

Detailed review of proposed changes to the Garfield County OWTS Regulation

*If you would like a full copy of the Garfield County OWTS regulation to reference the sections cited below, email us at owts@garfieldcountyco.gov

Garfield County will provide direct support and assistance to any person for access to online county services or obtaining accessible documents. If you have any questions or need assistance, please email owts@garfieldcountyco.gov or call 970-625-5200, ext. 8150.

1. Definitions (OWTS Regulation Section 43.3)

- (Page 8) Definition 76. “Installer” See “System Contractor.”
- (Page 8) Definition 83. "Local board of health" means any local, county, or district board of health. The local board of health is the Board of County Commissioners sitting as the Board of Health for Garfield County.
- (Page 9) Definition 94. “Modification” means a change or adjustment to a system component, often to improve the function of the system.
- (Page 10) Definition 101. "Permit" means a permit for the construction or alteration, installation, and use, or for the repair of an On-site Wastewater Treatment System. See Exhibit B for Permit Fee Schedule which may be amended by the BOH as determined necessary and appropriate.
- (Page 11) Definition 109. “Qualified OWTS Professional” means an individual that is capable of providing an inspection report on the current condition of an existing OWTS. This individual has also met the competencies for a “Qualified OWTS Professional” as defined in Section 43.4.K of this Regulation.
- (Page 12) Definition 126. “Setback” means the minimum distance between components of an OWTS and physical features for minimum system performance and treatment levels outlined in Section 43.7 of this regulation.

2. Inspections Required as Part of all Repair and Alteration Permits (OWTS Regulation Section 43.4.B.7.b and 43.4.B.8.b)

- Page 21, 43.4.B.7.b: Repair permit applications shall include an inspection report performed within the reasonable period of time prior to application that indicates the condition of all components of the existing OWTS by a “qualified OWTS professional”, as defined in 43.4.K, to ensure that the other components of the system are in good working order and functioning as originally intended. The report shall meet the requirements outlined in 43.4.L.
- Page 21, 43.4.B.8.b: If an existing OWTS is modified, an Alteration permit application shall be submitted.
 - (1) Alteration permit applications shall include an inspection report performed within a reasonable period of time prior to application that indicates the condition of all components of the existing OWTS by a “qualified OWTS professional”, as defined in 43.4.K, to ensure that the other components of the system are in good working order and functioning as intended at the time of installation. The report shall meet the requirements outlined in 43.4.L.

3. Denial of a Permit (OWTS Regulation Section 43.4.B.9, Page 22)

- a. If the Department determines that the proposed system does not comply with these Regulations, the Department will deny the application and provide written notice to the applicant and include the reasons.
- b. Any person whose application has been denied by the Department may submit a request to the BOH to review the Department’s denial within 60 days of receipt of the notice of denial.
- c. The applicant bears the burden of supplying the local Board of Health with sufficient evidence to document that the denied system should be constructed and used in such a manner that will result in no greater risk than that associated with compliance with the requirements of these

Regulations, comply with the declaration and intent of these Regulations, and comply with all applicable state and local regulations and required terms and conditions in any permit. The request must be made in writing and state the facts upon which the applicant bases their request for review, the reasons entitling them to relief, and the specific relief or outcome sought.

d. Following the submission of a written request for review, the BOH shall either deny the request or schedule a hearing during the next BOH meeting to consider the request.

4. Demonstrations of Competencies for a Qualified OWTS Professional (OWTS Regulation Section 43.4.K, Page 25)

1. NAWT certified inspector; or
2. Professional engineer licensed in the state of Colorado with OWTS experience; or
3. An individual with previous OWTS experience who can evaluate the condition of an OWTS, can determine if the system is in good working order and is functioning as intended, and can provide documentation indicating how the assessment of the OWTS was conducted.

5. OWTS Inspection Requirements (OWTS Regulation Section 43.4.L, Pages 26 and 27)

1. Inspections shall be performed by a Qualified OWTS Professional.
2. The inspection report shall be provided on company letterhead, and must include:
 - a. Owner's name.
 - b. Physical address of the property.
 - c. Legal description of the property.
 - d. Name of inspector and indication how the inspector meets the demonstrations of competence for a Qualified OWTS Professional.
 - e. Date of inspection.
 - f. Size of the existing septic tank.
 - g. Size of the existing STA (commonly known as a leachfield).

- h. Distribution media of the STA (chambers, rock and pipe, unlined sand filter, etc.).
- i. Condition of all OWTS components.
- j. Site plan showing locations of all OWTS components relative to pertinent physical features on the subject property and adjacent properties.
- k. Description of how the determination of the condition of OWTS components was made.
- l. Photographs taken during inspection (if available).

6. Variance Procedure Guidance (OWTS Regulation Section 43.4.N, Pages 27-32)

N. Variance Procedure

1. General

- a. The purpose of this section is to provide a procedure for GCPH to consider variances from the design and/or siting requirements of the OWTS regulations. Variances may only be included in permits issued by GCPH through the variance procedure as outlined below and approved by the state.
- b. The Garfield County Board of Health may set fees for processing an OWTS permit with a variance in accordance with section 25-10-107, C.R.S. This permit fee may be the standard OWTS permit fee or may be a separate fee based upon the cost of processing a permit with a variance.

2. Requirements for Variance Consideration

- a. The Board of Health must conduct a public hearing at a regularly scheduled meeting prior to rendering a decision on a variance request. The hearing must be the subject of a public notice and sent via certified mail, with a minimum of twenty (20) days reply time from the date of the mailing, to all adjacent property owners.
- b. Variance requests must be accompanied by:
 - (1) Site-specific request identifying the specific criteria from which a variance is being requested;
 - (2) Technical justification by a professional engineer or professional geologist, which indicates the specific conditions

which exist and/or the measures which will be taken that support a finding that the variance will result in no greater risk than that associated with compliance with the requirements of the regulation. Examples of conditions which exist, or measures which might be taken, include but are not limited to the following: evidence of a natural or manmade physical barrier to the movement of effluent to or toward the feature from which the variance is requested; placement of a manmade physical barrier to the movement of effluent to or toward the feature from which the variance is requested; soil replacement with sand filter media to reduce the infiltration rate of the effluent such that the travel time of the effluent from the absorption field to the physical feature is no less than the travel time through the native soils at the prescribed setback, and Higher Level Treatment;

- (3) A discussion of alternatives considered in lieu of the requested variance;
- (4) Technical documentation for 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;
- (5) Demonstration that all of the following requirements have been met:
 - (a) The property cannot accommodate a conforming OWTS.
 - (b) The property cannot merge with an adjacent property to create a single property which is able to accommodate a conforming OWTS.
 - (c) The variance is not being requested to mitigate an error in construction involving any element of property improvements.
 - (d) The variance does not grant a special privilege or use.
 - (e) The variance is not being requested solely for economic gain.
 - (f) The variance, if issued, will not result in a setback reduction to an offsite physical feature that

does not conform to the minimum setbacks defined in Table 7-1 of this regulation without the board of health considering any concerns of the owner of the property containing said feature. Property lines are considered offsite features. The property owner containing said feature must be notified of the time and date of the hearing.

(g) The variance will not reduce the separation to ground water or bedrock based on the level of treatment in Table 7-2.

(h) The variance will not impact wetlands, unless reasonable use of the property is not otherwise available without granting a variance. In these cases, the variance being granted is the minimum necessary to allow reasonable use and the variance must be approved by the local governing agency and the US Army Corp of Engineers (as applicable).

(i) The variance for a horizontal setback from a well is consistent with the variance requirements of the Board of Examiners of Water Well Construction and Pump Installation Contractors.

(6) A statement of the hardship that creates the necessity for the variance.

(a) The strict application of the Regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the property owner because of the special circumstances or extraordinary or exceptional physical conditions applicable to the property.

- d. Applicable fees have been paid. See Exhibit B for fee schedule which may be amended by the BOH as determined necessary and appropriate.
- e. 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.

3. The Garfield County Board of Health has the authority to impose site-specific requirements and conditions on any variance granted.
4. Outcome of the Variance Proceeding
 - a. The applicant must be notified, in writing, of the Garfield County Board of Health's decision regarding the request for a variance. The notice of a denial of a variance must include those reasons which form the basis for the denial. The notice of an approval of a variance must include any conditions of the approval. The variance, and any conditions thereof, must be recorded in the property records and any expenses associated with that recording must be the responsibility of the party obtaining the variance.
5. Prohibitions on the Granting of Variance Requests
 - a. No variance shall be issued where the property can accommodate a conforming OWTS.
 - b. No variance shall be issued to mitigate an error in construction involving any element of property improvements.
 - c. No variance shall be allowed solely for economic gain.
 - d. No variance shall be issued, if it will result in a setback reduction to an offsite physical feature that does not conform to the minimum setbacks defined in Table 7-1 of this regulation without the board of health considering any concerns of the owner of property containing said feature. Property lines are considered offsite features. The property owner containing said feature must be notified of the time and date of the hearing.
 - e. No variance shall be issued, if it reduces the separation to ground water or bedrock based on the level of treatment in Table 7-2.
 - f. No variance from the horizontal setback from a well shall be issued unless it also meets the variance requirements of the Board of Examiners of Water Well Construction and Pump Installation Contractors.
 - g. No variance shall be issued for the installation of a higher level treatment system based on sizing or separation reductions without GCPH having a maintenance and oversight program as defined in section 43.14.D.
6. Variances for Repair of Failing Systems
 - a. When a proposed variance for a system repair or upgrade would result in encroachment on minimum distances to physical features on

neighboring properties required by Table 7-1, the hearing procedures in 43.4.N.2 and 43.4.N.5 above must be followed.

- b. For the repair of or upgrade to an existing system where the existing system does not meet the required separation distances and where conditions other than lot size precludes adherence to the required distances, a variance to the separation distances may be requested. The repairs or upgrade must be no closer to features requiring setbacks than the existing facilities. Variances requesting setbacks no closer than existing setbacks do not have to provide technical justification from a professional engineer or professional geologist.

7. Findings on Appeal

- a. A request for review and reconsideration must be made within 60 days after denial of an application by GCPH.
- b. The applicant must bear the burden of supplying the Garfield County Board of Health with sufficient evidence to document that the denied system will be constructed and used in such a manner that will result in no greater risk than that associated with compliance with the requirements of the regulation, comply with the declaration and intent of this regulation, and comply with all applicable state and Garfield County regulations and required terms and conditions in any permit.
- c. At the next regular meeting of the Board of Health following the submission of a request for review, the Board of Health shall either deny the request or schedule a hearing to reconsider the original GCPH denial of the application.

8. Appeal of Board Decisions

- a. An applicant may follow the provisions of C.R.S. §25-1-515 to seek judicial review.