

Health Officers' Enforcement Duties



City of Manchester
Department of Health

Aaron Krycki, MPH, REHS, HHS
Senior Public Health Specialist, MHD
akrycki@manchesternh.gov
603-624-6466

Objectives

Participants will be able to:

- Identify laws regarding the authority of local Health Officers pertaining to subsurface waste disposal systems.
- Cite helpful tips and important resources to assist with the duties of a Health Officer.
- Identify enforcement duties as they pertain to the local health officer
- Complete standard forms and maintain records used in the enforcement of local and state regulations pertaining to subsurface waste disposal systems

WHEN SERVING AS A LOCAL HEALTH OFFICER OR DEPUTY:

- Keep a log to document complaints, and your response to them. Include notes on phone calls, e-mails, and other activities you take to respond.
- Keep a hard-copy file on all cases and inspections.
 - Many health officers now back this up with electronic copies as well.
- Carry a camera to take pictures if necessary when you are in the field.

WHEN SERVING AS A LOCAL HEALTH OFFICER OR DEPUTY (Cont.):

- For additional support during inspections, take a second person with you.
 - This could be a selectman (who under state law is a member of the local Board of Health), another town official such as a building inspector, police officer, animal control officer or your deputy health officer.
- For continuity between health officers, when your term is completed, please meet with the new health officer to pass on your manual and files.
 - Brief the new health officer on any cases that are not resolved that they may be involved in.

Legal Principles for Local Health Officers

What is the Law?

- Constitutional law (constitutionally based on US and state constitutions)
- Statutory Law (legislatively based)
- Regulatory Law (administratively based)
- Common law (judicially based)

Legal Principles for Local Health Officers

■ Legal Responsibilities

- Mandatory functions
 - Local health official must undertake by legislative mandate
 - e.g. – "...shall make two inspections per year..."; "...shall investigate all nuisances ..."; ie. Failing septic systems.
- Discretionary functions
 - Local health official is authorized to perform an act or function, but may not choose to do so (RSA 147:1).
 - e.g. – adoption of state regulations might be authorized by statute

Legal Principles for Local Health Officers

Some common terms and definitions:

Misfeasance: Performing a legal action in the wrong way.

Malfeasance: Doing something that is illegal.

Nonfeasance: The non-performance of an act that ought to be performed.

Nuisance Complaints/Investigations

Nuisances Investigations and complaints

- RSA 147:3 and RSA 595-B
- Town health officers shall inquire into all nuisances and other causes of danger to the public's health.
- Whenever a health officer knows or has cause to suspect that any nuisance or other causes of danger to the public health is in any building or enclosure, he/she may obtain an administrative inspection warrant under RSA 595-B, which may include, when necessary, authority for forcible entry.
- An **administrative inspection warrant** is a written order in the name of the state, signed by a justice of any municipal, district or superior court.
 - <http://www.courts.state.nh.us/forms/nhjb-2326-d.pdf>

Health Officer Responsibilities

- Inspect septic systems to determine if it has failed and certify that, when necessary, in cooperation with NH Department of Environmental Services.
 - May perform a dye test and, perhaps, a test of suspected sewage to confirm system failure.
 - Depending on town ordinances, a health officer may also witness test pits, inspect repaired and new system installations, and review and approve septic system design plans.
 - Many health officers report that becoming licensed as a septic system installer and/or designer is very helpful.

Procedures for Abatement of Nuisance

- Fill out complaint form with all pertinent information.
- Investigate complaint and establish proof of problem using photos if necessary.
- Contact the property owner and/or tenant.
 - Document all contact/inspections
 - Notification of property owner shall contain explanation of complaint, location, and reference to city or town ordinance or state statute and time allowed for abatement of complaint.
- Abatement shall occur within 7 days or as determined by Health Officer.
 - Re-inspection will occur after specified time period.

Septic

Septic – Role of Health Officer

- The health officer has four enforcement responsibilities concerning septic systems according to state laws and Administrative Rules:
 1. **RSA 48A: Addresses rental and public housing**
 - There must be adequate waste disposal available.
 - Toilets must function properly, and there must be an adequate supply of water.
 2. **RSA 147: When a residential septic system is in failure, creating a nuisance and health hazard, the health officer has the authority to order the system repaired or replaced in accordance with Administrative Rule Env-Wq 1000.10**
 - These requirements apply to both rental units and privately owned homes.

Septic – Role of Health Officer

- 3. **RSA 147:8 - All occupied buildings must have readily accessible toilet facilities, which are in proper sanitary condition with suitable drains or sewers for conveying wastewater and sewage away from the premises.**
 - These requirements apply to all occupied buildings, including residential and commercial buildings.
- 4. **RSA 485-A:29-44 [Accompanies the Subdivision and Septic System laws.]**
 - This law applies to the subdivision of land and construction of septic systems.
 - Local health officials may be authorized with concurrent (joint) enforcement of these laws and supporting Administrative Rules upon written application by Selectmen, to the Administrator, Subsurface Systems Bureau, DES Water Division.

Septic – Concurrent Authority

- **CONCURRENT AUTHORITY UNDER RSA 485-A:29-44 AND ADMINISTRATIVE RULES ENV-WQ 1000:**
 - Concurrent authority allows local officials and DES to jointly enforce regulations for the construction of septic systems.
 - Concurrent authority may be conferred upon local officials by DES.
 - It allows local officials to intervene when they observe a house or septic system being constructed when there is no approval by DES.
- **DES recommends the municipal Board of Health (as defined by RSA 128) be so certified.**
 - Manchester currently is the only city to have this certification
- For information about concurrent authority, contact the Enforcement Section of DES, Subsurface Bureau at 271-3501.

Septic – Role of Health Officer

- **RSA 485-A:2 IV defines “failure” of a septic system.**
 - When there is discharge of sewage into surface water, directly on the ground or into the ground water, or the system threatens to do so, then both the health officer and the DES Subsurface Systems Bureau jointly enforce RSA 147.
- **Before any new septic system is installed, written approval (i.e. Approval for Construction) must be granted by the DES Subsurface Systems Bureau.**
 - Copies of these approvals, and plans when requested by the municipality, are sent to the town or city.
- Some towns require that the health officer witness test pits and percolation tests, and sign off on septic plans before the plans are reviewed by the New Hampshire Department of Environmental Services.

Septic - Suggestions

- **Notify the owner of your activities.**
 - If you have not called in advance, knock on the door to inform them you are there to conduct an inspection.
 - If you expect you may encounter an uncooperative person, have a witness (i.e. your deputy health officer or a police officer.) See state laws regarding entry (RSA 147:3) and reversion to warrant (RSA 595:B).
- **Document in your log, the date, time, location of the home, location of the septic system, and your detailed observations.**
- **Develop a site sketch showing the house, any fill areas— where the leach field would probably be, any lush growth or vegetation or grass, any soft spots in the soil, or noticeable overland flow of effluent.**

Septic – Suggestions (Cont.)

- **Carry the legal definition of “failure” at all times and be prepared to show it to the property owner (RSA 485-A:2 IV).**
 - “Failure” means the condition produced when a subsurface sewage or waste disposal system does not properly contain or treat sewage or causes the discharge of sewage on the ground surface or directly into surface waters, or the effluent disposal area is located in the seasonal high groundwater table.
- **Perform a dye test when you can see a discharge.**
 - Record time of injection and check hourly or every 3 hours for the first few days, then daily thereafter.
 - If unable to dye test, obtain a sample and have it tested at the Lab.
- **If you find evidence of failure, notify in writing, the homeowner, town, and DES, by sending a copy of the Letter of Deficiency, that there is a failure, and what steps are necessary to correct the situation.**
 - Start to pump within 24 hours, fully correct within 60 days.
- **Pumping is not a permanent solution.**
 - If one has to pump, the system is in failure and must be corrected and a permanent solution has to be reached.

Failed Septic-Steps to Follow

- Visit the site and look for signs of a failed system.
- Dye the toilet facilities to prove that sewage from the house is surfacing near the septic system.
- If dye testing is not feasible, but there is liquid at the surface, take a sample and have it analyzed for fecal coliform at a state certified laboratory.
 - Phosphate analysis may also be helpful to indicate human waste, separate from natural fecal counts.
- If dye testing or lab analyses indicate the presence of sewage, (greater than 2,400 MPN of total coliform bacteria, or greater than 406 E. Coli bacteria per 100 ml. of sample) the system is likely in failure.

Failed Septic-Steps (Cont.)

- Prepare a **Letter of Deficiency** stating that the septic system was identified in failure and give the owner a defined time (e.g. 30 days) to correct the situation.
 - Send the homeowner two copies of the letter: one copy for their files; one copy which they are to give to their septic system designer when applicable. (See the example in the Attachments)
- If the septic system is not repaired or replaced within the required time, the health officer should issue an **Order**. (See the example in the Attachments.)
- If the septic system is still not repaired or replaced, the town may have its attorney present the case in the Superior Court.
- The town may elect to appropriate funds, correct the problem at the town's expense, and then recover costs as per RSA 147:17-b and RSA 147:7b. A lien would be put against the property deed.

Failed Septic Remedies

- The following are some examples of choices for the health officer in correcting septic problems:
 - Require pumping of septic tank be performed immediately, or at set intervals (i.e. once a week) so that overflow ceases.
 - This should be paid for by the owner of the building, or pumping may be performed at town expense and a lien put on property.
 - Copies of pumping receipts need to be submitted to the health officer weekly or depending on how often pumping. (*Remember: pumping is temporary solution.*)
 - Eviction of the occupants if the dwelling is found to be in unsafe condition and pumping cannot or will not be done by owner.
 - Issue a cease and desist order. If this order is issued prior to sale of a property and attached to the deed-the new owner must correct the situation before occupying the property.
 - Place lien on property and repair, or replace the septic system at town expense.
- Note: Contact your town attorney before issuing a cease and desist order, an eviction notice, or a lien on the property. A pump order does not usually have to go before the town attorney.
- Note: Copies of all paper work/documents should be kept in health officer files, as well as noted in logbook.

Failed Septic - Enforcement

- Using RSA 147, and any health regulations adopted by the town, the health officer has direct enforcement authority over septic system failures.
- The health officer can issue a pump order or a cease and desist order effective within **48 hours or less**.
 - The health officer in such a case has more direct enforcement authority than the DES. The DES's time frame would be in the range of 60 days.
- In some emergency cases it may be more efficient for the health officer to step in to initiate enforcement proceedings.

Failed Septic – Enforcement (Cont.)

- DES advises that after verbal notification, a **Letter of Deficiency** (LOD) should be issued (sent certified mail) or handed to the property owner.
- If there is sewage discharge directly to surface waters, this can also be enforced by DES (under RSA 485-A).
 - DES should be notified immediately.
 - If there is a sewage discharge directly into a public use area (such as swimming areas), then the health officer would immediately step in to enforce a safety and public health issue, (RSA 147) possibly by temporary closure.

Resources

Resources

- The Health Officer Manual contains a listing of important contacts and web-based resources.

<http://www.dhhs.nh.gov/dphs/holu/manual.htm>

- NH DHHS Program Area Directory
- NH DHHS District Office Information
 - Berlin, Littleton, Claremont, Manchester, Concord, Nashua, Conway, Portsmouth, Keene, Rochester, Laconia, and Salem
- Other Key Agencies/Programs List
- NH American Red Cross Chapters
- DES Subsurface Regional Offices
- Education/Training Resources in Emergency Preparedness

Resources (Cont.)

- The Health Officer Manual contains a listing of pertinent forms and templates.

- Sample of a Board of Health Order
- Sample of an Order to Vacate
- Sample letter of deficiency for a failed septic system
- Request for an Administrative Inspection Warrant
- Petition for an Administrative Inspection Warrant
- Local Health Officer Nomination Form
- Deputy Health Officer Appointment Form
- NH Communicable Disease Report Form
- All Health Hazards Region Map

Resources (Cont.)

- A CD with the above and additional resources is available through the completions of these trainings.

- For technical assistance and support:

NH DHHS, DPHS 1-800-852-3345

Jessica Morton

Phone: 603-271-4397

Email: Jessica.Morton@dhhs.state.nh.us