

ORDINANCE NO. 2023

AN ORDINANCE TO AMEND CHAPTER 110 OF THE CODE OF SUSSEX COUNTY BY ADDING A NEW PART 7 RELATING TO AN APPROVAL PROCESS FOR PRIVATE COMMUNITY WASTEWATER SYSTEMS IN SUSSEX COUNTY PRIMARY SERVICE AREAS AND SECONDARY SERVICE AREAS

WHEREAS, it is determined that in order to best serve the health, safety and welfare of the citizens of Sussex County, it is necessary to add a procedure for approving and regulating the construction of private community wastewater systems in areas designated as Primary and Secondary Service Areas by Sussex County and its Engineering Department; and

WHEREAS, it is necessary to create such a procedure so that Sussex County may more efficiently plan, design, finance and construct its public, County-owned Sewer Districts; and

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Part 7

Private Community Wastewater Systems

ARTICLE XXIII

§110-150. PURPOSE.

In accordance with Title 26 of the Delaware Code, the State of Delaware Public Service Commission is authorized to issue Certificates of Public Convenience and Necessity for the construction and operation of Private Community Wastewater Systems within Sussex County. In addition, Sussex County plans, designs, finances and constructs its own wastewater collection, conveyance, treatment and disposal systems within its Sanitary Sewer Districts. As part of this process, Sussex County has established Primary and Secondary Service Areas, which designate areas to be served in the future as part of a Sussex County Sanitary Sewer District. These Primary and Secondary Service Areas are utilized by Sussex County to adequately plan, design, finance and construct the collection, conveyance, treatment and disposal systems throughout the County. This Part is intended to provide a method for the review and approval of Private Community Wastewater Systems within the Sussex County Primary and Secondary Service Areas.

§110-151. DEFINITIONS.

The definitions supplied elsewhere in this Chapter shall apply to this Part. Unless the context specifically indicates otherwise, the following terms shall have the meanings hereinafter designated:

PRIVATE COMMUNITY WASTEWATER SYSTEM or “SYSTEM” shall mean a facility for the conveyance, collection, processing, treatment or disposal of sanitary sewage, which is owned by a non-governmental entity, and which services or is proposed to service more than one equivalent dwelling unit, as that term is defined elsewhere in this Chapter.

PRIMARY SERVICE AREA shall mean the area designated by Sussex County as being a Primary Service Area for Sussex County sanitary sewer service as adopted by Sussex County Council.

SECONDARY SERVICE AREA shall mean the area designated by Sussex County as being a Secondary Service Area for sanitary sewer service as adopted by Sussex County Council.

§110-152. REQUIRED APPROVAL.

- 1) **In General. A Private Community Wastewater System shall not be constructed within a Primary or Secondary Service Area by any non-governmental owner or entity without the prior approval of Sussex County, as hereinafter provided.**
- 2) **Applicants seeking to obtain the approval of Sussex County to construct a Private Community Wastewater System within a Primary or Secondary Service Area must complete and file with the County Engineer an application in the form prescribed by the County and accompanied by a fee to be determined by the County Council. In support of the application, the user shall submit the following information:**
 - a) **The address and location of the proposed Private Community Wastewater System, including the Sussex County Tax Map and Parcel Number where the System will be located.**
 - b) **The name, address and location of the owner and operator of the proposed Private Community Wastewater System.**
 - c) **A list of the property or properties to be served by the proposed Private Community Wastewater System, including the development within which the System may be located and any other properties or developments that may be served by it.**

- d) The number of Equivalent Dwelling Units to be served by the System.
- e) A certification from the System design engineer indicating that the System as designed and constructed will adequately process sanitary sewage and waste as required by all applicable laws and regulations of the federal, state and county government.
- f) An executed agreement between the applicant and the property owner, and the operator (if different from the applicant) containing the provisions for:
 - i) the operation and maintenance of the System;
 - ii) compliance with all applicable laws, ordinances, regulations, standards and agreements regulating the proposed System; and
 - iii) no liability to Sussex County with respect to, or arising out of, the operation, maintenance, repair and/or replacement of the System.
- g) The submission of plans and specifications for the wastewater collection, transmission and disposal system as required by Chapter 99 of this Code, if needed by the County Engineer for the proper assessment of the application.

§110-153. APPROVAL OF PERMIT APPLICATION.

- 1) After obtaining all required information, and no later than 45 days after a complete application has been filed with the County Engineer, the County Engineer shall approve the Private Community Wastewater System in writing only if it is determined that each of the following criteria have been favorably addressed, in addition to the information supplied with the Application:
 - a) Sussex County will not reasonably be able to provide sewer service to the property within 5 years from the date the application is filed; and
 - b) Sussex County has not performed a planning study that the Applicant can use to implement the extension of a transmission pipeline system to connect the development to existing County infrastructure; and
 - c) The System will not adversely affect Sussex County's ability to provide future sewer service to other properties in the area, including, but not limited to, other existing developments, individual properties or structures; and

- d) The System, if serving more than one property, will not interfere with the County's ability to construct future pipelines and/or mains within private or public rights of way or other areas as may be necessary; and
 - e) If mutually agreed, the System will be constructed in such a manner that it may be connected to a County Sanitary Sewer System in accordance with this Chapter when the County Sanitary Sewer System becomes available; and
 - f) The construction of the System does not adversely affect existing, designed or funded County Sewer infrastructure, including, but not limited to pipelines and/or mains sized to accommodate the property that is the subject of the application, pump stations sized to accommodate the property that is the subject of the application, treatment and disposal methods (including land application, ocean outfall or other methods) that have been or will be acquired to accommodate the treated wastewater; etc.; and
 - g) The proposed treatment and disposal area will not adversely affect neighboring and adjacent properties or water supplies.
- 2) The County Engineer's decision shall address each of the foregoing criteria, and shall be mailed to the Applicant by Certified Mail.

§110-154. APPEAL OF COUNTY ENGINEERS DECISION.

In the event an Applicant is denied an approval as set forth in Section 110-153, the Applicant may take an appeal to County Council by filing a Notice of Appeal with County Council and stating the grounds therefor within 30 days after the County Engineer's Decision has been mailed to the applicant by Certified Mail. County Council shall fix a date and time for a public hearing on the appeal, and give notice thereof by certified mail to the owner of the property that is the subject of the application, the Applicant (if different from the owner), and the operator of the System, and by posting said notice conspicuously at the place to be served by the System. Such notice shall be given not less than 10 days before the date of the public hearing. The County Engineer shall transmit to the County Council all papers and documents which constitute the record of the decision appealed. County Council shall conduct a hearing and consider all evidence presented from any party, including the party taking the appeal, the County Engineer or his representative, the

public or any other interested party, and may thereafter reverse or affirm the decision appealed.

The information considered by County Council shall be limited to the application for the Private Community Wastewater System and the criteria set forth in this Part.

§110-155. PROHIBITION AGAINST PRIVATE COMMUNITY WASTEWATER SYSTEMS WITHIN COUNTY SEWER DISTRICTS.

No Private Community Wastewater Systems shall be permitted within an established Sussex County Sewer District existing as of the date of adoption of this Ordinance.

§110-156. EFFECT ON EXISTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.

This Article shall not apply to any System for which a Certificate of Public Convenience and Necessity has previously been issued by the Public Service Commission as of the date of adoption of this Ordinance.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2023 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 16TH DAY OF DECEMBER 2008.



ROBIN A. GRIFFITH
CLERK OF THE COUNCIL