

Delegation Agreement between the Minneapolis Board of Health and the Minnesota Department of Health

This Agreement, effective on the first day of _____, 2010, is between the state of Minnesota acting through its Commissioner of Health (“Minnesota Department of Health” or “MDH”) and the Minneapolis Board of Health (“Board”).

1. AUTHORITY AND DELEGATION

- 1.1 MDH, charged with protecting public health and groundwater under Minnesota Statutes, Chapters 103I and 144, has the duty to regulate and inspect the construction, repair, and sealing of water-supply wells to protect public health and groundwater.
- 1.2 Minnesota Statutes, section 103I.111, subdivision 1 authorizes MDH to enter into an agreement to delegate all or part of the inspection, reporting, and enforcement duties to the Board. MDH delegates its authority to the Board according to this Agreement but nevertheless remains ultimately responsible for the performance of these duties under Minnesota Statutes, section 103I.111, subdivision 2(h).
- 1.3 The Board, having jurisdiction over the city of Minneapolis, accepts this delegation and agrees to the terms of this Agreement regarding inspection of the construction, repair, and sealing of wells and enforcement of the applicable laws for the purpose of protecting public health and groundwater.

2. SCOPE

- 2.1 Delegated Responsibilities: This delegation applies to any water-supply well used:
 - A. As a private water-supply well;
 - B. As part of a noncommunity public water system as defined in 40 Code of Federal Regulations 141.2 (e.g., wells serving schools, parks, motels, restaurants);
 - C. For irrigation;
 - D. For agricultural, commercial, or industrial water supply; and,
 - E. For heating or cooling, including groundwater thermal exchange devices as defined in Minnesota Statutes, section 103I.005, but excluding vertical heat exchangers as defined in Minnesota Statutes, section 103I.005; and,
 - F. For Monitoring wells and Remedial Wells as defined in Minnesota Rules, part 4725.0100.
- 2.2 Responsibilities not delegated: MDH retains exclusive authority for the following areas:
 - A. Licensing, registration, and bonding of well contractors, and the registration of drilling machines and hoists.
 - B. Construction, repair, and sealing of the following types of wells: wells serving a community water system as defined in 40 Code of Federal Regulations 141.2; dewatering wells and, borings.
 - C. Administration and processing of well disclosure certificates.

3. TERMS OF THE AGREEMENT

3.1 MDH's Responsibilities:

A. General

- (1) Beginning on _____, and through the duration of this Agreement, MDH will not enforce the applicable statutes and rules pertaining to the well types identified in paragraph 2.1, except as stated in this Agreement or at the request of the Board.
- (2) To assure consistent regulation and enforcement statewide, MDH will review the Board's ordinances or proposed changes to existing ordinances and provide a written response. MDH will review and provide comments within 30 days of receipt of the proposed ordinance language submitted to MDH.
- (3) MDH will evaluate the Board's compliance with the delegation agreement to assure that its programs adequately assure compliance by regulated parties with the standards and requirements established in the applicable statutes and rules.
- (4) MDH staff will be available to consult, advise, and assist the Board regarding issues covered under this Agreement.
- (5) MDH will refer to the Board any complaints that MDH receives concerning matters under the Board's jurisdiction.

B. Licensing and Registration

MDH will inform the Board of any license action taken against a licensee who regularly performs work within the area under the jurisdiction of the Board, within 30 days of the commencement of the action.

C. Disclosure Program

MDH will process well disclosures and transmit to the Board copies of disclosure certificates which require investigation as described in section 3.2 D. (5)

D. Enforcement

At the request of the Board, MDH will transmit to the Board a summary of each violation of a location or construction violation by a licensed contractor who performs work within the jurisdiction of the Board, and MDH's enforcement response, within 30 days.

E. Local Well Inspector Certification

MDH will certify qualified inspectors employed by the Board to perform the duties identified under this agreement. Certification examinations will be offered to candidates at least semiannually.

F. Training and Technical Assistance

MDH will provide training and consultation relating to the delegated programs and other supportive services to the Board on a continuing basis throughout the duration of this Agreement at minimal cost to the Board. The Board will schedule a joint inspection of wells under Board jurisdiction with MDH at least annually during the first two years of employment of each new inspection staff member employed by the Board, and once every two years thereafter, or case-by-case at a different frequency if MDH and the Board agree.

G. Variations from Minnesota Rules, Chapter 4725

- (1) MDH will provide to the Board a copy of each variance request received for a property under the jurisdiction of the Board, within five days of receipt. If needed, MDH will conduct a site evaluation of the property in question within ten days of receipt of the request. MDH will notify the Board at least 24 hours prior to the site evaluation, and the Board may have a representative present during the site evaluation. The Board may also recommend variance conditions to MDH.
- (2) MDH will transmit to the Board a decision on the variance request within 15 days after the site evaluation. MDH will collect and retain the full variance fee authorized under Minnesota Statutes, section 103I.101, subdivision 6. The Board may also assess a fee for the variance under Minnesota Statutes, section 103I.101, subdivision 6, provided such fees do not exceed the total direct and indirect costs to administer the delegated duties.

3.2 Board's Responsibilities:

A. Regulatory Authority

- (1) The Board must have ordinances satisfactory to MDH that regulate the categories of wells identified in paragraph 2.1. As stated in Minnesota Statutes, section 103I.111, subdivision 2b, ordinances may not be inconsistent with or be less restrictive than the relevant Minnesota statutes or rules.
- (2) Ordinances may contain additional provisions for the regulation of wells identified in paragraph 2.1.
- (3) Ordinances must specify the enforcement mechanisms, including specific sanctions for failure to comply.
- (4) The Board may not enact or amend any ordinance related to the well types set forth in paragraph 2.1 (except fee provisions) without MDH's prior review of and comment on the proposed ordinance language. Within 30 days of promulgation of any new or amended ordinance that is within the scope of this Agreement, the Board will provide MDH with a copy of the new or amended ordinance.

B. Trained Regulatory Staff

- (1) The Board will maintain qualified inspection personnel, as defined in this section, to enforce the statutes, rules, and local ordinances encompassed in this Agreement.
- (2) Each inspection staff member must possess the following qualifications:
 - (a) A four year degree in one of the natural sciences (e.g., hydrology, geology, chemistry) or environmental or civil engineering from an accredited college or university, which includes at least 8 semester hours or 12 quarter hours of geology, hydrogeology, soil science, or the equivalent as determined by the MDH; or
 - (b) A two-year associate or technical degree in an environmental or public health discipline, or well drilling, from an accredited college, university, or technical school, and at least two years of direct experience in well construction or the groundwater industry, or the equivalent as determined by the MDH; or
 - (c) A high school diploma, and at least four years of well drilling experience, as defined in Minnesota Rules, part 4725.0650, subpart 1; or
 - (d) The staff member was certified by the MDH to inspect wells prior to January 1, 2000.

Subject to the approval of MDH, an individual who meets most of the education requirements set forth in this paragraph (e.g., has completed seven of eight semesters required for a four year degree in the natural sciences or civil or environmental engineering from an accredited college or university) may be employed by the Board and granted up to two years after the effective date of this agreement to complete all the remaining requirements. Staff who were employees of the Board at least one year prior to the date of application for delegation, and who meet most of the education requirements set forth in this paragraph may be granted approval of MDH to take up to four years after the effective date of this agreement to complete the education requirements, or to receive alternate training in lieu of some requirements.

- (3) The Board will assure that each new member of the well program inspection staff becomes certified by MDH to inspect wells, within one year of the date of appointment. During the first year, the new inspector is conditionally authorized to inspect wells under the close supervision of other certified staff.
- (4) The Board will assure that all certified inspection staff obtain six contact hours of state-approved continuing education every 12 months, and in addition, four contact hours of state-provided training every two years.
- (5) The Board will prepare and submit to MDH on an annual basis, a staffing plan to assure adequate program coverage. The staffing plan may include mutual aid agreements, cooperative agreements or other tools to address staffing shortages, or the need for additional staff during emergencies or special circumstances.

- (6) The Board will notify MDH in the event of unexpected staff changes leading to inadequate or unqualified staff. MDH may perform a program evaluation under the following circumstances.
 - (a) If the Board has inadequate or unqualified staff, the Board remains responsible for providing both routine and emergency services covered by this Agreement.
 - (b) If the Board has inadequate or unqualified staff:
 - (i) Within 10 business days of the staff's departure, the Board must submit a written plan for providing routine and emergency services until qualified staff are hired. This plan must include the name, credentials and contact information for staff performing delegated duties. MDH will provide written approval or rejection of the plan within 10 business days of receipt.
 - (ii) While the Board has inadequate or unqualified staff, the Board must submit to MDH on a monthly basis, inspection reports for all inspections conducted during the previous 30 days.
 - (iii) The Board will have 180 days from the time of the staff's departure to hire qualified staff. If qualified staff cannot be hired within 180 days, MDH will terminate the Agreement and immediately begin providing routine and emergency services in the Board's jurisdiction.
- (7) If the Board is a Community Health Board, the Board may enter into agreements with other qualified persons to carry out its delegated duties, as stated in Minnesota Statutes, Section 145A.04 subd. 5 and Minnesota Statutes 145A.07 subd. 3(d). Before the parties enter into such an agreement, the Board must obtain MDH's written approval.

C. Permits and Fees

- (1) Water-Supply Well Construction and Sealing Permits and Fees
 - (a) The Board will require that a property owner, property owner's agent, or the designated well contractor obtain a permit for, or provide notification of, the construction, reconstruction, or permanent sealing of a water-supply well, prior to the start of work under Minnesota Statutes, section 103I.205 and Minnesota Rules, Chapter 4725, and any successor statute or rule.
 - (b) The Board will adopt procedures for granting notifications or permits for emergency well construction or reconstruction under Minnesota Statutes, section 103I.205 and Minnesota Rules, Chapter 4725 and any successor statute or rule.
 - (c) The Board may charge permit or notification fees for water-supply well construction and well sealing in excess of fees specified by Minnesota Statutes, section 103I.208, provided such fees do not exceed the total direct and indirect costs to administer the delegated duties.

- (2) Maintenance Permits and Fees
The Board will require an annual maintenance permit for any water-supply well that is not in use and has not been permanently sealed by a licensed well contractor or limited well contractor. The Board may assess fees for such permits in excess of fees specified by Minnesota Statutes, section 103I.208, provided such fees do not exceed the total direct and indirect costs to administer the delegated duties.
- (3) Notice to MDH of Fee Schedule
The Board will provide to the MDH one certified copy of any resolution establishing fees within 30 days of enactment.
- (4) State Core Function Fees
The Board will submit to the MDH the state core function fees authorized under Minnesota Statutes, section 103I.208, within 30 days after the end of each calendar quarter. The fees submitted will correspond to the number of well construction and well sealing permits issued, or notifications received, by the Board during the calendar quarter.

D. Compliance Monitoring

- (1) Inspections. The Board will inspect the construction of new water-supply wells, and the reconstruction or sealing of existing water-supply wells to determine compliance with the requirements of Minnesota Statutes, Chapter 103I and Minnesota Rules, Chapter 4725, and any successor law or rule, and to determine if the well contractor or limited well contractor performing the work is licensed in accordance with Minnesota Statutes, Chapter 103I and Minnesota Rules, Chapter 4725, and any successor law or rule. At a minimum, the Board will inspect all new noncommunity public wells, at least 25 percent of new water-supply wells (one-third of which must be during well drilling, casing placement, and grouting), and at least 10 percent of well sealings each year.
The Board will fully document the findings of each inspection on a form approved by the MDH. The board will forward to MDH the inspection form for all new noncommunity public wells within 30 days of final inspection. The Board agrees that MDH may accompany the Board's staff in their work, make independent determinations of compliance, and perform program activities in consultation with the Board as circumstances warrant.
- (2) Construction and Sealing Records. No later than January 1 of each year, the Board will forward to the MDH the original record of each water-supply well construction, reconstruction, and sealing performed within the jurisdiction of the Board during the preceding 12 months (December 1 through November 30). If a record received by the Board is incomplete or inaccurate, the Board will assure that the record is completed or corrected in accordance with established MDH procedures.

- (3) Water Sample Test Results. No later than January 1 of each year, the Board will forward to the MDH a copy of the test results of all water samples collected under Minnesota Rules, part 4725.5650 during the preceding 12 months (December 1 through November 30).
- (4) Well Disclosures. Board will investigate the status of water-supply wells located on properties within the jurisdiction of the Board, when wells are disclosed as “not in use,” “sealed” with no sealing record on file, or when the status of wells is not reported or not clear. The Board will assure that each water-supply well is restored to service, properly sealed by a licensed well contractor or well sealing contractor, placed under a maintenance permit, placed under a variance, or otherwise resolved as agreed to by the Board and the MDH.

E. Compliance and Enforcement

- (1) The Board will seek compliance with all applicable portions of Minnesota Statutes, Chapter 103I and Minnesota Rules, Chapter 4725 by using the enforcement tools specified in ordinance and written policies. If the Board’s initial enforcement actions fail to achieve compliance, the Board will exert its enforcement authority by undertaking one or more of the following significant actions:
 - (a) Seeking injunctions under Minnesota Statutes, section 145A.04, subdivision 9;
 - (b) Referring the matter to the Board’s legal counsel to initiate criminal or civil actions (including administrative actions) against noncompliant parties; and
 - (c) Pursuing other enforcement mechanisms.
- (2) The Board will document each violation it investigates including the date of discovery, nature of the violation, any enforcement action taken, and the resolution of the violation. The Board will forward to the MDH a summary of each violation of Minnesota Statutes, Chapter 103I or Minnesota Rules, Chapter 4725, and the Board’s enforcement response, within 30 days of the action.
- (3) The Board must maintain a written policy for documenting compliance and enforcement procedures.

F. Variance from Minnesota Rules, Chapter 4725

- (1) The Board will provide guidance to property owners and well contractors on situations which may be appropriate for a MDH variance from Minnesota Rules, Chapter 4725. The Board will not grant any variance unless the variance has first been granted by the MDH.
- (2) When the MDH grants a variance from Minnesota Rules, Chapter 4725, the Board may either grant or deny the variance. If the Board grants the variance, the Board will include all conditions placed upon the variance by the MDH, and may add additional conditions to the variance. The Board will transmit a copy of the final variance to the MDH within 30 days after the variance is granted by the Board.

- (3) If the Board chooses not to participate in the formal process for variance approval/denial, the Board may provide comments to MDH on any variance request, and the MDH will transmit the variance approval/denial directly to the applicant, and transmit a copy to the Board.
- (4) The MDH will collect and retain the full variance fee authorized under Minnesota Statutes, section 103I.101, subdivision 6. The Board may also assess a fee for the variance under Minnesota Statutes, section 103I.101, subdivision 6, provided such fees do not exceed the total direct and indirect costs to administer the delegated duties.

G. Reporting and Document Retention

- (1) The Board will obtain approval of the MDH for forms and written policies and procedures adopted for the program authorized under this agreement, and will provide to the MDH a current copy of each form and written policy within 30 days of enactment.
- (2) The Board will retain copies of all relevant program records, including permit applications, permits, notifications, inspection reports, well records, well sealing records, water quality sample reports, complaint documents, enforcement documents, and variance documents received, issued, or completed by the Board, and will make all records readily accessible to the MDH for review or duplication.
- (3) By March of each year, the Board will submit to the MDH a report of activities and accomplishments during the past calendar year. At a minimum, the Board will provide the following information:
 - (a) Narrative of program activities and accomplishments during the past year, staffing changes, etc.
 - (b) Number of permits or notifications processed for wells constructed or reconstructed, and for wells sealed, by type of well.
 - (c) Number of well records, well sealing records, and water quality sample reports received.
 - (d) Number of wells inspected and total number of inspections conducted, by well type and inspection type (e.g., during construction, post-construction, re-inspection).
 - (e) Number of annual maintenance permits issued.
 - (f) Number of well disclosure follow-up actions, by type of action.
 - (g) Number of variances issued from the requirements of Minnesota Rules, Chapter 4725, and from any requirements of the local ordinance which are more stringent than Minnesota Rules, Chapter 4725.
 - (h) Number of wells with documented violations.
 - (i) Number of enforcement actions, by type of action.
 - (j) Summary of fines assessed and fines collected.
- (4) The Board will keep records documenting its compliance with this Agreement.

H. Industry and Community Relations

The Board must actively participate in work groups, advisory boards, or committees that foster communication and information sharing to improve public health outcomes in the program areas as identified in paragraph 2.1.

4. MDH ASSESSMENT OF BOARD'S PERFORMANCE

4.1 Program Evaluation:

- A. MDH will evaluate the Board's performance for compliance with this Agreement. MDH will limit its evaluations to no more than one formal evaluation per year, and no less than one formal evaluation every four years, except when the performance of the Board warrants more frequent evaluation.
- B. MDH will use the following criteria for evaluating whether the Board's performance meets appropriate standards and is sufficient to replace performance by MDH:
 - (1) Whether the Board has exercised the regulatory authority delegated to it under this Agreement by adopting ordinances covering the duties of inspection, reporting, and enforcement of all applicable parts of Minnesota Statutes, Chapter 103I and Minnesota Rules, Chapter 4725.
 - (2) Whether the Board has established written procedures for inspecting, reporting, and enforcement of all applicable parts of Minnesota Statutes, Chapter 103I and Minnesota Rules, Chapter 4725.
 - (3) Whether the Board has adequately permitted and inspected well construction and sealing of well types identified in paragraph 2.1.
 - (4) Whether the Board has enforced the statutes, rules and ordinances to remove the risks to public health and groundwater in a manner that corresponds to the circumstances of the risk involved. MDH will evaluate this factor according to the following criteria:
 - (a) Whether the Board has identified and appropriately documented violations of statutes, rules, and ordinances; and
 - (b) Whether the Board has determined a reasonable and appropriate time period for a violator to correct a violation, has taken appropriate enforcement measures, and can assure MDH that the violation has been corrected.
- C. MDH will report its evaluation findings in writing to the Board within 60 days after completion of the evaluation. MDH's report will assess the Board's performance to be one of the following:
 - (1) *Acceptable*, which may take one of two forms: *Acceptable* or *Acceptable With Improvements Needed*, meaning the Board must make specific improvements that are enumerated in the report, within a timeframe that is mutually agreed upon by the Board and MDH;
 - (2) *Conditionally Acceptable*, meaning that immediate, priority improvements are required. The Board must submit a written plan of correction within 30 days. The plan must include a timetable for correction and must be approved by MDH. *Conditionally Acceptable* status may be resolved in one of two ways:
 - (a) The Board may be reassigned to *Acceptable* status if the Board makes needed improvements according to its written plan; or
 - (b) The Board may be reassigned to *Unacceptable* status if the Board fails to provide a written plan of correction, or fails to make corrections according to the written plan.

- (3) *Unacceptable*, meaning that the program evaluation has identified certain specified problems of a critical nature that make the program unacceptable. The Board must submit a written plan of correction within 30 days. The plan must include a timetable for correction and must be approved by MDH. *Unacceptable* status may be resolved in one of two ways:
 - (a) The Board may be reassigned to an *Acceptable* or *Conditionally Acceptable* status if the Board makes needed improvements according to its written plan; or
 - (b) The Board may be subject to *Termination* if the Board fails to provide a written plan of correction, or fails to make corrections according to the written plan.
 - (4) *Termination*, meaning that the situation requires MDH to terminate the delegation immediately, and that all delegated duties immediately revert to MDH.
- D. If there are disputes concerning the evaluation findings that cannot be resolved through an informal process, the Board will have an opportunity to appeal its position to the Commissioner of Health.
- E. While the Board's status is designated as *Unacceptable*, MDH may conduct inspections or enforcement actions necessary to protect public health and groundwater. Until such time when the Board's status is no longer *Unacceptable*, the Board will pay service fees of \$100/hour per inspector to MDH for all inspections and related enforcement work conducted by MDH.

4.2 Termination:

- A. MDH may terminate this Agreement for the following reasons:
 - (1) The Board is unable or unwilling to carry out the terms of this Agreement; or
 - (2) The Board fails to demonstrate that it has carried out inspection, reporting, and enforcement activities under this Agreement; or
 - (3) MDH has reasonable evidence to establish that the Board's failure to act poses an immediate threat to public health.
- B. MDH will provide to the Board, in writing, the reasons for immediate termination.

5. OTHER TERMS

- 5.1 Voluntary Termination: Either party may voluntarily terminate this Agreement by written notice to the other no later than January 1 of the year before the calendar year in which the termination will be effective. If either party terminates this agreement, a minimum of five years must pass before the parties begin a new agreement.
- 5.2 Merger: The parties' entire Agreement is contained in this document. This Agreement supersedes any other agreements between the parties, either verbal or written, about the terms of this Agreement. MDH retains all functions and duties not included in this Agreement.
- 5.3 Amendment: The parties may amend this Agreement only by written agreement signed by the parties.
- 5.4 Liaison: Both MDH and the Board will assign a person to be liaison with the other party.

- 5.5 Statutory or Rule Changes: Successor or amended statutes and rules apply to this Agreement and are automatically incorporated herein upon their effective date.
- 5.6 Exclusion: Actions under the Emergency Health Powers Act (Minnesota Statutes, Chapter 12) are excluded from this Agreement.
- 5.7 Severability: A determination that any provision of this Agreement is invalid, illegal, or unenforceable does not affect the enforceability of any other provision.
- 5.8 Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and will not be responsible for the acts of the other party and the results thereof. The State's liability will be governed by the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736 and other applicable law. The Board's liability will be governed by the Municipal Tort Claims Act, Minnesota Statutes, Chapter 466 and other applicable law.

The parties' duly authorized officers have executed this Agreement on the date shown.

MINNESOTA DEPARTMENT OF HEALTH

Dated: _____ By: _____
Sanne Magnan, M.D., Ph.D.
Commissioner

_____ **COMMUNITY HEALTH BOARD**

Dated: _____ By: _____

Its: _____

Dated: _____ By: _____

Its: _____

Dated: _____ By: _____

Its: _____