



MEMORANDUM

TO: Health District Environmental Health Directors
Health District Environmental Health Supervisors
Health District Environmental Health Program Managers
DEQ Wastewater Program Staff – State Office
DEQ Regional Office Administrators
DEQ Regional Office Engineering Managers

FROM: Peter Adams, DEQ On-Site Wastewater Coordinator

THROUGH: Mary Anne Nelson, DEQ Surface and Wastewater Division Administrator

DATE: 02/19/2021

SUBJECT: Subsurface Sewage Disposal Permits for Systems that Span Multiple Properties

This memorandum provides recommended language from the Department of Environmental Quality (DEQ) for the seven Health Districts to incorporate as an addendum to Subsurface Sewage Disposal (SSD) Permits for SSD systems that cross property/parcel lines.

IDAPA 58.01.03.005.04.I requires a permit applicant (the owner of the waste-generating property) to include in the application copies of legal documents relating to access to the entire system and all system components.

If an applicant wishes to install any portion of a system on a property that they do not own, they must include an easement or other legal access agreement as a part of their permit application to the health district. Please see the Technical Guidance Manual (TGM) for more information on the requirements of the agreement and the responsibilities of the applicant. If a permit applicant wishes to install a system across multiple parcels owned by the applicant, the applicant should be notified that they will need to ensure access to all system components if they are divested of one of the parcels in the future.

Because of the complicated nature of permitting systems across multiple properties, and the associated risks of loss of access to these systems due to property sales or other unforeseen circumstances, DEQ has created recommended language that the health districts may include as an addendum to the permit in these instances. DEQ recommends that the health districts include this addendum for any permit that involves a system installed across multiple properties, regardless of ownership.

This permit addendum is intended to:

- a. Inform the applicant of the conditions of their permit approval.
- b. Put the applicant on notice of required future actions (i.e., securing an easement or access agreement) if a property/parcel containing a portion of the permitted system is transferred.
- c. Inform any potential buyer of a property/parcel containing any portion of the permitted SSD system that a legal access agreement (e.g., easement) must be secured as a part of the sale; otherwise, loss of access could occur and render the system failing.
- d. Ensure that any parties conducting due diligence (e.g., realtors, attorneys) are made aware of the circumstances of the properties involved.
- e. Aid DEQ in assisting the Health Districts with potential enforcement action.

Per Protocol A of the Memorandum of Understanding (MOU) between DEQ and the Health Districts, the Health Districts retain authority to make permitting decisions pursuant to IDAPA 58.01.03 (SSD Rules) and the TGM for all systems covered by the SSD Rules. The Health Districts may or may not choose to incorporate this recommended addendum language into their SSD Permits. The language is proposed as an addendum only because the space on the main permit page is limited and may not be sufficient to contain this recommended language in addition to the standard language found on all permits. If an addendum is attached to the permit, the main permit page should reference it clearly.

Recommended SSD Permit Addendum for Systems that Span Multiple Parcels:

“This permit is being issued with the understanding that the subsurface sewage disposal system will be installed on a combination of two or more properties/parcels.

If these properties have different owners, or a sale of one of the properties occurs after the permit is issued such that ownership of one of the properties transfers to a new individual/entity, it is the responsibility of the system owner to secure a valid legal agreement (e.g., an easement) between all properties involved. This agreement must ensure access to the entire system indefinitely and convey through transfer of property ownership unless the system is abandoned, removed, replaced or the permit is renewed. It is not the duty of the health district to determine the legal adequacy of the agreement, and the issuance of a permit does not in any way represent or warrant that access has been properly created.

If for any reason access to any portion of the subsurface sewage disposal system is lost and the system can no longer receive blackwaste and wastewater, the system may be considered a failing system pursuant to IDAPA 58.01.03.003.13. The owner of the waste-generating property must establish a new easement or other legal agreement that grants access to the property where the wastewater is treated, stored or disposed of.

If no legal access agreement can be reached, the owner of the waste-generating property must

obtain a permit to repair or replace the failing system (IDAPA 58.01.03.004.05).

In the event the failing system cannot be repaired or replaced in a way that meets the current rules and regulations, the health district may issue a nonconforming permit if it can be determined that the public's health is not at risk (IDAPA 58.01.03.008.12). Otherwise, once all other options have been exhausted, the waste-generating property may be denied a subsurface sewage disposal permit.”