

## **Environmental Health Department Septic System Complaint Process**

The investigation of a problem with a septic system revealed that although the Mendocino County Environment Health Division (EHD) is moving towards timely processing and resolution of citizen complaints, complaint problems prevail in the system.

### **Method of Investigation**

The Grand Jury interviewed the EHD Director, an EHD Environmental Health Specialist, and complainants. The Grand Jury reviewed the 1998-1999 Grand Jury report "Citizen Complaint of the Environmental Health Division," and responses by the Board of Supervisors (BOS), EHD and the Mendocino County Public Health Advisory Board (PHAB). The Grand Jury reviewed the "Audit Report on the Complaint Process within the Mendocino County Division of Environmental Health," a document authored by an audit committee of two PHAB members, a private business owner, and representatives from the County Administrator's Office, the County Department of Planning and Building Services, and the Mendocino County Employers Council. The Grand Jury reviewed EHD Policy 48.02.01 "Complaint Acceptance," EHD Policy 48.02.02 "Complaint Processing," EHD Policy 48.02.03 "Minor and Nuisance Complaints," EHD Policy 48.02.04 "Complaint Confidentiality," and the EHD Complaint Flowchart. The Grand Jury reviewed EHD form letters used for routine responses to complaints. The Grand Jury visited the site of an open septic tank and faulty septic system.

### **Background Information**

The "Conclusion" of the 1998-1999 Grand Jury Final Report stated, "The EHD is falling short of meeting its stated goals and vision...in regard to citizen complaints concerning liquid waste." The 1998-1999 Grand Jury Final Report included the following recommendations:

- Timely acknowledgement of complaints
- Progress reports to the complainant and the County Public Health Department
- Complaint management escalation with complaint age.
- Resolve all complaints within 90 days.

The audit committee "Audit Report on the Complaint Process" included the following recommendations to EHD:

- Technology should be used for efficient tracking of deadlines and identification of patterns.

- ❑ Add the statement “provide complainants with an outcome/results of investigation” after second paragraph, EHD Policy 48.02.01 “Complaint Acceptance.”
- ❑ Provide time estimates to a complainant as to when a response from EHD can be expected.
- ❑ Communication to complainant by EHD should include options for action, related state agency contacts, and pertinent phone and fax numbers within the County.

## **Findings**

### **1. EHD handling of a complaint about an open septic tank and faulty system was not done in a timely manner.**

**Response (Environmental Health):** Environmental Health cannot agree or disagree with this finding. The finding depends on what the Grand Jury considers timely. Many septic system repairs or septic system replacements for single family homes can be very involved and may take considerable time to complete. In difficult cases, the property owner must hire a private consultant. The consultant usually needs 30-60 days before they can schedule the work and another 20-30 days to prepare the report. EHD may need 10-20 days to review the report, visit the site, and prepare the permit. In addition, installing a replacement system should not be completed when the soil is wet during winter. Since most difficult sites have poor soils and most septic failures occur in the winter, most repair work is delayed until summer. Thus, those difficult cases may take a minimum of 4-6 months to finish even when the owner is cooperative.

If the owner is uncooperative, EHD may need to intervene with legal action at any step in the process. If the owner does not submit a consultant’s report within the specified time period, EHD will take legal action. If the owner finally submits a report but delays obtaining the permit, EHD will take legal action. If the owner pays for the permit but delays hiring a contractor, EHD will take legal action. If a case requires legal action at some or all of these steps, the final outcome may be delayed for a year or more. If the case goes to court, it may take several additional months. Once a case is referred to legal counsel or the case goes to court, EHD has little control over the length of time to resolve the problem. Fortunately, these protracted cases are very uncommon.

Utilizing the average of the last seven quarterly complaint reports submitted to the Board of Supervisors, reveals that 95% of sewage complaints are resolved within one year, 91% are resolved within 9 months, 82% are resolved within 6 months, and 65% are resolved within 3 months. EHD received an average of 105 septic system complaints a year in the past four years.

The case investigated by the Grand Jury is not typical of most septic system complaints, as described above. The case involved a relatively simple replacement of a septic tank. EHD received the complaint on February 28, 2000. EHD investigated on March 3, 2000 and discovered that the top of the septic tank had broken across the middle and slipped into the tank. The tank was temporarily covered and was not leaking sewage onto the surface of the ground, so EHD allowed the owner to wait until summer to fix it when the soil was dry.

When summer arrived it became apparent that the owner was not willing or able to complete a repair. In October 2000, the owner requested help from EHD to fix the septic tank because the owner had no money to fix it. The owner said if EHD ordered the house to be vacated, the owner and the owner's children would have no place to go.

EHD decided it would be better and quicker if we could find someone to help the owner rather than go through the courts to have the owner's house vacated. We contacted the Community Development Commission (CDC) to see if they could offer low or no interest loans for home repairs to people with low incomes. CDC said they could probably help the owner. CDC received a bid to replace the tank in November 2000 and, apparently due to delays caused by the weather and the owner seeking a second bid, CDC was not able to complete the repair until four months later in March 2001. Fortunately, the mild weather conditions in March allowed the repair to be completed without any problem.

**Response ( Mendocino County Public Health Advisory Board (MCPHAB)):** MCPHAB disagrees partially with this finding. When considering the totality of the circumstances, MCPHAB believes that the investigation of the complaint and immediate communications with the **property owner** were done in a timely manner. However, the **complainant** should have received a written communication regarding the status of his/her complaint in a more timely manner. Complaint resolution deadlines given to the property owner were not adequately enforced and the situation remained unresolved for approximately one year.

**Response (Board of Supervisors):** The Board agrees with the response presented by the EHD. In fact, the Board commends the Department for seeking alternative solutions in order to avoid the eviction of the residents. The Board also agrees that the complainant should have been kept informed of the status, as appropriate.

**a. On February 28, 2000 a problem was first reported to EHD, citing excessive fly and gnat populations and foul odors in the immediate neighborhood.**

**Response (Environmental Health):** EHD agrees with most of this finding. The complaint form alleges excessive flies but not gnats or odors.

**Response (MCPHAB):** *No separate response received.*

**Response (Board of Supervisors):** The Board agrees with the response presented by the EHD.

**b. March 3, 2000, EHD responded that the top of the tank had collapsed and nothing could be done until the rainy season ended.**

**Response (Environmental Health):** EHD agrees with this finding. After the EHD inspector determined that the tank did not pose a health or safety threat, the inspector allowed the owner to install a new tank when the soil conditions were drier and more favorable for installation.

**Response (MCPHAB):** *No separate response received.*

**Response (Board of Supervisors):** The Board agrees with the response presented by the EHD.

**c. Two months later a complainant contacted EHD and was told that EHD had given the landowner deadlines for repairs.**

**Response (Environmental Health):** EHD cannot agree or disagree on what the complainant testified to the Grand Jury. A letter from EHD to the owner dated March 14, 2000 requests the owner to correct the situation before June 2000.

**Response (MCPHAB):** *No separate response received.*

**Response (Board of Supervisors):** The Board was not given enough information to either agree or disagree with this finding.

**d. The complainant had to contact EHD to receive a response, no written response had been received.**

**Response (Environmental Health):** Environmental Health cannot agree or disagree on what the complainant testified to the Grand Jury. A written response dated August 9, 2000 was provided to the complainant.

**Response (MCPHAB):** *No separate response received.*

**Response (Board of Supervisors):** The Board agrees with the response presented by the EHD.

**e. When nothing was done about the problem by the fall, the complainant again contacted EHD and was told that nothing could be done because the rainy season has started.**

**Response (Environmental Health):** EHD cannot agree or disagree on what the complainant testified to the Grand Jury.

**Response (MCPHAB):** *No separate response received.*

**Response (Board of Supervisors):** The Board agrees with the response presented by the EHD.

**f. EHD reported to the Grand Jury that EHD action resolved the problem around April 12, 2001.**

**Response (Environmental Health):** EHD disagrees with this finding. The problem was resolved on March 23, 2001.

**Response (MCPHAB):** *No separate response received.*

**Response (Board of Supervisors):** The Board disagrees with this finding based on the information presented by the EHD.

**2. The EHD is addressing inadequacies in complaint processing with the implementation of the EHD complaint policy and procedures dated November 8, 2000, which responded to the audit committee “Audit Report on the Complaint Process” recommendations.**

**Response (Environmental Health):** EHD agrees with the first part of this finding. EHD strives to improve all aspects of EHD’s programs. EHD disagrees, in part, with the second part of this finding. The Grand Jury indicates that EHD complaint policies dated November 8, 2000 were implemented as a response to an audit committee’s report. The policies were modified and expanded to address a new standardized complaint form adopted by the County and to include recommendations from the 1998-1999 Grand Jury Report. The audit committee reviewed the policies and made recommendations to EHD.

**Response (MCPHAB):** MCPHAB agrees with this finding.

**Response (Board of Supervisors):** The Board agrees with the response presented by the EHD.

**3. The November 8, 2000, policies have specific timelines for initiating investigation of a complaint, but there are no timelines for responding to complainants or timelines or guidelines for resolving problem situations.**

**Response (Environmental Health):** EHD disagrees, in part, with this finding. EHD does have guidelines for resolving problem situations. EHD has an enforcement manual dated 1983, which was updated in May 2001.

**Response (MCPHAB):** MCPHAB agrees with this finding.

**Response (Board of Supervisors):** The Board disagrees with this finding based on the information presented by the EHD.

**4. The EHD Director acknowledged problems still exist with timely implementation of complaint processing and resolution because of inadequate staffing and lack of funds for a computer tracking system.**

**Response (Environmental Health):** EHD disagrees, in part, with this finding. The EHD director advised the Grand Jury that we inquired about a prepackaged system specific to EHD. We found the cost prohibitive and the

system was not considered better than our existing system, which was working satisfactorily.

In regards to the staffing shortage, EHD agrees with the finding. At the time of the Grand Jury interview, the EHD director testified to the Grand Jury that we were short two positions – one person accepted a position in Napa County and the other was on medical leave. The director also advised the Grand Jury that EHD was completing a workload assessment to determine needed staffing levels. At this time, EHD is trying to fill two new vacancies.

**Response (MCPHAB):** MCPHAB agrees with this finding.

**Response (Board of Supervisors):** The Board disagrees in part with this finding based on the information presented by the EHD.

**5. The EHD and BOS responses to the 1998-99 Grand Jury report acknowledged that there were long-term unresolved complaints in the County. The EHD Director stated this year that long-term unresolved complaints still exist.**

**Response (Environmental Health):** EHD agrees with this finding. As noted in the introduction, EHD resolves 95% of septic system complaints within a year, thus 5% take longer than a year. The small percentage of unresolved complaints are usually tied up in court or delayed due to some other legal reason.

**Response (MCPHAB):** MCPHAB agrees with this finding.

**Response (Board of Supervisors):** The Board agrees with this finding based on the information presented by the EHD.

**6. Recommendations of the 1998-99 Grand Jury and the audit committee regarding communication, timely response, and resolution of complaints have not been implemented.**

**Response (Environmental Health):** EHD disagrees, in part, with this finding.

EHD routinely advises complainants of the status of pending complaint investigations when appropriate. In addition, EHD notifies the complainant upon receipt of a complaint and upon final disposition. The receipt and final disposition notifications were adopted as policy in November 2000 which was just two months before the Grand Jury investigation. The recommendation regarding resolution of complaints appears to refer to the 98/99 Grand Jury recommendation of resolving all complaints within 90 days. EHD responded to that recommendation stating that resolving all complaints in less than 90 days is not feasible for some complaints. EHD receives approximately 500 complaints a year and resolves 67% of them within 90 days and 86% of them within 180 days.

EHD and other Mendocino County departments represented by the Public Resource Council (PRC) have been working on a standardized complaint

process since 1998. The following chronology lists some of related achievements/events since that time.

1998/1999 – The PRC reviewed a proposal from the Mendocino County Public Health Advisory Board (MCPHAB) on a standardized complaint process. The PRC agreed with several of MCPHAB’s recommendations: to develop a standardized complaint form, to notify complainants upon referral of a complaint to another agency, to cross-train staff, and to review major complaints at quarterly PRC meetings.

- July 1999 – The 1998/1999 Grand Jury Report was published.
- October 1999 – The standardized complaint form was developed by the PRC. EHD completed drafts of several complaint policies to implement the standardized complaint form and implement some of the Grand Jury recommendations.
- February 2000 – The BOS directed EHD to conduct a third party audit by reviewing the newly drafted EHD complaint policies and making additional recommendations to EHD.
- August 2000 – The audit committee completed its report.
- October 2000 – The report was presented to the BOS.
- November 2000 – EHD adopted the new complaint policies.

The time period of the specific complaint investigation by EHD (subject to the 2000/2001 Grand Jury Report) occurred during much of the same time period from February 2000 to March 2001 when the audit committee was conducting its audit. The Grand Jury investigation occurred in early 2001 just a few months after EHD adoption of the policies. Some of the Grand Jury findings may be based on past EHD practices and during early stages of implementing the new complaint policies.

**Response (MCPHAB):** MCPHAB disagrees partially with this finding. While improvements are recommended, the Environmental Health Department has implemented many of the policies and procedures and has made significant progress in communication and timely response of complaints.

**Response (Board of Supervisors):** The Board disagrees with this finding based on the information presented by the EHD.

## **Recommendations**

- A. EHD clearly delineate timelines for written responses to complainants and timelines for resolution of complaints in EHD Policy 48.02.02-"Complaint Processing" and the EHD Complaint Flowchart. (Findings 3,4)**

**Response (Environmental Health):** EHD has already implemented receipt and final disposition notifications to complainants; however, the notifications do not have to be written. Most receipt notifications are done in writing while most final disposition notifications are done in person or by a personal phone call.

EHD will not implement written timelines for resolution of specific complaints. The length of time to resolve a complaint can depend on many factors, some of which are outside our control. However, EHD will continue to strive to resolve 95% of all complaints within a year, 90% of all complaints within nine months, 75% of all complaints within six months, and 67% of all complaints within three months.

**Response (MCPHAB):** MCPHAB supports the need for timely response and resolution of complaints, but recognizes timeliness measured only by the number of days it takes to resolve a complaint is not appropriate. Complaints should be handled individually, and appropriate resolution deadlines established and monitored. MCPHAB does find that there is need for more consistent tracking, follow-up and communication with both property owners and complainants. MCPHAB recommends that those actions be triggered by specific events included in the resolution plan, rather than by a standard and inflexible deadline. MCPHAB recommends that complainants receive communication from the EHD that acknowledges receipt of the complaint, investigation timeline and a brief outline of the resolution plan with built in consequences. MCPHAB also recommends that all communications clearly state performance deadlines and consequences for non-compliance. Progress toward complaint resolution should be monitored and if it becomes apparent a deadline cannot be met, or is not met, then the EHD becomes proactive and consequences must be consistently implemented. The EHD already provides written communication to complainants upon successful resolution of each complaint. However, if future events result in a delay in complaint resolution, then complainant should receive follow-up communication detailing deadline extensions and circumstances.

**Response (Board of Supervisors):** The Board agrees with the response of the EHD that all feasible portions of this recommendation have already been implemented.

**B. EHD adopt a goal of zero tolerance for not meeting the timelines for complaint processing and resolution. (Findings 1, 4, 5)**

**Response (Environmental Health):** EHD will not implement this recommendation. As mentioned in the response to “A”, complaint processing and resolution is dependent upon many factors, some of which are out of our

control. In addition, unanticipated staff or workload changes may necessitate delaying minor complaint processing and resolution.

**Response (MCPHAB):** MCPHAB recognizes that unique circumstances require that all complaint processing and resolution be handled on an individual basis. MCPHAB commends the EHD for the internal timeliness of complaint response and investigation which resulted in the initial communication with the property owner. However, MCPHAB does recommend that the EHD continue to improve the tracking and follow-up process, including the creation of a uniform, department-wide, “tickler system” that will trigger interim follow-ups to determine progress toward complaint resolution.

**Response (Board of Supervisors):** While the Board does not condone unnecessary delays in resolving complaints, it does recognize the many factors which can affect the processing and resolution of a complaint. The Board encourages the EHD to continue to strive toward the earliest resolution possible of all complaints, including keeping the complainant informed of progress and/or delays.

**C. EHD use a computer system to track complaints. (Findings 1, 4, 5)**

**Response (Environmental Health):** This recommendation has already been implemented.

**Response (MCPHAB):** The EHD has already established a computerized system for tracking complaints. MCPHAB recommends that the EHD continue to improve the tracking and follow-up process, specifically the implementation of a uniform system that would result in more consistent reminders to initiate complaint follow-up, update of resolution progress and file documentation. Currently, complaint status reports are run quarterly, with a one quarter delay, thereby allowing up to six months before an issue is reported by the tracking system. MCPHAB recommends that the report schedule be updated to run either monthly or bimonthly.

**Response (Board of Supervisors):** This recommendation has already been implemented.

**D. The BOS audit staffing at EHD to determine if more staff is necessary for adequate complaint tracking and resolution.(Findings 1, 4, 5, 6)**

**Response (Environmental Health):** EHD supports the BOS to audit staffing levels with EHD. EHD has nearly completed a workload assessment which the BOS could use as a starting point.

**Response (MCPHAB):** Though the EHD is currently understaffed, the department is in the process of recruiting for the three vacant positions. MCPHAB recommends that the EHD utilize existing clerical support to a greater degree than now occurs to track implementation and progress reporting. Specifically, clerical support should track complaint progress and notify inspectors when it is time to check on progress toward complaint resolution.

**Response (Board of Supervisors):** The Board will consider any request from the Department regarding staffing levels along with its other budgetary priorities.

**E. Legal remedies be applied for long-term unresolved complaints when the property owner is not cooperative. (Finding 5)**

**Response (Environmental Health):** EHD has already implemented this recommendation.

**Response (MCPHAB):** MCPHAB recognizes that legal action is an appropriate option when needed. In the case referenced by this Grand Jury report, EHD staff took the initiative to search for a more creative and humane solution that benefited all parties involved. This initiative should be encouraged.

The Mendocino County Public Health Advisory Board (MCPHAB) wishes to make two additional comments. First, according to EHD, although a septic system was in disrepair (a broken septic tank cover) and posed a potential health problem, it was their contention that the yard where the tank was located was fenced and covering the tank top with plywood and a tarp considerably reduced the health threat and therefore allowed for time to complete the repairs. Second, MCPHAB commends the Environmental Health Department (EHD) for the extraordinary actions taken to work with the property owner and other agencies to create a unique solution for the case referenced by the Grand Jury report. We believe that regular communication with the complainant regarding the ongoing efforts and progress toward complaint resolution would have kept the EHD aware of progress that had been made and could possibly have satisfied all parties involved and thus could have averted this Grand Jury investigation altogether.

**Response (Board of Supervisors):** This recommendation has already been implemented.

### **Comment**

The EHD acted promptly to resolve one case after the Grand Jury inquiry. The County should have a way for complaints to be resolved uniformly without Grand Jury intervention.

**Response Required**

Mendocino County Board of Supervisors

**Response Requested**

Mendocino County Environmental Health Department  
Mendocino County Public Health Advisory Board

