

**Introduction**

Following is a general guideline to follow when complaints relating to existing onsite wastewater treatment systems (OWTS) are received. Complaints do not have to be in writing, and the complainant does not have to identify himself or herself. However, the investigator must determine probable cause or that an adjoining property owner or an aggrieved party made the complaint. Based on the ordinary meaning of the term, an aggrieved party would include a person having some interest directly affected by the alleged violation. For example: the presence of a health hazard, such as sewage effluent on the ground surface accessible to children and pets; a nuisance, such as odors or the potential for breeding of flies and mosquitoes; or possibly economic impact, such as difficulty selling property as a result of sewage effluent flowing across the property.

**Duties of Onsite Sewage Program Staff and Office Support**

1. Establish and review guidelines for complaint investigation;
2. Provide for training in complaint investigations;
3. Assess administrative penalties when appropriate.

**Duties of other DHSS Staff**

1. Assist with training in complaint investigations;
2. Provide technical assistance to counties regarding onsite complaints.

**Common Responsibilities of Local Public Health Agency**

1. Receive complaints regarding malfunctioning onsite systems;
2. Determine probable cause and conduct investigations relating to onsite systems;
3. Issue notices of violation when warranted;
4. Contract agency staff must be available for hearings (agency staff in ordinance jurisdictions follow hearing/appeal processes established by local ordinance);
5. Contract agencies work with system owner to reduce or abate any imminent risk and achieve compliance;
6. In ordinance counties where another agency has permitting authority, the LPHA works with the system owner and the administrative authority to achieve compliance.

**Existing System Malfunction In (701) Contract Counties**

Onsite Sewage Program personnel, contract agencies, and counties with ordinances that do not include complaint procedures should follow these guidelines.

There are two areas of complaints: non-emergency and emergency. The distinction for determining emergency status is found in 701.037.6 RSMo.

Whenever a complaint is received it is the responsibility of the administrative authority to establish the facts relating to the complaint. After receipt of a complaint, the investigation process includes documenting the complainant interview, any other interviews, and conducting the site investigation. Through each step you should gather evidence and document all facts and determine whether the investigation should continue. Generally, facts gathered and interviews conducted should systematically answer questions of who, what, where, when, and how related to the possible violation. When the investigation is completed, if the evidence shows reasonable grounds to believe there is a violation of law, a Violation Notice (also known as a Notice of

Violation – NOV), form [E3.10](#), should be issued. If compliance cannot be obtained, the case should be sent to the county prosecuting attorney and must include a statement of probable cause. See guidance regarding Non-Compliance on page 5 of this section.

Follow these steps when receiving a complaint:

1. Fill out a complaint form and include name, address and phone number of complainant if provided. Use complaint form E15.12.
2. Determine whether the complaint relates to a malfunctioning OWTS. (If it does not, see EHOOG Subsection [5.7](#) regarding illegal installations, EHOOG Subsection [5.9](#) regarding registration of OWTS industry professional's, or the Complaints Not Related to Onsite Systems heading below.)
3. If asked, explain to the complainant that information relating to an investigation of a malfunctioning OWTS may reveal whom the complainant is, and any information provided will become public record.
4. Ask about the length of time that the problem or nuisance has existed. (This will assist you in determining whether the complaint should be handled as an emergency).
5. Document as much information as possible on the complaint form and start a file for the complaint. If the complainant is not an adjoining property owner or if in your judgment the complainant is not an aggrieved party, other probable cause must be established before you proceed with an investigation. Once you enter the subject property, as an investigating regulator the investigation should proceed until it is completed. Withdrawal of the complaint, or finding that the degree of nuisance is not as bad as reported should have no effect on the investigation and determination of whether a violation notice should be issued.

It is important to be consistent in determining whether the complaint is valid, having come from an adjoining property owner or an aggrieved party. Generally there is not a problem in determining ownership of adjoining property. Whether a party is aggrieved can be more difficult to determine. Using your professional judgment, you might determine that a parent is aggrieved if his or her child must wait at a bus stop near wastewater ponded in the road ditch, whereas you might determine that someone driving past the same site is not aggrieved.

It is also important to be consistent in determining whether you have probable cause before making an investigation without a valid complaint. If the results of an investigation by another agency or department alleging a violation of 701 are referred to you, that might be considered probable cause, whereas you might consider a complaint only referred by another agency with no investigation and no information showing any aggrieved party to be insufficient probable cause.

### **Complaints Not Related to Onsite Systems**

Occasionally complaints allege problems in areas served by public or private sewer systems that are regulated by the Department of Natural Resources (DNR). Complaints regarding nuisance conditions created by these treatment or sewer collection systems should be referred, with a description of the public health concerns, to the operator of the system, local community authorities, and the DNR Regional Office. There is no authority under 710.025 through 701.059 RSMo regarding operation of systems under DNR authority.

Complaints regarding surfacing sewage at an individual facility or residence that is connected to a system regulated by DNR should also be referred to the system operator, community and DNR.

However, if the nuisance and health concerns are not addressed, the facility/building owner could be in violation of 701.031 RSMo, which requires that “Owners of all buildings where people live, work or assemble shall provide for the sanitary disposal of all domestic sewage.” The required remedial action should be to connect, repair the connection, or maintain the connection, to the available sewer service to abate the nuisance or health hazard. If the sewer service provider disconnected the service in an attempt to collect sewer fees, they should reconnect the building to abate the nuisance; 701 Violation Notices would not be effective and should not be used as a bill collection tool.

### **Investigation Process**

After receiving a legitimate complaint and/or determining probable cause, conduct an investigation to determine whether the allegations can be substantiated and whether there are reasonable grounds to believe there is a violation of the onsite sewage law. An existing system would not be considered in violation based solely on a finding that it does not meet the size, setbacks, or other requirements of the current standards. Alleged violations of the law would include:

1. Conditions that present a nuisance or health hazard;
2. Contamination of surface waters; and
3. Contamination of groundwater.

Follow any recommendations of the County Prosecuting Attorney as to what evidence should be gathered and use the appropriate steps below when investigating an alleged malfunctioning OWTS.

1. It may be possible to complete the investigation without entering the property where the alleged malfunctioning system is located. Contact the complainant, if an adjoining property owner, to inform them of your intent to conduct an investigation. Ask for permission to enter their property to conduct the investigation. The complainant should be able to indicate where the nuisance or problem is.
2. Attempt to notify the property owner in writing that you have received a complaint regarding their onsite system that it is potentially in violation of the law, and that it may be necessary to enter the property when conducting the investigation. Ask for their cooperation with the investigation and in remedying the situation, if necessary.
3. If possible, call the property owner prior to investigating the property where the violation is alleged. Visit the residence to identify yourself to the property owner before entering the property. Your official identification card will be adequate, however, you may also wear identifying clothing such as a department hat, or jacket. Again, explain that you have received a complaint and their onsite system is potentially in violation of the law and ask for their cooperation and permission to investigate. Document any relevant conversations with the property owner relating to the complaint issue.
4. If the property owner is uncooperative and refuses to allow access for investigation, leave the property. If you are unable to complete the investigation without entering the property, contact the local law enforcement office for assistance. After you contact the authorities return to the site with them and conduct the investigation. Refer to RSMo 701.033.1.(3), which allows entry for investigation.
5. When investigating a complaint, visual observation of the conditions (obvious signs of malfunction) is a common method of determining if an absorption system or lagoon is

malfunctioning. The existence of surfacing effluent, tall weeds or areas of bare soil crusted with a black mat are examples of visual clues. The presence of septic odors near a soil absorption field may also be an indication of malfunction. Occasional odors may be expected from a properly functioning lagoon. However, continuous bad odors and visual observations, such as an off color, inadequate water depth or a significantly undersized lagoon may be indications of malfunction. Observations such as these, or indications of effluent discharging from the property, are evidence that the system is in violation of the onsite sewage law.

6. Look for other possible sources or causes of surfacing water including, but not limited to, roof gutter or foundation drains, or curtain drainage systems. Interview the owner of the subject OWTS system seeking their input as to the cause(s) and extent of a malfunction and potential ways to abate and correct the problem(s).
7. If possible photograph the site to document any evidence of violation.

If there is not enough evidence to substantiate a violation, document the investigation for the file. Inform the complainant and end the investigation, unless they can provide additional information.

If evidence supports reasonable grounds to believe that one or more violations exist, summarize the facts for the file and prepare to issue an NOV. Assess whether an emergency situation exists, and if it does follow the steps discussed under the emergency guidelines heading on page 5 of this subsection.

### **Notice of Violation**

After you have investigated the complaint and gathered adequate information to believe that a malfunctioning OWTS is in violation of the law, you should write the notice of violation. Send a copy of the notice to the Onsite Sewage Program and other DHSS staff. Using department form [E3.10](#), available from the Onsite Sewage Program and the DHSS Intranet, the notice must:

1. Be in writing;
2. Include a statement of the reasons for issuance of notice;
3. Allow a reasonable time for correction;
4. Be served to the owner of the property by certified mail or in person;
5. Contain an outline of remedial action necessary to effect compliance.

An example completed Violation Notice is included with the forms in EHOOG Subsection [5.12.12](#). The form is an example only; when completing a notice, check the violations that apply and complete the Remedial Action(s) Indicated and Compliance Schedule sections as appropriate based on your investigation of the alleged violation(s).

In general, the remedial action required to effect compliance will be that the property owner makes application for a permit to repair or replace the onsite system. Write a compliance schedule requiring the property owner to contact the administrative authority, obtain a construction permit, and repair or replace the system within a reasonable time (can be as little as thirty (30) days). It may be apparent that lack of maintenance or improper operation have created the problems. Sometimes maintenance or repairs can be made without a permit; these may include, but not be limited to, cleaning filters, replacing a pump, or service that has been neglected. If a public sewer were available, connection to the sewer would abate the nuisance

and achieve compliance. In some situations it may be appropriate for the compliance schedule to require more immediate remedial action, such as reduced water use or tank pumping, to abate the nuisance while additional time is allowed for completing repairs. Within the allotted time, the property owner may make a written proposal of an alternate method to abate the nuisance and bring their system into compliance. If the property owner is unable to obtain repair service, an extension of thirty (30) days (or more for weather conditions) may be granted to repair the system and abate the nuisance. Any request(s) for extensions should be in writing prior to the deadline and include adequate justification.

**Within ten (10) days of the date of receipt of a Notice of Violation, the property owner may submit a request for a hearing in writing to the DHSS Onsite Sewage Program in Jefferson City.** It is important for contract counties to submit a copy of the notice to the Onsite Sewage Program as soon as possible in case a hearing is requested. When a timely request is received, the time frame for compliance with the requirements of the notice will be suspended until the decision of the hearing officer is rendered. A hearing is for the purpose of reviewing the appropriateness of the remedial action. A hearing will be held within twenty (20) days from the date the property owner received the notice of violation, if possible. The hearing officer will notify the property owner by certified mail of the date, time, and location of the hearing. A copy of the letter will be sent to the county or regional staff that issued the notice of violation and to the Onsite Sewage Program. Those involved with the case should be available during the time of the hearing in case they are required to testify.

Once the remedial action has been completed, and the nuisance is abated, finalize records for the file. Send a letter to the complainant stating that the onsite system is no longer in violation with a copy of the letter to the Onsite Sewage Program.

### **Emergency Guidelines**

When it is determined that an emergency exists, as detailed in 701.037.6 RSMo, a notice of violation should be issued as in other situations. However, the required remedial action should include measures to abate the health hazards without delay, such as pumping out sewage tanks or installing a holding tank, and the reasonable time for correction can be significantly reduced.

If the property owner does not abate the conditions as soon as practical or as required, prepare a summary of the case in chronological order, describing the conditions that warrant immediate actions to protect the health and welfare of the public. Forward the summary, other pertinent material, to the District EPHS Vs and the Onsite Sewage Program staff. If DHSS supports the emergency status, DHSS will request that the county prosecutor file a restraining order and temporary injunction. When hazardous conditions are corrected and the imminent health threat no longer exists, then a request must be made to dissolve the temporary restraining order and injunction. Once the order is dissolved, continue with the normal process to get compliance.

### **Non-Compliance**

Some property owners will refuse to comply with the requirements of the notice of violation, and will allow the time allotted for remedial action to elapse. When this occurs and every feasible option was afforded the property owner to comply, the final recourse will be to refer the case to the county prosecutor to file charges. A suggested format for filing a complaint affidavit is included with forms in [5.12.10](#). The prosecuting attorney may file an **information** (a formal

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charging document) charging the commission of a misdemeanor based upon the prosecutor's information and belief that the offense was committed. The **information** must be supported by a statement of probable cause as prescribed by the Supreme Court of Missouri Rule 21.04:

A statement of probable cause must be in writing and shall:

1. State the name of the accused or, if not known, designate the accused by any name or description by which the accused can be identified with reasonable certainty;
2. State the date and place of the crime as definitely as can be done;
3. State the facts that support a finding of probable cause to believe a crime was committed and that the accused committed it;
4. State that the facts contained therein are true; and
5. Be signed and on a form bearing notice that false statements made therein are punishable by law.

The prosecutor in a county may suggest a format, or have a form, for your use when submitting a statement of probable cause.

**Existing System Malfunction In Ordinance Jurisdictions**

Agencies working under a local ordinance must look closely at the wording of the ordinance. Many ordinances give the agency the authority to issue violation notices. If that is the case, the agency should have or should develop operational guidelines for investigating complaints, issuing violation notices, and an appeals process. Use of this guideline would only be appropriate if those agencies officially adopted it as their guideline. The Onsite Sewage Program would not be involved with hearings or appeals under these local ordinances.

If the local onsite sewage ordinance does not include authority to issue violation notices, then the administrative authority must fall back on the state law. When the County Public Health Agency is working under core contract with the DHSS, the guidelines for onsite sewage program contract counties should be followed. The remedial action, however, would change to reflect obtaining the applications and permits, if necessary, from the local permitting authority, which could be a different local agency with permitting authority under local ordinance or DHSS.

**Investigation/Dye Testing of Existing Onsite Wastewater Treatment Systems**

With the property owner's permission, an investigation may include a procedure where water is added and/or a water tracing dye is introduced to the onsite system in question. An increase in surfacing water flow observed after adding water to the onsite system would be evidence that the soil absorption system is malfunctioning and is causing the nuisance conditions. If dye were observed surfacing in the area in question, that would also be evidence to substantiate the complaint under investigation. Usually access to the septic tank will not be available and cannot be required as part of the investigation. However, if access is provided, it may be helpful in determining whether the tank is leaking or otherwise malfunctioning.

A dye test procedure for a complaint investigation is described below. For dosed alternative treatment and alternative soil absorption systems, a smaller water volume should be used. Generally the volume should be limited to one dose cycle. If a dosed absorption field is believed to be malfunctioning and dye is introduced, it should be introduced into the dosing tank to reduce the time needed for recovery. When a system is in normal use, dye may be introduced with a

minimal water volume. However, with normal water usage, more time will be necessary for dye to be recovered. Revisit the site as necessary.

**Any person engaged in groundwater or surface water tracing, for any purpose must register with the Missouri Department of Natural Resources, Division of Geological Land Survey (DGLS) and comply with any requirements.**

### **Complaint Investigation/Dye Test**

The purpose of this procedure is to establish a hydraulic connection between the OWTS and surfacing water, not to determine whether the system can handle a certain water volume. **Use only as much water as necessary for the investigation, not to exceed the volumes indicated below.** It may be useful to introduce a dye element to trace water flows and check for leakage. From the time dye is introduced, it may take a few hours to a day or two before dye is recovered.

During the investigation/dye test, the investigator must be able to examine the plumbing configuration in a home and have access to all fixtures that use water. If access is also available to the interior of the sewage tank, determine the effect of water usage on the tank. The following flow rates approximate flows through a fixture at full flow.

#### **a. Set flow rates**

- |                              |                       |
|------------------------------|-----------------------|
| 1. BF= Bathroom sink faucet  | 3 gallons per minute  |
| 2. KF= Kitchen faucet        | 3 gallons per minute  |
| 3. BT= Bathtub faucet        | 5 gallons per minute  |
| 4. Water closet              |                       |
| a. Old style                 | 5 gallons per flush   |
| b. New style                 | 1.6 gallons per flush |
| 5. Washing machine/per cycle |                       |
| a. Top loader                |                       |
| i. small                     | 15 gallons            |
| ii. medium                   | 30 gallons            |
| iii. heavy                   | 45 gallons            |
| b. Side loader               | 15 gallons            |

#### **b. Determine that all wastewater drain lines are attached to the sewage tank. [except water softener discharge lines]**

#### **c. At this point, if determined necessary, introduce dye.**

#### **d. Introduce no more than the following water volumes:**

Homes presently lived in and homes vacant up to thirty (30) days\*

- |                         |             |                         |
|-------------------------|-------------|-------------------------|
| a. 1 or 2-bedroom house | 200 gallons | water from all fixtures |
| b. 3 bedroom house      | 250 gallons | water from all fixtures |
| c. 4 bedroom house      | 300 gallons | water from all fixtures |
| d. 5 bedroom house      | 350 gallons | water from all fixtures |

\* Add 50 gallons of water per each additional bedroom. Water should be introduced at a rate of approximately 5 to 10 gallons per minute.

#### **AUTHORITY**

701.025 – 701.059 RSMo  
19 CSR 20-3.060