

TITLE 410 INDIANA DEPARTMENT OF HEALTH

LSA Document #22-395

Residential Onsite Sewage System Rule Update

Summary of and Response to Comments

Commenter: Kyle Nix, IOWPA President

Comment 1: Mr. Nix read the contents of Rule 410 IAC 6-8.3-52(a) which states:

No person shall throw, run, drain, seep, or otherwise dispose into any of the surface waters or ground waters of this state, or cause, permit, or suffer to be thrown, run, drained, allowed to seep, or otherwise disposed into such waters, any organic or inorganic matter from a dwelling or residential on-site sewage system that would cause or contribute to a health hazard or water pollution.

Mr. Nix stated that IOWPA agreed with that statement, but they hoped that this section would be changed to state that “untreated” waste could not be discharged.

Response 1: This rule regulates residential on-site sewage systems only. It is assumed that Mr. Nix is referring to recent legislation that pertains to onsite residential sewage discharging disposal systems in SEA 414. Residential sewage discharging disposal systems are beyond the scope of this rule.

Comment 2: Mr. Nix referenced Rule 410 IAC 6-8.3-52(d) – (f), primarily speaking to sewage holding tanks. Mr. Nix indicated that he felt these sections contradict the provisions for sewage holding tanks in SEA 414 and that this will cause confusion.

Response 2: The provisions of IC 16-41-25-9 supersede the provisions of Rule 410 IAC 6-8.3 and therefore all decisions for sewage holding tanks will be made in compliance with this statute. The rule sections are still applicable, and the statute provides additional applications for sewage holding tanks.

Comment 3: Mr. Nix read part of the contents of Rule 410 IAC 6-8.3-52(h) including:

(h) In order to permit development of new or more efficient sewage treatment or disposal processes, the department may approve the installation of experimental and TNI equipment, facilities, or pollution control devices for which extensive experience or records of use have not been developed in Indiana.

Mr. Nix stated that IOWPA felt there was an issue with compliance with HEA 1245 (2022) and SEA 1402 (2023) which specify that any technology used elsewhere in Indiana may be used in another other part of the state as long as an engineer creates a design and an installer attests

that the design does meet the rule and can be used, and a soil scientist has been on the site and provided a report of the soil profile. If this were the situation, Mr. Nix indicated that the technology would not need to be approved by IDOH, pursuant to the legislation.

Response 3: IC 16-41-25-5 (2022) states that a LHD cannot deny a permit if a professional engineer certifies that the location, design, proposed construction, and proposed installation complies with the administrative rule, including section 52(h). In this situation, the PE would need to certify that any TNI components proposed for use in the system have been approved by IDOH, as required in 52(h) of the rule.

IC 16-41-25-8 (2022, as amended in 2023) requires that a LHD issue a permit if a soil scientist has completed a description of a soil profile and determines that a site is suitable for a residential OSS and either the LHD or a professional engineer, an installer or inspector, and a designer (if different) approve a design for the residential OSS. It is assumed that this would also require that the approved system to be in compliance with administrative rules, including section 52(h). The LHD is required to issue a permit for the system within 30 days of receipt of a complete application. A complete application includes a written plan of sufficient clarity that compliance with the rule can be verified.

IC 16-19-3-27.5(l) (2022) states that a LHD may not refuse an application for a construction permit for a residential OSS solely because the type of system has not been used previously in the jurisdiction of the LHD or is unfamiliar to the LHD if the system or components have been approved by the Technical Review Panel.

IC 16-19-3-27.6 states that if a LHD has issued a permit for a type of residential OSS and the same type of OSS is approved by a professional engineer, a registered soil scientist, an installer, and a designer (if different), and the same attest that the same type of system would satisfy the requirements of the rule of the state department, another LHD cannot may not refuse to issue a construction permit.

All of these statutes referenced rely on the fact that either the design must comply with the rules of IDOH and/or a complete application, including plans verifying compliance with the rule; therefore, the provisions of the rule, including 52(h), would still apply in all cases.

Commenter: Dr. Gary Steinhardt, IRSS, Professor of Agronomy, Purdue University

Comment 4: Dr. Steinhardt stated that he works with registered soil scientists and in past discussions there had been some discussion regarding different strategies to be used by soil scientists throughout the state. Soil pits may be appropriate in some area but not in other areas. Soil scientists need to be given some latitude and be able to decide how best to evaluate the site and where pits are needed. Almost without exception, evaluation would be better done from a soil pit because you would see more of the soil profile. If a soil scientist has seen

something over and over again, pits would not necessarily be required. LHD can have other requirements because we have home rule in Indiana.

Response 4: There are no changes proposed to the requirements for soil evaluation in the proposed revisions to Rule 410 IAC 6-8.3. The rule currently allows soil scientists to use borings and/or pits as they deem necessary.

Commenter: Carlie Hopper, Indiana Builders Association

Comment 5: Ms. Hopper stated that members of the Indiana Builders Association include builders, developers, remodelers and other trade professionals throughout Indiana, including some OSS system professionals. IBA is concerned about adopting more recent editions of reference standards. The economic impact statement states that there is no cost to the regulated community, even though many standards are proposed to be updated. "Newer" most often comes with an additional cost or may restrict the use of some products while mandating use of others. The regulated community often does not know the new requirements until after they have gone into effect. IBA is very sensitive to adding costs, as for every \$1000 price increase, more than 3000 Hoosiers are priced out of the market. It does not matter if price increases are result of a local ordinance or from state code.

Response 5: IC 16-19-3-27.7 requires IDOH to update all matters incorporated by reference in the rules, including all bulletins, standards and specifications and all industry standard practices reflected in the rule.

Comment 6: Section 51(d) of the proposed draft of Rule 410 IAC 6-8.3 states that local ordinances are not considered more stringent than this rule. In accordance with IC 16-19-3-27.8, which does not use the words "more stringent", IBA feels that 51(d) is outside the scope of the statute that it references. The statute uses words such as restriction, prohibition, and variance to describe the reasons why a LHD must submit a local ordinance for review by the TRP. IBA recommends amending 51(d) to align more closely with the statute it references. Ms. Hopper recommended wording such as "a local ordinance must be approved both locally and by the Technical Review Panel, in accordance with the statute".

Response 6: We believe Ms. Hopper to be referencing section 51(e) rather than 51(d) of the proposed draft of Rule 410 IAC 6-8.3. Currently, section 51(e), proposed to be added to the rule, states "A local ordinance is not considered more stringent than this rule if it is in accordance with IC 16-19-2-27.8." (This has been corrected to IC 16-19-~~3~~-27.8 in the final rule). This provision was added to interpret IC 16-41-25-7, which prohibits local onsite sewage ordinances that are more stringent than Indiana Department of Health rules. It clarifies that a local ordinance that has been approved by the TRP is consistent with and is not considered more stringent than the rules. This provision is necessary to harmonize IC 16-41-25-7 with the

legislative intent behind the TRP process, which allows local ordinances to include requirements that are not in the Department's rules.

IC 16-19-3-27.8 requires any local ordinance that restricts or prohibits the use of technologies new to Indiana or would otherwise vary from the rules concerning residential OSS must have the ordinance adopted or readopted by the local legislative body after June 30, 2023 and prior to submission to the TRP for review. The TRP is then required to review all local ordinances submitted. If the TRP approves a local ordinance submitted for review, the ordinance then becomes effective in the jurisdiction of the ordinance. Therefore, an ordinance in compliance with this statute has been approved locally and by the Technical Review Panel, as Ms. Hopper is requesting.