

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

IN THE MATTER OF ADOPTING)
PROCEDURES FOR THE INSPECTION OF)
ON-SITE WATER SUPPLY SYSTEMS AND) RESOLUTION NO. R-13-0064
ON-SITE WASTEWATER TREATMENT)
SYSTEMS PRIOR TO THE SALE, TRANSFER,)
OR CONVEYANCE OF PROPERTY IN)
LANCASTER COUNTY, NEBRASKA)

WHEREAS, pursuant to Neb.Rev.Stat. §23-174.10 (Reissue 2007), the Lancaster County Board of Commissioners has authority to adopt regulations to promote the public health, safety and welfare, which shall apply to all of the county except within the limits of any incorporated city or village and except within the unincorporated area where a city or village has been granted zoning jurisdiction and is exercising such jurisdiction; and

WHEREAS, the County Board adopted procedures for the inspection of on-site water supply systems and on-site wastewater treatment systems prior to the sale, transfer, or conveyance of property in Lancaster County on February 28, 2006, under County Resolution No. R-06-0005; and

WHEREAS, the Lincoln-Lancaster County Health Department has recommended that Resolution No. R-06-0005 be updated in its entirety to reflect the most current version of the procedures for the inspection of on-site water supply systems and on-site wastewater treatment systems prior to the sale, transfer, or conveyance of property in Lancaster County, as provided in Attachment "A," attached hereto and incorporated by this reference; and

WHEREAS, on October 15, 2013, the Board of Commissioners of Lancaster County, Nebraska, conducted a public hearing regarding the adoption of procedures for the inspection of on-site water supply systems and on-site wastewater treatment systems prior to the sale, transfer, or conveyance of property; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of

Lancaster County, that the procedures for inspection of on-site water supply systems and on-site wastewater treatment systems prior to the sale, transfer, or conveyance of property in Lancaster County, Nebraska, as provided in Attachment "A," are hereby adopted, and shall become effective November 5, 2013.

BE IT FURTHER RESOLVED, that County Resolution No. R-06-0005 is hereby superseded and that all other resolutions and parts of resolutions in conflict herewith be and they are hereby replaced.

BE IT FURTHER RESOLVED, that a copy of this resolution be placed on file in the office of the County Clerk.

DATED this 15 day of October, 2013, in the County-City Building, Lincoln, Lancaster County, Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF
LANCASTER COUNTY, NEBRASKA



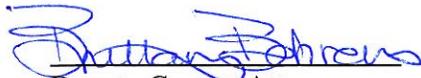








APPROVED AS TO FORM
this 15 day of
October, 2013.



Deputy County Attorney
for JOE KELLY
Lancaster County Attorney

Attachment "A"

PROCEDURES FOR THE INSPECTION OF ON-SITE WATER SUPPLY SYSTEMS AND ON-SITE WASTEWATER TREATMENT SYSTEMS PRIOR TO THE SALE, TRANSFER, OR CONVEYANCE OF PROPERTY IN LANCASTER COUNTY, NEBRASKA

The procedures outlined herein define and regulate the inspection of on-site systems prior to the sale, transfer or conveyance of property within the unincorporated areas in Lancaster County outside of the incorporated cities and villages and their jurisdictional areas; authorize the issuance of permits; repeal any previous resolution or section thereof in conflict herewith; require registration of those who inspect on-site systems; and provide penalties for violations.

Section I. PURPOSE

The Board of County Commissioners of Lancaster County finds that properly planned, constructed, installed, operated and maintained on-site water supply systems and on-site wastewater treatment systems:

- A. Promote the health and welfare of the citizens of this county by preventing the pollution of ground and surface water;
- B. Prevent nuisances;
- C. Eliminate hazards to the public health by minimizing pollution of water supplies and hazards to recreational areas;
- D. Minimize disease transmission potential; and
- E. Minimize economic impact to the county and the public resulting from on-site water system and on-site wastewater treatment system failures.

It is therefore, declared to be the public policy of this county to ensure a safe and adequate supply of drinking water for those homes served by an on-site water supply system, ensure the adequate treatment and disposal of sewage from premises served by an on-site wastewater treatment system and eliminate and prevent health and safety hazards by regulating the operation and maintenance of on-site water supply systems and on-site wastewater treatment systems, requiring permitting of those who inspect on-site systems; and providing penalties for violations.

The intention of this resolution is not to cause existing permitted on-site systems that are in substantial conformance (pose a minimal likelihood of degradation of groundwater or surface water, or risk to public health) to be brought into compliance with County Resolution R-13-0062 On-site Wastewater Treatment Systems, and any amendments thereto (hereinafter referred to as R-13-0062) and County Resolution 02-31 Regulations for Operation and Maintenance of On-site Wastewater Treatment Systems, and any amendments thereto (hereinafter referred to as C.R. 02-31).

Section II. DEFINITIONS

Definitions for purposes of this resolution shall include definitions provided in R-13-0062 and C.R. 02-31; and shall also include the following:

AUTHORIZED AGENT shall mean a real estate agent, Property Transfer Inspector, or any individual or corporation authorized, in writing, to act as the legal representative in all matters authorized by the owner.

BUSINESS DAY shall mean any day, Monday through Friday, except official county holidays or a day during which the county does not operate for any reason.

FAILURE OF AN ON-SITE WATER SUPPLY SYSTEM shall mean (1) an unsafe water sample; (2) substantial nonconformance with water well construction requirements in Title 178 NAC 12; (3) substantial nonconformance with water well location from contamination source requirements in Title 178 NAC 12.

ON-SITE SYSTEM (OS) shall mean an On-site Wastewater Treatment System (OWWTS) and/or an On-site Water Supply System (OWSS).

ON-SITE WATER SUPPLY SYSTEM (OWSS) shall mean a private or shared well for domestic purposes.

OWNER shall mean any person who is an owner of record or a trustee under a deed of trust or similar trust document.

PROPERTY TRANSFER INSPECTOR shall mean any person meeting the requirements of a Property Transfer Inspector per this resolution and possessing a valid permit issued by the Lincoln-Lancaster County Health Director.

PUMPER shall mean a person that is certified by the Nebraska Department of Environmental Quality under Title 124 NAC as an On-site Wastewater Treatment System Professional in the category of Pumper.

TITLE 124 NAC shall mean the Nebraska Administrative Code Title 124 (Nebraska Department of Environmental Quality Title 124 - Rules and Regulations for the Design, Operation and Maintenance of On-site Wastewater Treatment Systems).

TITLE 178 NAC 10 shall mean the Nebraska Administrative Code Title 178 Chapter 10 (Nebraska Department of Health and Human Services Title 178 Environmental Health, Chapter 10 - Regulations Governing Licensure of Water Well and Pump Installation Contractors and Certification of Water Well Drilling and Pump Installation Supervisors, and Water Well Monitoring and Natural Resources Ground Water Technicians).

TITLE 178 NAC 12 shall mean the Nebraska Administrative Code Title 178 Chapter 12 (Nebraska Department of Health and Human Services Title 178 Environmental Health Chapter 12 - Water

Well Construction, Pump Installation and Water Well Decommissioning Standards).

TITLE 179 NAC 3 shall mean the Nebraska Administrative Code Title 179 Chapter 3 (Nebraska Department of Health and Human Services Title 179 Public Water Systems Chapter 3 - Monitoring and Analytical Requirements).

UNSAFE WATER SAMPLE shall mean a water sample which tests positive for coliform bacteria, or exceeds 10 mg/l Nitrate-Nitrogen, or which exceeds the Maximum Contaminant Level (MCL) for any other contaminant as established by the U.S. Environmental Protection Agency or Nebraska Department of Health and Human Services for a public water supply.

Section III. INSPECTION REQUIRED; EXCEPTIONS

Prior to the sale, transfer or conveyance of property upon which an OS is located, it shall be the duty of the owner to have each OS inspected per this resolution by a Property Transfer Inspector and secure a determination letter as provided in Section VII of this resolution. An inspection is not required for the following:

- A. When a determination letter approving an OS was issued within the preceding 36 months of the transfer.
- B. When a new OS was installed in compliance with R-13-0062 and C.R. 02-31 within the preceding 36 months of the transfer.
- C. A transfer creating or ending a joint tenancy or tenancy in common if at least one person is an original owner of the property or his or her spouse, including a transfer from one spouse to another, or a change in ownership solely to exclude a spouse.
- D. Where structures on the property will not be occupied and are to be demolished after property is sold, transferred, or conveyed.
- E. A transfer to establish, release, or foreclose a security interest.
- F. A transfer by intestate, will, or trust to an heir, devisee, or beneficiary.
- G. A transfer by warranty deed or quitclaim deed between immediate family members, including parents, grandparents, grandchildren, siblings, and children (including adopted children and stepchildren).

Section IV. INSPECTION OF ON-SITE WASTEWATER TREATMENT SYSTEMS (OWWTS)

- A. An inspection of an OWWTS by a OWWTS Property Transfer Inspector shall consist of determining compliance with R-13-0062, C.R. 02-31, Title 124 NAC, and the following:
 - 1. The septic tank shall be inspected to determine the depth of the sludge layer and scum layer; and
 - 2. The soil absorption field shall be visually inspected for signs or evidence of

- failure; and
 - 3. The soil absorption field shall be probed to determine the location of laterals and to check for excess effluent.
- B. An inspection of a wastewater lagoon by an OWWTS Property Transfer Inspector shall consist of determining compliance with R-13-0062, C.R. 02-31, Title 124 NAC, and the following:
 - 1. The dike shall be inspected for the presence of animal burrows, damage, cracks or crevices, and evidence of wastewater lagoon overflow or over-the-ground surface water inflow; and
 - 2. The wastewater lagoon shall be inspected for the presence of cattails, other emergent plants, and trees that might damage the wastewater lagoon seal or dike construction.

Section V. INSPECTION OF ON-SITE WATER SUPPLY SYSTEMS (OWSS)

- A. An inspection of an OWSS by an OWSS Property Transfer Inspector shall consist of:
 - 1. Determining compliance with Title 178 NAC 12; and
 - 2. Taking water samples from the OWSS and having such water samples analyzed for coliform bacteria, fecal coliform bacteria and Nitrate-Nitrogen to determine compliance with Title 179 NAC 3.
- B. Further water analysis may be required by the Health Director in cases of unsafe water samples, or in areas known or suspected to have contamination which could impact human health. Analysis may include testing for organic or inorganic chemicals. All such sampling and analysis shall be in compliance with Title 179 NAC 3.

Section VI. INSPECTION REPORTS; REQUIREMENTS

- A. The Property Transfer Inspector shall submit to the Department a signed property inspection report on forms approved by the Health Director. Inspection reports shall include, but are not limited to:
 - 1. The street address and the legal description of the property.
 - 2. The parcel identification number.
 - 3. The name of the owner or authorized agent.
 - 4. The location of the OS.
 - 5. Proximity to sources of contamination.
 - 6. A description of the current operational or functional status of the OS.
 - 7. Identification of any necessary repairs or replacement of all or portions of the OS.
 - 8. Results of the OWSS water analysis, where applicable.
 - 9. Other relevant observations related to the system(s), and potential health or environmental hazards, or nuisance conditions.
 - 10. Signature of Property Transfer Inspector.

- B. In the event that a complete inspection of the OWWTS cannot occur prior to the sale, transfer, or conveyance of property due to inclement weather conditions, the Property Transfer Inspector shall submit to the Health Director a signed written statement indicating what elements of the inspection could not be completed.
- C. The Property Transfer Inspector shall provide a copy of the inspection report to the owner or authorized agent.
- D. The inspection report filed with the Department shall be considered a public record.

**Section VII. REVIEW OF INSPECTION REPORT BY HEALTH DIRECTOR;
DETERMINATION LETTER**

- A. Upon receipt of an inspection report and review fee, the Health Director will:
 - 1. Document the day of receipt of the inspection report.
 - 2. Review and evaluate the inspection report.
 - 3. Provide a written or electronic determination letter to the owner or authorized agent within five (5) business days after receipt of the inspection report and review fee. The determination letter will issue:
 - i. The approval of the OS to mean the structure and operational status are in substantial conformance with R-13-0062, C.R. 02-31, Title 124 NAC and/or Title 178 NAC 12; or
 - ii. The denial of the OS to mean the OS adversely affects or may adversely affect the public health and/or the environment; or
 - iii. An inability to approve or deny the OWWTS based upon receipt of a signed
- B. The owner or authorized agent is considered notified of the determination letter when the Health Director sends it by U.S. mail to the owner's or authorized agent's last known mailing address.
- C. If the owner or authorized agent disputes the Health Director's determination, the owner or authorized agent shall have the right to a hearing and appeal as provided in this resolution. A hearing or appeal does not stay the effect of the Health Director's determination.

Section VIII. INSPECTIONS AND ENFORCEMENT; RIGHT OF ENTRY

- A. The Health Director is hereby authorized and directed to make such inspections as are necessary to determine compliance with this resolution.
- B. Upon presentation of proper credentials the Health Director may enter at reasonable times any building, structure, or property in the county to determine compliance with the requirements of this resolution. It shall be unlawful for any owner or occupier of the property or person in charge of the property to deny right of entry to the Health Director to make such inspection.

Section IX. PROPERTY TRANSFER INSPECTOR PERMIT; REQUIREMENTS

- A. Application for a permit for a Property Transfer Inspector shall be made to the Health Director on forms furnished by the Health Director. Such forms shall require the name, address, business address, daytime phone number of the applicant, which permit the applicant is applying for, and such other relevant information as may be required by the Health Director. The applicant shall complete the required forms.
- B. A Property Transfer Inspector may be permitted in two categories: On-site Water Supply Systems (OWSS) and/or On-site Wastewater Treatment Systems (OWWTS).
 - 1. OWSS Property Transfer Inspector. A person shall be certified in the State of Nebraska under Title 178 NAC 10 as a Water Well Contractor, a Water Well Drilling Supervisor, a Pump Installation Contractor or a Water Well Monitoring Technician.
 - 2. OWWTS Property Transfer Inspector. A person shall be certified by the State of Nebraska under Title 124 NAC as a Site Evaluator or Inspector, shall be a Journeyman Installer or Master Installer under R-13-0062.
- C. The applicant shall be required to take a Property Transfer Inspector training program and the Property Transfer Inspector Exam. Both the training program and exam must be approved by the Health Director.
- D. The Health Director shall issue a permit if:
 - 1. The applicant has properly completed the required application forms; and
 - 2. The applicant possesses the required certification requirements for the permit; and
 - 3. The applicant has paid the required permit fee; and
 - 4. The applicant has provided proof insurance meeting the requirements of this resolution; and
 - 5. The applicant has satisfactorily completed the training program and passed the exam.
 - 6. The applicant agrees to supplement all pertinent information, including applicant's address, business address, phone number, and such other information as the Health Director requires.
- E. The permit shall remain in force for two (2) years from its date of issue, unless suspended or revoked. The permit may be renewed without an exam, by paying the required fee, and providing documentation of required certification. Any person who does not renew their permit prior to or on the date of expiration shall complete a new permit application, pay the required fee, and pass the exam.
- F. Any person whose application for a Property Transfer Inspector permit has been denied by the Health Director shall be notified in writing as to the denial. Such person may within ten (10) business days after receipt of denial request a hearing before the Health Director to be held in compliance with this resolution.

Section X. CERTIFICATE OF INSURANCE

- A. Before any Property Transfer Inspector may be issued a permit under the provisions of this resolution, such Property Transfer Inspector shall be required to purchase and maintain a

policy of insurance sufficient in coverage and amount to fully satisfy any judgments and pay any and all liabilities, judgments, claims, and related expenses that may arise in connection with services provided under the provisions of this resolution. At a minimum, such insurance shall include:

1. Workers' Compensation Insurance fully insuring its employees as required by law. Said insurance shall be obtained from an insurance company which is authorized to do business in the State of Nebraska.
2. Commercial or Comprehensive General Liability Insurance, naming and protecting the Property Transfer Inspector, Lancaster County, and the Lincoln-Lancaster County Health Department against claims for damages resulting from (i) bodily injury, including wrongful death; (ii) personal injury liability; and (iii) property damage which may arise from services provided under the provisions of this resolution. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

\$1,000,000 Each Occurrence
 \$1,000,000 Personal Injury
 \$2,000,000 Aggregate

- B. All Certificates of Insurance shall be subject to review and approval by the County Attorney's Office. All Certificates of Insurance shall be filed with the Health Department on the standard ACCORD Certificate of Insurance form showing the specific limits of insurance required by the preceding subsections A and B, and showing Lancaster County and the Lincoln-Lancaster County Health Department as additional insured. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the County and the Health Department with thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance coverage. Any termination, reduction, or lapse of such insurance shall be grounds for suspension or revocation of the Property Transfer Inspector's permit, unless other insurance satisfying the requirements of this section is provided and is in full force and effect at the time of such expiration or cancellation.

Section XI. FEES

- | | |
|--|----------|
| A. Fee for evaluation and review of Property Transfer Inspector reports and any necessary site visits by Health Director | \$200.00 |
| B. Property Transfer Inspector permit fees: | |
| On-site Wastewater Treatment System (OWWTS) Property Transfer Inspector | \$30.00 |
| On-site Waste Supply System (OWSS) Property Transfer Inspector | \$30.00 |
| Both OWWTS & OWSS | \$30.00 |

All fees are payable to the Lincoln-Lancaster County Health Department and shall be credited to the Health Fund. No fees will be refunded.

Section XII. PROPERTY TRANSFER INSPECTION; PERMIT REQUIRED

It shall be unlawful for any person other than a Property Transfer Inspector or an authorized representative of the Health Director that is currently a Registered Environmental Health Specialist in the State of Nebraska to inspect any OS prior to transfer, sale or conveyance of property as required by this resolution.

Section XIII. PROPERTY TRANSFER INSPECTOR PERMIT; SUSPENSION, REVOCATION

It shall be a condition of the Property Transfer Inspector permit issued under this resolution that it may be suspended or revoked at any time by the Health Director for a violation of Title 124 NAC, Title 178 NAC 10, Title 179 NAC 3, or any of the provisions of this resolution. A permit granted under this resolution shall be subject to suspension or revocation in the following manner:

- A. The Health Director shall notify the person holding the Property Transfer Inspection Permit to be suspended or revoked as provided in Section XVI.
- B. The Health Director may suspend the permit for an appropriate period of time not to exceed ninety (90) days.
- C. The suspension or revocation shall be effective immediately upon notice.
- D. This person has a right to a hearing in which the Health Director shall conduct the hearing in accordance with this resolution.
- E. It shall be unlawful to inspect an OS after receiving notice of suspension or revocation.
- F. Actions for reinstatement, hearing, or appeal shall not stay or delay the suspension or revocation in any manner.

Section XIV. PROPERTY TRANSFER INSPECTOR PERMIT; REINSTATEMENT OF PERMIT

- A. Any person whose Property Transfer Inspector Permit has been suspended may apply to have the permit reinstated after the suspension period has expired. The person shall pass the exam and provide a statement signed by the person that the conditions causing suspension of the permit have been corrected.
- B. Any person whose Property Transfer Inspector Permit has been revoked may apply for a new permit after 90 days. The person shall complete a new permit application, pay the required fee, pass the exam, and provide a statement signed by the person that the conditions causing revocation of the permit have been corrected.

Section XV. ENFORCEMENT HEARINGS

- A. Unless this resolution provides otherwise, the Health Director shall conduct hearings allowed or required under this resolution as soon as practicable, but in no event later than:
 - 1. Three (3) business days after a request for hearing to appeal a permit suspension or revocation; or
 - 2. Five (5) business days after any other request; or

3. At an agreed upon time frame if such is requested by the person for whom the hearing is being held.
- B. The Health Director shall make recommendations based on the evidence adduced at the hearing for the Health Director's final determination of the matter.
- C. The hearing need not be conducted according to the technical rules relating to evidence and witnesses. The person requesting the hearing and the Health Director may:
 1. Call and examine witnesses on any matter relevant to the issues of the hearing;
 2. Introduce documentary and physical evidence;
 3. Cross examine opposing witnesses on any matter relevant to the issues of the hearing; and
 4. Rebut evidence.
- D. The Health Director may uphold, reverse, or modify the act or findings prompting the request or the Health Director may take such other reasonable action as the Health Director may determine proper related to the request.
- E. The Health Director shall make a final determination within ten (10) business days after the hearing.
- F. The Health Director's decision shall be final and binding upon the County and upon the person making the request. The Health Director's decision may be appealed to the district court as provided by state law.

Section XVI. NOTICE; SERVICE

- A. The Health Director may serve notice authorized or required by this resolution as follows:
 1. By personal service to the person holding the Property Inspector Permit; or
 2. By certified mail, postage prepaid, return receipt requested to the last known address of the person holding the Property Inspector Permit.
- B. The person making personal service may provide a written declaration, under penalty of perjury, identifying the person served and the time, date, and manner of service as proof of service.
- C. After a request for a hearing, the Health Director shall provide notice of the time, place and date for said hearing and shall identify the provisions of this resolution alleged to be violated and the facts alleged to constitute such violation.

Section XVII. PENALTY

Any person who is found to have violated any provision of this resolution shall be subject to the penalties provided in Neb. Rev. Stat. § 23-174 and § 23-114.05, as amended. In addition to any penalty sought or obtained under this resolution or other applicable law, the County Attorney may institute injunctive or other appropriate civil proceedings necessary to obtain compliance or to abate any nuisance resulting from violations of this resolution.

Section XVIII. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this resolution.

Section XIX. EFFECTIVE DATE

This resolution shall take effect and be in full force on November 5, 2013.

FACT SHEET

TITLE:

County Resolution amending CR No. R-06-0005 Procedures for the inspection of on-site water supply systems and on-site wastewater treatment systems prior to the sale, transfer, or conveyance of property in Lancaster County, Nebraska

SPONSOR:

Health Department

OPPONENTS:

None specifically identified

STAFF RECOMMENDATION:

For

OTHER DEPARTMENTS AFFECTED:

None

APPLICANT:

Health Department

REASON FOR LEGISLATION:

To update County Resolution CR No. R-06-0005 Procedures for the inspection of on-site water supply systems and on-site wastewater treatment systems prior to the sale, transfer, or conveyance of property in Lancaster County, Nebraska by amending Section X. Fees and re-adopting all of the sections of the existing regulations to provide a single document with all current regulations and fees.

DISCUSSION

Incremental fee increases are proposed for the review cost for regulation of property transfers with onsite systems, which address operational costs. No increase is proposed for individual Property Transfer Inspector permit fees. This revenue will allow the Department to provide required services, including reviews, inspections, education, and investigations, and to protect the public from illness and the spread of disease. This revenue was part of the FY 13/14 Budget that was approved by the joint budget committee.

In addition, we are asking the County Board to re-adopt the entire set of regulations so that the official record consists of a single document with all regulations and current fees.

POLICY OR PROGRAM CHANGE: No

COST OF TOTAL PROJECT: Projected revenue change will be a total of \$1055.

SOURCE OF FUNDS: User Fees

FACT SHEET PREPARED BY: Scott E. Holmes, REHS, MS
Environmental Public Health Division Manager

REVIEWED BY: Judith A. Halstead, MS, Health Director

CR No. R-06-0005

Procedures for the inspection of on-site water supply systems and on-site wastewater treatment systems prior to the sale, transfer, or conveyance of property in Lancaster County, Nebraska

Section X. FEES

- (a) Fee for evaluation and review of Property Transfer
Inspector reports and any necessary site visits by Health Director ~~.\$195.00~~ \$200.00

- (b) Property Transfer Inspector permit fees:
 - On-site Wastewater Treatment System
(OWWTS) Property Transfer Inspector \$30.00

 - On-site Waste Supply System (OWSS)
Property Transfer Inspector \$30.00

 - Both OWWTS & OWSS \$50.00

All fees are payable to the Lincoln-Lancaster County Health Department and shall be credited to the Health Fund. No fees will be refunded.