

4.4 Easement

Revision: ~~April 21~~ October 31, 2013~~00~~

The Individual/Subsurface Sewage Disposal Rules provide that every owner of real property is responsible for storing, treating, and disposing of wastewater generated on that property. This responsibility includes obtaining necessary permits and approvals for installation of the individual or subsurface disposal system. Therefore, a property owner wishing to install an individual or subsurface disposal system must obtain a permit under these Rules, and any other necessary approval for the installation of a system, including any authorization needed to install the system on another property that does not contain the wastewater generating structure. This property may be owned by the same individual that owns the parcel with the wastewater generating structure or another individual. Consistent with this requirement, the Rules require an applicant for a permit to include in the application copies of legal documents relating to access to the system (IDAPA 58.01.03.005.04.1). This section provides guidance regarding the circumstances under which the health district should permit a system to be located on another property that does not contain the wastewater generating structure and the legal documents that must be included in or with an application for such a system.

- A. The health district will consider allowing the installation of a ~~private, individual~~ subsurface sewage disposal system on ~~an adjoining~~ another property (e.g., lot, parcel, etc.) ~~owned by a second property owner~~. However, this option should be considered a last resort for use ~~only~~ when other practical solutions ~~for subsurface sewage disposal~~ are not available on the applicant's property. In addition, the entire site (i.e., the area for both the primary and replacement drainfield) on the other property must be reviewed by the health district and the site must meet all requirements of the "Individual/Subsurface Sewage Disposal Rules" (IDAPA 58.01.03).
- B. The placement of an individual subsurface sewage disposal system on another property requires that an easement be in place prior to subsurface sewage disposal permit issuance. Easements are required anytime a subsurface sewage disposal system is proposed on another property regardless of property ownership. Easements will need to be obtained for each property, other than the wastewater generating parcel that the application is submitted for, that any portion of the subsurface sewage disposal system is proposed to be installed upon. ~~The following is guidance and guidelines provides guidance for approval of an easement to construct an individual subsurface sewage disposal system. It is the applicant's responsibility to include an easement that:~~
1. Contains a sufficient description of the easement area, and of the property to be benefited by the easement (the property of the applicant).
 2. Contains language that ensures that the other property can be used for the system, and that the applicant or a subsequent purchaser of the applicant's property has access to make repairs or perform routine maintenance, until the system is abandoned. The language must ensure such use and access even when the applicant's property or the other property is sold or otherwise transferred.

3. Contains language that restricts the use of the easement area in a manner that may have an adverse effect on the system functioning properly.
 4. Is surveyed, including monumenting the corners of the entire easement area, to supply an accurate legal description of the easement area for both the primary and replacement drainfield areas and enable the health district to properly evaluate the site.
- C. It is the responsibility of the applicant to ensure that a legally sufficient document is prepared to establish the necessary easement for the subsurface disposal system located on another property. This document must be submitted to the health district with the permit application. The health district must ensure that an easement document is included in the application. However, the health district does not have the expertise, nor is it the duty of the health district, to determine the legal adequacy of the easement document, and the issuance of a permit does not in any way represent or warrant that an easement has been properly created. In order to issue a permit that includes a system on another property, the health district must ensure that the easement document included with the application:
1. Has been prepared by an attorney.
 2. Has been recorded in the county with jurisdiction. Evidence that the document has been recorded must be provided.

If the easement document meets the above two criteria, the health district may issue a permit. It is not the health district's responsibility to ensure the easement document meets the requirements in section B above. It is the responsibility of the applicant and the applicant's attorney to ensure the easement is legally sufficient and will meet the requirements in section B.

5. The entire site (i.e., the area for both the primary and replacement drainfield) for the proposed easement area must be reviewed by the health district for approval prior to recording and surveying of the easement and issuance of the permit.
6. Site must meet all requirements of the "Individual/Subsurface Sewage Disposal Rules" (IDAPA 58-01-03) (section 8.1), including but not limited to soils, setbacks, slope, and sufficient area for the original primary and replacement drainfields, and slope.
7. The easement is to be professionally prepared by an attorney and recorded in the county courthouse of local jurisdiction, or a written agreement prepared from the grantor granting an easement to the grantee, both of which will be surveyed and recorded after the system is installed. A copy of the easement is to be made available to the local health district and attached to the sewage disposal permit before final permit approval.
 - a. The easement shall include a survey, including monumenting the corners of the entire easement area, of the proposed easement site shall be made to

supply an accurate legal description of the easement and enable the health district to properly evaluate the site.

- ~~b. The entire easement area shall be monumented at all corners to identify the area of system placement prior to permit issuance and the monuments should be identified on the easement survey.~~
- 8. ~~The easement shall be signed by all individuals or entities listed on the deed or title for each impacted property.~~
- 9. ~~A copy of the easement is to be provided to the local health district prior to permit issuance.~~
- 8.10. ~~A copy of the recorded easement and survey is to be provided to the local health district prior to final permit approval.~~
- 9. ~~The attorney shall include in the written easement the following items:~~
 - ~~a. Easement shall be in perpetuity or until the system is abandoned by the grantee.~~
 - ~~b. Grantor is to be protected with enforceable provisions that will require the owner of the system to make repairs as needed.~~
 - ~~c. Grantee is to have access to the system to make repairs or perform routine maintenance.~~
 - ~~d. Grantee must have ability to restrict any use of the easement area that may have an adverse effect on the system functioning properly.~~
- 10.11. ~~A survey, including monumenting the corners, of the proposed easement site shall be made to supply an accurate legal description of the easement and enable the health district to properly evaluate the site.~~

4.4.1 Easement Restrictions

1. Effluent transport pipes for separate properties should not occupy the same trench within an easement.
2. If easements for drainfields under separate ownership result in more than 2,500 gallons per day of effluent being disposed of on the same property then the drainfield(s) must be designed as a Large Soil Absorption System and undergo a Nutrient-Pathogen Evaluation.
3. Easement boundaries that are not adjacent to the grantee's property line must meet the separation distance of 5 feet between the drainfield and/or septic tank and the easement boundary.