of \$500 per month of noncompliance beyond the ten-month period. Administrative penalty orders may be issued for violations under this subdivision, as provided in section 116.072. One-half of the proceeds collected from an administrative penalty order issued for violating this subdivision shall be remitted to the local unit of government with jurisdiction over the noncompliant straight-pipe system.”

## **How are penalties assessed?**

Penalties are assessed by the MPCA through a combination APO that is sent to the system owner after their deadline is missed. The APO contains a penalty fee for the prior month of noncompliance and an additional penalty if the system is not replaced or discontinued within 30 days.

Combination APOs can continue to be sent for each subsequent month of noncompliance until the system owner replaces or discontinues the use of the system. Penalty fees accumulate for each combined APO sent.

While the MPCA issues the APO penalties, the system owner must follow all LGU requirements for required permits, new system design approval, and inspections.

## **Can a system owner appeal?**

System owners who are issued APO penalties have the right to appeal the case for reconsideration by a judge.

In the event of an appeal, MPCA initiates a process to bring the case before an Administrative Law Judge (ALJ) for a hearing with the plaintiff (MPCA) and the defendant (system owner). Then, the ALJ rules if the APO stands, is dismissed, or is modified.

If an appeal is pursued, LGUs and Inspectors can be requested or subpoenaed by the MPCA to appear at the hearing to provide their testimony about the case.

## **What steps should the LGU follow to involve the MPCA?**

Here is a suggested procedure.

### **1. Discovery**

The compliance process begins when a private inspector or LGU Qualified Employee:

- Discovers a straight-pipe, and
- Confirms that is an imminent threat to public health (ITPH).

For private inspectors, they will issue a Notice of Noncompliance (NON) to the homeowner on the MPCA’s existing system compliance inspection form that appropriately indicates the system is an ITPH. They will also forward a copy of the NON to the LGU.

After the LGU has received the NON from the private inspector, they will issue an order to the system owner to come into compliance by identifying:

- There is a straight-pipe on the property,
- The due date for compliance,
- Requirements to replace or discontinue the straight-pipe discharge by the due date, referencing MN Statue 155.55, Subd. 11, and
- Any information on the availability of funding assistance for upgrades.

If the LGU was the entity to discover the straight-pipe, they still need to fill out the MPCA’s existing system compliance inspection form and identify the system as an ITPH. The LGU can issue the NON and the order at the same time in this scenario.

It is important to note the NON establishes the basis for the potential issuing of an APO by the MPCA, and the date the LGU sends the order will start the ten-month clock.

While there is no requirement for an LGU to refer a straight-pipe case to the MPCA as soon as it is discovered. It has been shown, that the sooner the MPCA gets involved, the less likely there will be a penalty assessed to the system owner before compliance is achieved.

## **2. Notification to MPCA staff**

When the LGU is ready to refer the straight-pipe to MPCA staff, they should put together a referral package that includes:

- The NON,
- The LGU's order to the system owner,
- Any photos taken during the investigation with corresponding labeling and identification, and
- Copies of any field notes from inspections or other supporting documentation written or received since the discovery date.

This information can be mailed or emailed to the appropriate MPCA regional compliance and enforcement staff. The MPCA cannot begin its enforcement process until all the background information and documentation is provided.

## **3. After discovery and notification to the MPCA**

Once MPCA staff have been notified by the LGU of the straight-pipe septic system, a notification letter will be sent to the system owner identifying the MPCA is also involved. The notification letter will reiterate the due date in the LGU's order, identify there is a penalty for noncompliance after 10 months, and the system owner needs to work with the LGU to update or discontinue their straight-pipe septic system.

## **4. Month 10 after the LGU issued their order**

If, after 10 months no information has been given to MPCA staff identifying the straight-pipe was resolved, MPCA staff will reach out to the LGU to verify the status of the system. If the straight-pipe discharge has not been replaced or discontinued, MPCA staff will issue an Alleged Violations Letter (AVL) to the system owner. The AVL will give the system owner 30 days to replace or discontinue the straight-pipe discharge or an APO will be issued to them.

## **5. 30 days after issuance of the AVL**

If, after 30 days from the issuance of the AVL the straight-pipe discharge has not been replaced or discontinued, MPCA staff will issue a combination APO. The combination APO will give the system owner a \$500 nonforgivable penalty for not coming into compliance and will require them to discontinue or replace the straight-pipe discharge within 30 days. If the Regulated Party does not come into compliance within 30 days after the issuance of the APO, the \$500 forgivable portion of the APO will then automatically become a non-forgivable penalty.

The MPCA can issue subsequent combination APOs or can docket the case in district court if the system owner has not completely satisfied all the required items.

Please note that MPCA staff will not close the case until the straight-pipe system has been replaced or discontinued.

## **Do you need additional information?**

For more information on the MPCA's SSTS program, please visit our Web site at [www.pca.state.mn.us/programs/ists/](http://www.pca.state.mn.us/programs/ists/) or call us at 651-296-6300, or toll-free at 800-657-3864.