

# **PROWERS COUNTY ON-SITE WASTEWATER TREATMENT SYSTEM REGULATION**

## **I. Title and Authority**

These requirements will be known as the “Prowers County On-site Wastewater Treatment Systems Regulations” (Regulation).

These requirements have been adopted by the Prowers Board of County Commissioners, acting as a Board of Health 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 the Prowers County Public Health and Environment (“PCPHE”) to implement these Regulations on behalf of the Board of Health.

## **II. Scope and Purpose**

### **A. Declaration**

1. This regulation applies 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 of 2,000 gallons and less per day within Prowers 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 Prowers County.

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

1. An OWTS permit must not 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. [43.4(B)(11)]

### **E. Severability**

1. Should any section, clause, or provision of these Regulations be declared by a court of competent jurisdiction to be invalid, such decision will 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 April 30, 2018”, are made a part of these Regulation 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 Regulation. 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 Regulation.
2. Allowable local options identified in Regulation 43 and the designated decisions for these Regulations are identified in the attached “Appendix A to OWTS Regulations for Prowers 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 with higher level treatment units are not allowed under these Regulations. All designs must be based on TL-1 parameters as defined 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 PCPHE.
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 must 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 the PCPHE. After a permit is invalidated, a new application and subsequent permit is required to begin construction.
5. Repair permits must identify a reasonable period of time in which the owner must make repairs prior to expiration of the permit.
6. Application for a product development permit may be approved by the PCPHE consistent with requirements of section 43.4(l) of Regulation 43.

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

1. When an application is denied by PCPHE, an applicant may request review by the local board of health with 14 working days. Request must be submitted to PCPHE.
2. Denial shall become final upon expiration of time for filing an appeal, or when final action is taken upon an appeal, whichever is later.

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

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.
2. Waiver of fees [43.4(B)(4)(c)]  
The BOH may waive, if just cause is provided, any permit fee normally required for an OWTS.

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

1. A surcharge of \$23.00 will be collected for each permit issued by PCPHE. Of that fee, the PCPHE 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. Septic Tank [43.9(B)(3)(c)]

1. The applicant must notify the local public health agency or its designee a minimum of 2 business days' notice so the local public health agency or its designee can conduct a field inspection of the septic tank before backfilling.

B. Soil Treatment Area and Related Components [43.4(F)(3)]

1. The applicant must notify the local public health agency or its designee a minimum of 2 working days' notice so the local public health agency or its designee can conduct a final field inspection of the soil treatment area and all related components of the OWTS before backfilling.

**VI. Licensing**

A. Systems Contractors [43.4(K)(1)]

1. Licensing requirements...

- a. No person shall install, or be hired to aid in the installation of, renovate or repair an OWTS unless he holds a valid systems contractor license, with the exception of the owner of record doing their own installation on their own property.
  - i) Employees of a valid licensed systems contractor shall not be required to be licensed but must perform work under the supervision of a licensed systems contractor.
  - ii) If the owner of record is doing their own installation they must demonstrate adequate knowledge of these regulations to the Health Officer or their designee.
- b. Standard of performance required of holders of systems contractor licenses:
  - i) Applications for systems contractor licenses or renewals shall be made upon forms supplied by PCPHE.
  - ii) Prior to the issuance or renewal of a license, the Health Officer or their designee shall require the applicant to demonstrate adequate knowledge of these regulations and submit any fee established by the Board of Health to PCPHE.
  - iii) At intervals not greater than 5 years all licensees shall be required to demonstrate adequate knowledge of these regulations.
  - iv) Installation, renovation or repair of any OWTS shall be in compliance with these regulations and with the conditions set out in the installation permit.
  - v) During excavation, if bedrock or groundwater is encountered, all excavation must cease and the PCPHE is to be contacted for an evaluation to determine if additional tests are required.
  - vi) Notice of a requested inspection shall be given by the license holder not 2 working days' hours before the inspection is to be made.
  - vii) A license holder shall have in his possession the installation permit at the time construction begins, and shall make the permit available at the time of final inspection so that final approval may be endorsed upon it.
- c. Revocation or suspension of a systems contractor license:

- i) A license may be revoked or suspended for failure to comply with these regulations or for other good cause shown. Revocation or suspension shall take place only after a hearing before the Board of Health. The license holder shall be given reasonable notice of the hearing and may be represented at the hearing by counsel.
  - ii) Written notice of revocation or suspension, stating the violation, shall be served upon the holder of the systems contractor license. Service of notice as required in this section shall be as provided by the Colorado Rules of Civil Procedure, or by registered or certified mail, with return receipt requested.
- d. The BOH shall from time to time set qualification standards and fees for licensed systems contractors.

## **VII. Variances [43.4(N)]**

### **A. Variances Allowed**

1. An applicant may request the BOH to approve a variance from any requirement of these Regulations that is either more stringent than or not addressed by Regulation 43.
2. Approval of a variance shall be based upon evidence presented by the applicant showing that the variance: a) would not be injurious to the public health, water quality, or 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 PCPHE in writing on forms provided by PCPHE.
  - 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 BOH shall 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, as long as the specific conditions of those sections are met.

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 their 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 or Percolation Holes to Remain Open [43.5(E)]**

- A. Soil Profile Test Pit Excavations
  1. Soil profile test pit excavations must remain open until approved for closure by or closed by PCPHE or its designee.
- B. Percolation holes
  1. Percolation Holes must remain open until approved for closure by or closed by PCPHE or its designee.

**Appendix A to OWTS Regulations for Prowers County**

Attached

Adopted 4/24/2018