

TOWNSHIP OF BERKELEY
ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE
TOWNSHIP OF BERKELEY IN OCEAN COUNTY,
AMENDING THE CODE OF
THE TOWNSHIP OF BERKELEY
BY ADDING A SECTION ENTITLED
x-xx, SEPTIC MANAGEMENT ORDINANCE

SECTION ONE

A. FINDINGS

It is found and declared that:

1. Individual and non-individual on-site subsurface sewage disposal systems are in use within the Township of Berkeley.
2. Existing subsurface sewage disposal systems have malfunctioned even when the systems have been designed, constructed, and sited in accordance with applicable standards, largely due to lack of proper system management or improper operation and maintenance. These malfunctions have been shown to adversely affect public health and welfare and the environment. Such systems constitute a potential source of pollution of ground and surface waters, contamination of potable water supplies, foul odors, nuisance problems and other hazards to public health.
3. It is determined to be in the interest of public health, safety and welfare to establish provisions to regulate the management of such systems to protect the public against system failures and resultant pollution.
4. The licensing provisions contained in this Ordinance are necessary to protect the public health safety and welfare and it is therefore necessary to exceed the provisions contained in N.J.A.C. 7:9A-1 et seq. This is hereby declared to be a "special ordinance" in accordance with N.J.A.C. 7:9A-3.1(b) and shall be forwarded to the New Jersey Department of Environmental Protection within 10 days of adoption.

OR

A. PURPOSE

In addition to the purposes set forth in N.J.A.C. 7:9A-1.1, it is the purpose of this ordinance:

1. To establish a management program for individual and non-individual subsurface sewage disposal systems in the (insert name of jurisdiction) in order to ensure the proper operation and maintenance of such systems. This ordinance requires existing, new and proposed individual and non-individual subsurface sewage disposal systems to be pumped out at least once every three years in order to minimize future malfunctions of such systems.
2. To regulate individual and non-individual subsurface sewage disposal systems in the program area in such a way as to protect public health and welfare and the environment, and to provide for a means of educating owners/operators, as defined herein, in the characteristics of such systems and the proper procedures for altering, operating and maintaining them.

3. To develop a management program to maintain records and manage systems in the program area.

4. To promote and assure the proper management and maintenance of individual and non-individual sewage disposal systems through time.

SECTION TWO. TITLE

This Ordinance shall be known as the Subsurface Sewage Disposal System Management Ordinance of the Township of Berkeley

SECTION THREE. DEFINITIONS

All definitions given in Subchapter 2 (N.J.A.C. 7:9A-2.1 et. seq.) of the New Jersey Department of Environmental Protection (NJDEP) Standards for the Construction of Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A-1.1 et seq., and any amendments thereto ("NJDEP Regulations") are hereby incorporated into this article, with the following additions:

ACTIVE USE – For initial licenses, this term shall mean: "The use or direction of waste water to a system after the adoption date of this ordinance." For renewal licenses, this term shall mean: "The use or direction of waste water to a system at any time during the period of the license."

BOARD OF HEALTH – The Board of Health of the Township of Berkeley

EDUCATION PROGRAM – An educational program prepared and administered by the Board of Health regarding the fundamentals of individual and non-individual subsurface sewage disposal systems and the proper procedures for the operation and maintenance of such systems. The educational program shall be deemed to be in accordance with N.J.A.C. 7:9A-3.14.

ENFORCING OFFICIAL – The Township Engineer or his designee.

INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM – An individual subsurface sewage disposal system, as defined at N.J.A.C. 7:9A-2.1, serving a single family detached residential housing unit.

LICENSED SEPTIC SLUDGE REMOVAL OPERATOR – Any person, firm or corporation which has been duly examined by the enforcing official and found qualified to pump out an individual or non-individual subsurface sewage disposal system, and who has been issued a license.

MANAGEMENT DISTRICT – All areas of the Township outside of the jurisdiction of the Pinelands Commission.

NON-INDIVIDUAL SUBSURFACE SEWAGE DISPOSAL SYSTEM – An on-site subsurface sewage disposal system serving a property other than a single family home. Such systems include but are not limited to those systems defined in N.J.A.C. 7:9A-1.8(c)2. Typical examples include but are not limited to: commercial buildings, restaurants, food establishments, commercial/residential mixed uses, and systems servicing multiple units.

OPERATOR'S LICENSE – A license issued to an applicant pursuant to this ordinance for the operation of an individual or non-individual subsurface sewage disposal system.

OWNER OR OPERATOR – The person who owns or leases the realty upon which an individual or non-individual subsurface sewage disposal system is located and/or the person who uses or operates said system. The owner of the realty and the operator of the system, if different, are jointly and severally liable for the obligations imposed by this ordinance.

PLOT PLAN – A sketch drawn by the owner/operator, or agent on their behalf, showing the type (if known) and location of the individual or non-individual subsurface sewage disposal system servicing the property, as well as the location and type of any on-site water supply. All plots shall be drawn to scale and list the dimensions used.

RETAIL FOOD ESTABLISHMENT – Any fixed or mobile restaurant; coffee shop; cafeteria; short order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; night club; roadside stand; industrial feeding establishment; private, public, or nonprofit organization, institution, or group preparing, storing or serving food; catering kitchen; commissary; box lunch establishment; retail bakery; meat market; delicatessen; grocery store; public food market, or any similar place in which food or drink is prepared for retail sale or service on the premises or elsewhere, and any other retail eating or drinking establishment or operation where food is served, handled or provided for the public with or without charge.

SYSTEM – An individual or non-individual subsurface sewage disposal system, including all of the component parts thereof.

SECTION FOUR. SCOPE, APPLICABILITY AND EXEMPTIONS

A. SCOPE. The owner and/or occupant of any realty improvement serviced by an individual or non-individual on-site subsurface sewage disposal system located in the (Option One – Management District) (Option Two – Township of Berkeley) shall be subject to all of the requirements of this chapter.

B. APPLICABILITY. No person within the Township of Berkeley area shall operate an individual or non-individual subsurface sewage disposal system unless such construction, installation, alteration, maintenance or operation is in accordance with all applicable sanitary regulations, Chapter 32-4 of the Berkeley Township General Code and this ordinance.

C. EXEMPTIONS. Any system not in active use shall be exempted from this Ordinance. The Board of Health may require an owner or operator of a system seeking exemption under this section to submit proof in the form acceptable to the Board so as to qualify for this exemption.

SECTION FIVE. LICENSE TO OPERATE

A. REQUIREMENT FOR LICENSE: On and after [insert effective date] no owner or occupant of a property in the Township of Berkeley upon which an individual or non-individual subsurface sewage disposal system is located shall use or operate the system unless a currently valid license to operate the system has been issued by the Board of Health in accordance with the schedule herein to the owner of the property on which the system is located.

1. The Board of Health or its designee may issue a license to operate and educational information relative to the proper operation and maintenance practices (pursuant to N.J.A.C. 7:9A-3.14) to the owner and occupant of a property upon one or more of the following events:

- a. Issuance of a certificate of compliance for a new system.
- b. Issuance of a certificate of compliance for the alteration of a system
- c. Upon the sale or transfer of a premises.
- d. For all existing individual and non-individual sewerage disposal systems in accordance with the following schedule

Option 1 – Immediate effective date for all systems

Option 2 – Deferred effective date for all systems

Option 3 – Phased in date for existing systems

2. All licenses issued pursuant to this section shall be on a form provided by the Board of Health. Once issued, a license shall be transferable upon change of ownership or occupancy of the premises for which the license has been issued. A fee as provided in section eleven of this ordinance thereof shall accompany each application for a license or renewal. The initial application for a license shall include a plot plan showing the location of the septic system (both the tank and the disposal area) and of any private water source on the property. The plot plan shall also include the general location, if known, of any wells, and septic systems on adjoining properties.

B. EXPIRATION/RENEWAL: The license to operate shall expire three (3) years after issuance. The Board of Health shall notify the licensee or its designee at least sixty (60) days before the license expires and shall be directed to apply for a renewal of the license. The renewal notice shall include educational materials relative to the proper operation and maintenance practice for such systems in accordance with N.J.A.C. 7:9A-3.14.

1. Requirements for Renewal: The Board of Health or its designee shall not renew the license unless the licensee has submitted the following to the Board of Health or its designee:

JURISDICTIONS SHOULD CHOOSE EITHER OPTION 1 OR OPTION 2

OPTION 1

a. Evidence that the septic tank (or in the case of an alternate system, the comparable component of such system) has been pumped by a licensed septic sludge removal operator as required by Section Seven of this Ordinance; or

b. Submission of a Septic System Inspection* Report on a form approved by the Board of Health indicating that the system has been maintained, is not in need of pumping, and is functioning in conformance with the requirements of this chapter. Said form shall be prepared, completed and certified by:

- i) A staff member of the Board of Health;
- ii) A licensed septic installer;
- iii) A NJDEP registered inspector;
- iv) A NJDEP registered waste hauler;
- v) A licensed professional engineer;

- vi) A licensed health officer or sanitarian;
- vii) Other person acceptable to the Board of Health.

Any such inspection under this section, shall include but not be limited to the following:

- i) A complete walkover of the septic field;
- ii) Measurement of the effluent in inspection ports, (if any) and a reading of the groundwater monitoring port when such ports were included in the original septic design; and
- iii) An inspection of baffles and internal integrity of the tank.

OPTION 2

Submission of a Septic System Inspection* Report only as required in OPTION 1 on this page (Section Five B1b).

** Any such inspection shall be conducted in accordance with any NJDEP approved protocol, guidance or regulations. If the inspection indicates that a pumpout of the tank or other maintenance, alteration, or repair of the system is necessary, the Board of Health shall issue a notice of pumping, alteration or repair. Following pumpout or other maintenance, alteration or repair of the system, the owner /operator shall submit to the Board of Health a completed alteration/pumpout report prepared and signed by the person performing the required work. No person shall test an individual or non-individual subsurface sewage disposal system in a manner that will adversely affect the functioning of the system. Hydraulic loading shall not be applied in excess of the design flow capacity. All solids shall have been removed from the septic tank and/or grease trap prior to testing unless the hydraulic loading is applied at a point that will bypass the septic tank and/or grease trap.*

2. Renewal Term: Any license renewed under section B.1.a (Actual pumping) shall be renewed for a period of three years.

Any license renewed under Option 2 (Inspection) shall be renewed for period of (insert term) years.

3. As a condition precedent to a license renewal, the owner/operator shall pay the fee required by section eleven herein.

C. SUSPENSION OF LICENSE: The Board of Health or its designee may suspend or revoke the license to operate in the following circumstances:

- 1. It has been determined that the system is malfunctioning based upon criteria provided for in N.J.A.C. 7:9A-3.4(a) and the licensee fails to take steps to correct said malfunction as directed by the Board of Health or its designee;
- 2. The owner or occupant of the premises served by the system violates any provision of this chapter with respect to operation and maintenance of the system; or
- 3. The owner or occupant of the premises served by the system denies the right of entry to the Board of Health or its designee, or to the New Jersey Department of Environmental Protection (NJDEP), as required in N.J.A.C. 7:9A-3.19, or in any way interferes with the administration or enforcement of this ordinance.

D. MODIFIED TERM OF LICENSE: The Board of Health may on its own motion, upon notice and opportunity to the property owner or operator for a hearing, or upon application of a property owner or system operator, alter the time period of a license to operate. The Board of Health may consider the following factors in determining that a more frequent licensing renewal or pumping/inspection schedule may be necessary:

1. Limited size of the septic tank or disposal field;
2. The fact that the existing system may be a cesspool;
3. The age of the system;
4. Past history of malfunction or other non-compliance;
5. Location of the existing system in a flood hazard, wetland area, wetland transition zone or other environmentally sensitive area as defined in Ordinance #_____/2009 regarding Environmentally Sensitive Areas.
6. Proximity of the system to a well or water body.

E. SPECIAL LICENSING PROVISIONS FOR RETAIL FOOD HANDLING ESTABLISHMENTS:

The license to operate for a retail food handling establishment shall expire one year after issuance or one year from the date of the documented pumpout, whichever comes first. The owner of said establishment shall have the right to apply to the Board of Health for a longer license renewal period, but in no case shall the license renewal period exceed three years.

In considering any such application the Board of Health may consider the establishment's demonstrated compliance history with management of the system.

SECTION SIX. STANDARDS ON THE USE OF SUBSURFACE SEWAGE DISPOSAL SYSTEMS

A. GENERAL

1. The subsurface sewage disposal system shall be used only for the disposal of wastes of the type and origin provided for in the approved engineering design. No permanent or temporary connection shall be made to any source of wastes, waste water or clean water other than those plumbing fixtures which are normally present within the type of facility indicated in the approved engineering design.
2. Drainage from basement floors, footings or roofs shall not enter the sewage disposal system and shall be diverted away from the area of the disposal field.
3. As set forth in N.J.S.A. 58:10A-17, no person shall use or introduce or cause any other person to use or introduce into any sewage water disposal system any sewage system cleaner containing any restricted chemical material.
4. Disposal of materials containing toxic substances into a subsurface sewage disposal system is prohibited. Materials containing toxic substances include, but are not limited to, waste oil (other than cooking oil), oil based or acrylic paints, varnishes, photographic solutions, pesticides, insecticides, paint thinners, organic solvents or degreasers and drain openers.

5. Inert or non-biodegradable substances should not be disposed of in the subsurface sewage disposal system. Such substances include, but are not limited to, disposable diapers containing plastic, cat box litter, coffee grounds, cigarette filters, sanitary napkins, facial tissues and wet-strength paper towels.

6. Large quantities of cooking greases or fats shall not be discharged into systems not equipped with a grease trap designed and constructed as prescribed in N.J.A.C. 7:9A-8.1.

7. Major plumbing leaks shall be repaired promptly to prevent hydraulic overloading of the system.

8. Vehicle traffic and vehicular parking shall be kept away from the aspects of the system, unless the system has been specifically designed to support vehicular traffic.

B. DISPOSAL FIELD MAINTENANCE

1. The area of the disposal field shall be kept free of encroachments from decks, pools, sprinkler systems, driveways, patios, accessory buildings, additions to the main building and trees or shrubbery whose roots may cause clogging of any part of the system

2. Grading shall be maintained in a condition that will promote run-off of rainwater and prevent ponding.

3. All drainage from roofs, footing drains, ditches or swales shall be diverted away from the disposal field.

4. Vegetation shall be maintained to prevent soil erosion.

5. Vehicle traffic and vehicular parking shall be kept away from the area of the disposal field, unless the disposal field has been specifically designed to support vehicular traffic.

C. ABANDONED SYSTEMS

1. When it is necessary to abandon a system or components of a system, all septic tanks, dosing tanks, seepage pits, dry wells and cesspools which are to be abandoned shall be emptied of wastes and removed or filled completely with sand, gravel, stones or soil material in a manner which is acceptable to the Board of Health or its designee.

2. Except when done as part of or in conjunction with an alteration, a permit must be obtained from the Board of Health prior to abandoning a septic system or component of a septic system.

D. ADDITIONAL INSPECTION AND MAINTENANCE REQUIREMENTS FOR SYSTEMS WITH GREASE TRAPS

1. Grease traps shall be inspected and cleaned out at a frequency adequate to prevent the volume of grease from exceeding the grease retention capacity. Grease

shall be removed whenever seventy-five percent (75%) of the grease retention capacity has been reached.

2 Pumping of grease traps shall be performed by a solid waste hauler registered with the NJDEP in accordance with the requirements of N.J.A.C. 7:26-3.1

3. Equipment used in the pumping of grease traps shall meet the following requirements:

- a. Mobile tanks shall be securely mounted on trucks or trailers, shall be watertight and provided with a leak-proof cover and shall be vented to permit the escape of gases but not the liquid or solid contents of the tank.
- b. Pumps and hoses shall be maintained and operated in a condition that will prevent the leakage of sewage.
- c. Equipment shall be available to permit accurate measurement of the volume of grease in relation to the grease retention capacity of the grease trap.
- d. Pumping of grease traps shall be conducted in such a manner that the entire contents of the grease trap including both liquids and solids are removed.
- e. Pumping shall be carried out in a manner that will prevent spillage of sewage onto the ground. If any spillage occurs, the solid portion shall be immediately removed and disposed of in a sanitary manner and the area of the spill shall be disinfected using a suitable chlorine-bearing compound.
- f. Grease and other waste materials removed from grease traps shall be disposed of in accordance with the requirements of the Statewide Sludge Management Plan adopted pursuant to N.J.S.A. 13:1E-1 et seq. and N.J.S.A. 7:11A-1 et seq., as well as any other applicable State or local rules, regulations, ordinances or directives.

E. MAINTENANCE OF DOSING TANKS

1. Dosing tanks and associated pumps, siphons, switches, alarms, electrical connections and wiring shall be maintained in proper working order.
2. Any solids that accumulate in the dosing tank shall be removed and disposed of in a sanitary manner.

SECTION SEVEN. REMOVAL OF SEPTIC TANK SLUDGE

A. Any person, partnership, firm or corporation who empties, relieves or pumps out all or a portion of an individual or non-individual sewage disposal system within the Township shall first apply to the Board of Health to become a licensed septic sludge removal operator. The applicant shall have the following qualifications: (Insert qualifications.) Any such license shall be for a term of (insert time period) and shall be subject to the payment of a fee as provided in section eleven of this ordinance.

B. Prior to emptying, relieving or pumping out all or a portion of any individual or non-individual subsurface sewage disposal system within the Township of Berkeley, the licensed septic sludge removal operator shall obtain a septic sludge removal permit from the Board of Health.

C. The septic sludge removal operator shall complete all information on the septic sludge removal permit and deliver one (1) copy to the property owner and one copy to the Board of Health within 72 hours of the time that the individual or non-individual sewage disposal system is pumped. Failure to deliver said report within the required time frame shall be considered to be a violation of this ordinance.

D. In addition to the license required under section A above, the pumping of septic tanks shall be performed by a solid waste hauler registered with the NJDEP in accordance with the requirements of N.J.A.C. 7:26-3.c.

E. The Board of Health may suspend or refuse to renew the license of any septic sludge removal operator who fails to comply with this ordinance.

F. Equipment used in the pumping of septic tanks shall meet the following requirements:

1. Mobile tanks shall be securely mounted on trucks or trailers, shall be watertight and provided with a leak-proof cover and shall be vented to permit the escape of gases but not the liquid or solid contents of the tank.
2. Pumps and hoses shall be maintained and operated in a condition that will prevent the leakage of sewage.
3. Equipment shall be available to permit the accurate measurement of the sludge and scum levels in relation to the bottom of the outlet baffle.

G. Pumping of septic tanks shall be conducted in such a manner that the entire contents of the septic tank including both liquids and solids are removed.

H. Pumping shall be carried out in a manner that will prevent spillage of sewage onto the ground. If any spillage occurs, the solid portion shall be immediately removed and disposed of in a sanitary manner and the area of the spill shall be disinfected using a suitable chlorine-bearing compound.

I. Septage shall be disposed of at a sewage treatment plant designated in accordance with District and/or State Solid Waste Management Plans pursuant to the Statewide Sludge Management Plan adopted pursuant to N.J.S.A. 13:1E-1 et seq. and N.J.S.A 58:1A-1 et seq.

SECTION EIGHT. APPEAL TO BOARD OF HEALTH

Any person aggrieved by any decision of a designee of the Board of Health made pursuant to this chapter shall have the right to appeal that decision to the Board of Health. Any aggrieved person seeking a hearing under this section shall make application to the Board in writing within 30 days of the decision to be appealed. The Board of Health shall schedule the matter for a hearing within 45 days thereafter. The hearing shall be conducted at a meeting held pursuant to the Open Public Meetings Act.

SECTION NINE. ENFORCEMENT

A. NUISANCES TO BE CORRECTED

1. Any on-site sewage disposal system or component thereof that is found to be malfunctioning (as defined in N.J.A.C.7:9A-2.1 and 3.4) shall constitute a nuisance and shall be repaired, modified or replaced pursuant to an order of the Board of Health or its designee to correct the condition caused by the malfunction. Alterations

shall be performed in accordance with “Standards for the Construction of Individual Subsurface Sewage Disposal Systems” as adopted and implemented by the Board of Health by virtue of this Code and any amendments thereto.

2. Any individual or non-individual subsurface sewage disposal system which has not been maintained in accordance with N.J.A.C. 7:9A:12.3, Septic Tank Maintenance, is hereby declared a nuisance.

3. Any individual or non-individual subsurface sewage disposal system which is constructed, installed, altered, operated or maintained in violation of this section, the DEP Regulations, any rule or regulation promulgated pursuant to this ordinance or any permit, certificate or license issued pursuant to this ordinance is hereby declared to be a nuisance.

4. In addition the powers provided for in N.J.A.C. 7:9A-1.1 et seq., the Board of Health retains its authority to abate any nuisance in accordance with the provisions of N.J.S.A. 26:3-45 et seq.

B. MALFUNCTIONING SUBSURFACE SEWAGE DISPOSAL SYSTEM: INSPECTIONS OF SYSTEM; REVOCATION OF LICENSE

1. The Board of Health shall have the right to inspect any system which shows evidence of any malfunction. Such evidence may include, but not be limited to, foul odors, leakage to ground surface, or soggy ground over system. Water and/or soil samples may be taken to confirm the existence of a malfunctioning system.

2. The Board of Health may require that any malfunctioning system be corrected by servicing or by replacement or alteration of the system.

3. Until any necessary replacement or alteration of a system has been accomplished, the Board of Health may require pumping and the removal of the entire contents of the septic tank for the system (both liquids and solids) at intervals specified by the Board.

4. No provision to this Ordinance shall be interpreted as precluding the Board of Health from revoking a license issued by the Board for the operation of a system in the event that the Board shall determine that such action is necessary and appropriate for the enforcement of this Ordinance. Any such revocation shall be upon Notice to the owner/operator, with an opportunity to comment or appeal.

SECTION TEN. RIGHT OF ENTRY

In furtherance of the rights granted to the Board of Health in N.J.S.A. 26:3-45 et seq. and N.J.A.C. 7:9-3.19, the (insert name of enforcing official) or his designee, upon presentation of identification, shall have the right to enter upon property where an individual or non-individual subsurface sewage disposal system is located for the purpose of observation, inspection, monitoring and/or sampling of the on-site sewage disposal system. This authority is exercised by virtue of N.J.S.A. 26:3-31 as a necessary and reasonable method of furthering the duties of the Board of Health as enumerated therein.

SECTION ELEVEN. FEES

- A. Initial License
- B. Renewal License
- C. Board of Health Inspection at time of license renewal
- D. Septic Sludge Removal Operator
- E. Septic Sludge Removal Permit

SECTION TWELVE. VIOLATIONS AND PENALTIES

A. A person who violates any provision of this article, or any term or condition of any certificate or license issued hereunder, shall be liable for one or more of the following penalties [N.J.S.A. 40:69A-29(b)].

1. A fine of not less than one hundred dollars (\$100.00) nor more than \$1,000.
2. A period of community service not to exceed 90 days.

B. Each separate day and each violation of any provision of this article, any term or condition of any certificate or license or any notice or order issued by the Board of Health shall constitute a separate and distinct violation under this ordinance.

C. Nothing in this section shall be construed as limiting the remedies of the Board of Health for violation of this article. The Board of Health may proceed under any other remedy available at law or in equity for any violation of this article or any term or condition of any certificate or license issued by the Board of Health or for any failure to comply with any notice or order issued by the Board of Health or its enforcement official under this ordinance.

SECTION THIRTEEN. REPEAL OF INCONSISTENT ORDINANCES.

All ordinances, codes or parts of same inconsistent with any of the provisions of this ordinance are hereby repealed to the extent of such inconsistency

SECTION FOURTEEN. EFFECTIVE DATE

This ordinance shall take effect thirty (30) days after adoption and publication of a Notice of Adoption in accordance with New Jersey law.

SECTION FIFTEEN. SEVERABILITY

In the event that any provision of this Ordinance or its application to any person is held invalid for any reason, such invalidity shall not affect any other provision of this Ordinance and to this end, the provisions of this Ordinance are severable.