
Onsite Wastewater Treatment Systems Variance Procedures

Purpose: To provide clarification and process parameters to support request for variance to the regulations governing Onsite Wastewater Treatment Systems (OWTS).

Rationale: Providing structure and guidelines for variance requests allows for consistency in applying standards and processes related to all variance requests. This will allow property owners to demonstrate strict adherence to the current regulations would cause unnecessary hardship or practical difficulties. Additionally, it will ensure that the variance will not adversely impact the surrounding area, groundwater, or public health.

Potential Variance Requests

Properties with OWTS systems which are not functioning as intended or in a state of disrepair are required to repair the system with a regulatory conforming system. El Paso County Public Health (EPCPH) recognizes there are areas or properties which may not be reasonably able to meet the requirements of the current OWTS regulations. The following situations warrant potential for variance requests to be made:

1. Repair or upgrade to system resulting in encroachment of any regulatory setbacks on property or neighboring properties
2. Repair or upgrade to an existing system which does not meet separation requirements or lot sizes preclude adherence to currently required distances
3. Repair to an existing cesspool where site conditions preclude installation of a conforming OWTS or the installation of a septic tank prior to the cesspool

It is important to note that some circumstances or criteria are regulatory prohibited from allowing a variance to be granted. The following will not be considered as justification criteria for a variance request per section 8.4.Q.2:

1. Errors in Construction
2. Properties which can support a conforming OWTS
3. Encroachment to setbacks off the property
4. Separation to groundwater or bedrock
5. Setbacks to well which do not meet the Board of Examiners of Well Water Construction and Pump Contractors
6. Solely for Economic Gain (i.e. cost)

Initiation of Variance Request

Per Chapter 8 regulations, section 8.4.P.1 Any person who receives a notification of denial or disapproval from EPCPH relating to design or siting requirements may request a variance from the EPCBoH, by submitting a written request to the Public Health Director, along with the current EPCBoH variance fee, within 10 days of notification of such denial or disapproval.

A notification of denial or disapproval can be in the form of or the result of an OWTS Permit application requiring revision due to not meeting the regulatory requirements or issuance of a Notice of Condition specifically in relation to modification of an identified cesspool.

Request Submission

Any request for a variance submission must include a written statement including:

1. A statement from the owner requesting that the EPCBoH consider the variance request.
2. Identification of the property owner and property in question.
3. The specific criteria from which a variance is being requested;
4. Technical justification by a Colorado Licensed Professional Engineer indicating that the specific conditions which exist, and/or the measures which will be taken, will result in no greater threat to health or environmental degradation than that achieved by compliance with the applicable laws and regulations;
5. A discussion of alternatives considered in lieu of the requested variance;
6. Technical support for the selected alternative, which may include a testing program, which confirms that the variance does not increase the risk to public health and to the environment; and,
7. A statement of the hardship which creates the necessity for the variance.

Potential Criteria for Variance Request

Examples of criteria to be considered for variance request relative to setbacks and site constraints, including but not limited to:

1. Well
2. Active waterways
3. Seasonal drainage channels
4. Lot sizes
5. Existing systems which do not currently meet setbacks

Examples of criteria to be considered for variance requests relative to existing cesspools

1. Site access concerns
 - a. Lack of driveway or road access
2. Lot sizes

3. Site constraints, such as
 - a. Exceptional topography
 - b. Terrain including large boulders

Key Considerations for Variance Request

The property owner must demonstrate that compliance with the regulatory requirements would present undue burden or hardship. That hardship must be discussed in terms specific to the property while demonstrating the variance would not adversely impact the environment or public health. Variances are not intended to be requested or granted simply based on the property owners desires for a specific outcome and should only deviate from the regulatory requirements to the extent necessary.

Supporting documentation should include but is not limited to:

1. A complete site plan showing all pertinent features on the property and/or neighboring property.
2. A site evaluation including soil and conforming system specifications
3. System use information (ex: continuous occupancy, seasonal use, vacation rental, etc.)
4. 8.4.Q.1.c The applicant has the burden of proof to demonstrate that the variance is justified and will pose no greater risk to public health and the environment than would a system meeting the regulations.
5. [43.10.I] For the specific repair or modification of an existing cesspool where site conditions preclude installing a conforming OWTS, one of the preceding repair options, or installing a septic tank, the local board of health may consider a variance per the requirements of section 43.4.N. For a cesspool variance, the applicant has the burden of proof to demonstrate that (1) the variance is justified due to specific site constraints, and (2) installing a septic tank is not feasible under section 43.4.N.2.e.