Gila County Ordinance #01-2

Minimum Qualification Standards for Persons Performing Soil Classifications, Percolation Tests, Site Assessments, On-site Wastewater Treatment Facility Design; Prohibiting Performance of Such Services by Persons with a Documented History of Reporting Inaccurate results, Producing Inadequate Designs, or Other Potentially Unethical or Unacceptable Behavior; Additional Notice of Intent to Discharge, Design and Installation Requirements; Repair of Existing On-site Wastewater Treatment Facilities; Penalties; Appeals Process

WHEREAS the Gila County Board of Supervisors is empowered to make and enforce all sanitary regulations not in conflict with general law, pursuant to A.R.S. §11-251(31), and may adopt ordinances necessary or proper to carry out the county's responsibilities not otherwise limited or conflicting with other laws, pursuant to A.R.S. §11-251.05(A); and

WHEREAS the State of Arizona has adopted technical and procedural standards for the practice of site evaluation, soil classification, percolation testing, system selection and design of on-site wastewater treatment facilities having a design flow of less than 24,000 gallons per day; but has not set minimum qualification standards for the individuals performing these functions; and

WHEREAS the preservation of the health and welfare of the citizens of Gila County, and the efficient and effective performance of Gila County's delegated regulatory duties is dependent upon how well these tasks are performed, and

WHEREAS minimum qualification standards are necessary to ensure that the individuals performing these functions have the technical knowledge and skills necessary to conform with the required technical and legal standards and procedures for these tasks; and

WHEREAS it is necessary to provide the regulated community with an avenue to appeal the on-site wastewater treatment facility licensing decisions made by the Gila County staff; and

WHEREAS the Board of Supervisors has published this Ordinance in compliance with A.R.S. §11-251.05(C);

THEREFORE, be it ordained by the Board of Supervisors of Gila County, Arizona, as follows:

Section 1: Soil Analysis, Percolation Tests, Site Investigation, On-site Wastewater Treatment Facility Design; Persons Authorized to Perform; Additional Notice of Intent to Discharge, Design, and Installation Requirements, Repair of Existing On-site Wastewater Treatment Facilities.

A) All site investigations, percolation testing, soil analyses, system selection, and design of on-site wastewater treatment facilities shall be conducted in accordance with Arizona Administrative Code Title 19, Chapter 9, Articles 1 and 3.

B) The services referenced in Section 1(A) shall be performed only by the following persons:

1) Professional Engineers or Geologists licensed by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq*, with knowledge of and competence with the preparation of the design documents and submittals for such systems, unless exempted under ARS §32-144(A)(6).

2) Sanitarians registered with the Arizona Sanitarians Council pursuant to A.R.S. §36-136.01, with knowledge of and competence with the preparation of the design documents and submittals for such systems.

3) Persons who have demonstrated proficiency in site investigations and the selection and design of on-site wastewater systems, and who have met all the following requirements:

i) Successful completion of one or more classes presented by the Gila County Health Department within the past two years and after January 1, 2001, regarding the tasks specified in Section 1(A). Those persons who successfully completed the "Implementing ADEQ's Aquifer Permit Program Regulations for On-Site Wastewater Treatment Facilities, Effective January 1, 2001" training presented by the Gila County Health Department in March 2001 shall be considered qualified to perform the tasks specified in Section 1(A). The Gila County Health Department shall expressly state whether or not any classes it presents to the regulated community after the effective date of this ordinance will qualify the prospective attendees to perform the services referenced in Section 1(A) under this section.

ii) Maintained a satisfactory history of producing accurate results, and adequate designs.

C) The Gila County Health Department reserves the right to not accept results from persons or firms with a documented history of reporting inaccurate results, producing inadequate designs, or other actions that may result in violations of the provisions of Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3.

D) All site investigations, percolation testing, and soil classifications pertaining to on-site wastewater treatment facilities shall be witnessed by a member of the Gila County Environmental Health staff to be valid. Any results of such activities, which are performed without being witnessed by Gila County Environmental Health Staff, will be considered invalid.

1) The Gila County Health Department may require percolation testing to resolve disputes in those instances where the site investigator and the Gila County Environmental Health Staff are unable to reach an agreement on the soil's ability to absorb water as determined by soil classification methods.

2) The Gila County Health Department may require percolation testing when the soil type and structure are such that soil classification methods are difficult to apply properly. Such soil types and structures include, but are not limited to, decomposed granite, fractured shale, fractured sandstone, etc.

E) Conventional on-site wastewater treatment facilities regulated under Arizona Administrative Code R18-9-E302 (General Permit 4.02) may be designed by any person qualified under Section 1(B) of this Ordinance.

F) Alternative on-site wastewater treatment facilities regulated under Arizona Administrative Codes R18-9-E303 through R18-9-E322 (General Permits 4.03 through 4.22) shall only be designed by Professional Engineers licensed by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq,* with knowledge of and competence with such systems.

G) Surveying performed for the purposes of establishing property boundaries, corners, and bench mark elevations shall be performed by or under the direct supervision of a professional land surveyor registered by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq.* Any other surveying for the purpose of establishing surface slopes or topographical grades shall be performed by or under the direct supervision of a person qualified to perform the tasks specified in section 1(A).

H) A Gila County Septic Compliance Report and a Gila County Floodplain Status Report shall accompany each on-site wastewater treatment facility Notice of Intent to Discharge form submitted to the Gila County Health Department.

I) Where the daily design flow for a residence as calculated by fixture count does not agree with the daily design flow as calculated by bedroom count, the designer shall base the design on the larger of the two values.

J) The Gila County Health Department may deny requests made for an alternative feature of design, installation, or operational feature under Arizona Administrative Code R18-9-A312(G) when the applicant is unable to demonstrate that the proposed alternative feature satisfies both of the following criteria specified in Code R18-9-A312(G):

1) The proposed alternative feature addresses site or system conditions more satisfactorily than the general permit requirement, and;

2) The proposed alternative feature achieves equal or better performance compared with general permit requirement.

K) The Gila County Health Department may expressly require a person requesting an alternative feature of design, installation, or operational feature under Arizona Administrative Code R18-9-A312(G) to submit written documentation prepared by a Professional Engineer (other than the original designer of the on-site wastewater treatment facility), a Registered Geologist with a strong background in hydrology, registered by the Arizona Board of Technical Registration pursuant to A.R.S. §32-121 *et seq,* or other qualified professional as necessary to demonstrate conformance with Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3.

L) A property owner may not install an alternative on-site wastewater treatment facility regulated under Arizona Administrative Codes R18-9-E303 through R18-9-E322 (General Permits 4.03 through 4.22) for his or her own use, unless the property owner possesses a valid license issued by the Arizona Registrar of Contractors which would allow the homeowner to contract to install an on-site wastewater treatment facilities.

M) No person shall repair or replace an existing an on-site wastewater treatment facility, unless they have met all of the following requirements:

1. They meet one or more of the qualification requirements given in Section 1(B).

2. They obtain an on-site wastewater treatment facility repair permit from the Gila County Health Department before beginning the repair or replacement.

3. The repair and/or replacement conforms to Arizona Administrative Code Title 18, Chapter 9, Articles 1 and 3 to the maximum extent practicable.

Section 2: Penalties

A) Any individual violating Section 1 of this Ordinance shall be guilty of a class one (1) misdemeanor, pursuant to A.R.S. §11-251.05(A)(2).

B) In addition, the Gila County Attorney may file a civil action to enjoin the individual from performing such services and/or recover all fees earned by the violator for return to the person who has paid for the performance of these services.

Section 3: Appeals Process

A) An applicant may appeal any final decision made by the Gila County Health Department regarding the issuance or denial of a license to install and/or discharge from an on-site wastewater treatment facility, pursuant to the Pre-Hearing and Hearing Procedures for on-site wastewater system licensing Appeals adopted by the Gila County Board of Supervisors.

Section 4: Severability

Should any section, paragraph, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid for any reason, it is the intent of the Board of Supervisors that the remainder of this Ordinance shall not be affected thereby, and shall continue in full force and effect.

Section 5: Effective Date and Territorial Applicability

A) This Ordinance shall apply to all services denoted in Section 1(A) which are performed on or after 30 days after the adoption of this ordinance.

B) This Ordinance shall be effective in all unincorporated areas of Gila County, and shall be effective in any incorporated city or town which may approve, by resolution, the application or enforcement of this Ordinance within that city or town's boundaries, pursuant to §A.R.S. 11-251.05(D).

APPROVED THIS FOURTH DAY OF DECEMBER 2001 BY THE GILA COUNTY BOARD OF SUPERVISORS.

Chairman of the Gila County Board of Supervisors

Steve Besich, Clerk of the Board

APPROVED AS TO FORM

James W. Hazel, Gila County Attorney