

**GUNNISON COUNTY ENVIRONMENTAL HEALTH BOARD  
AGENDA: October 8, 2009**

**Planning Commission Meeting Room, Blackstock Government Center,  
Gunnison County 221 N. Wisconsin, Second floor.  
All meetings are open to the public.**

Anyone needing special accommodations please contact the Environmental Health Office prior to the meeting.

**1:15 p.m. Call to order; determine quorum;**

**1:20 p.m. Approval of minutes;**

**1:30 p.m. Public Hearing for Larry and Dana Darien, Lot 3, Darien Subdivision, near the Town of Marble. The owners have applied for a Special Review—variance on their proposal for an Individual Sewage Disposal System. Their application was denied because their proposal does not meet the required setbacks from water courses, including wetlands and the Crystal River.**

**3:00 p.m. Break**

**3:15 p.m. Review of the amended ISDS Draft;**

**4:15 p.m. Unscheduled citizens;**

**4:30 p.m. Adjourn**

**GUNNISON COUNTY ENVIROMENTAL HEALTH BOARD**  
**Regular Meeting**  
**October 8, 2009**  
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The Gunnison County Environmental Health Board conducted a meeting, in the Commissioners' Meeting Room in the Blackstocks Government Center, Planning Commission meeting room.

**Present were:**

Lucinda Lull, Chairperson  
Corey Bryndal, EH Board Member  
Richard Stenson, EH Official  
Michelle Spain, Admin. Assistant

Larry Parachini, EH Board Member  
Eddy Balch, EH Board Member  
Crystal Lambert, EH Staff

Others present as listed in text

**Absent:** Steve Glazer

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01:20 p.m. With a quorum present Chairman Lucinda Lull opened the regular meeting of the Commission.

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**LARRY AND DANA DARIEN;** The Gunnison County Environmental Health Board conducted a public hearing for a Special Review—variance on their proposal for an Individual Sewage Disposal System. Their application was denied because their proposal does not meet the required setbacks from water courses, including wetlands and the Crystal River. The parcel described as Lot 3, Darien Subdivision.

01:33 p.m., Chairperson Lucinda Lull opened the public hearing of the Gunnison County Environmental Health Board. Stenson verified that all postings and public hearing notices were made.

Stenson verified that the steering committee met on October 8, 2009 on the 13 recommendations on the on site waste water ISDS systems.

Stenson stated that all public notices had been met. Posting on property site and both papers were met. Two letters received and entered as formal comments. Larry Darien and Paul Rutledge were introduced. Mr. Darien submitted a map of the property and the subject parcel. Photos of the lot were then submitted and reviewed. The location of the house and septic were reviewed. High water area was discussed. Wetland delineation and expiration of the current delineation was reviewed. Parachini questioned the possibility of a debris flow area. Rocky Mountain Ecological Services submitted a wetlands assessment for the records.

# **ROCKY MOUNTAIN ECOLOGICAL SERVICES, INC.**

NEPA•WILDLIFE•VEGETATION•WILDFIRE MITIGATION•WETLANDS•PLANNING

October 6, 2009

Richard Stenson  
Gunnison County Planning Department 221 N.  
Wisconsin St. Ste D  
Gunnison, CO 81230

RE: Lot 3, Darien River Subdivision- Wetlands Assessment

Dear Mr. Stenson

I visited Lot 3, Darien River Subdivision in the summer of 2009, and performed wetland delineations on portions of the subject property in 2008 as part of a section 404 permit application to the US Army Corps of Engineers (ALOE) for bank stabilization.

Claffey Ecological Consulting completed a wetlands delineation on the entire property in 2003, which was reviewed and accepted by the ACOE and which I used as part of the bank stabilization permit application (Nationwide 037 permit). Mr. Darien contacted me on September 23 2009 to re-delineate the property as part of the County's requirements for providing 50-foot set backs for a proposed ISDS.

While a wetland delineation must be less than 5 years old to be accepted by the ACOE, the wetlands on the property have not changed in the past 5 years based on my knowledge of the site. The wetlands are located in well vegetated Engelmann spruce (*Picea engelmannii*) and backwater areas that show long-term site stability given the type and structure of the vegetation. These types of wetland systems are considered to be relatively stable and not prone to rapid temporal changes as opposed to wetlands which may be influenced by riverine deposits or movement of a creek.

Further, as a 50-foot buffer between the ISDS and wetland areas would be incorporated into the plans using the 2005 Claffey Ecological Consulting delineation, and I am confident that wetland resources would be sufficiently protected from the engineered ISDS system and a re-delineation of the wetlands on the property would not be necessary or result in any changes to the location of the ISDS due to potential changes in wetland boundaries. If actual direct impacts to wetlands were planned, then I would agree that a new delineation be completed, but with a 50-foot buffer it is not likely necessary.

The wetland resources on the property do provide good function and value, and I would further recommend that stormwater management of the construction site be implemented to prevent fine sediment mobilization and potential deposition into

wetlands. The site has existing drainage patterns that could deliver loose materials to wetlands easily and therefore the construction site should be managed accordingly.

Thank you and please feel free to call or email with any questions.

Eric Petterson  
Rocky Mountain Ecological Services, Inc.

Rutledge submitted a survey of the parcel in relation to the wetlands. Discussion on the location of the home showing it to be on higher ground.

Soil profile hole investigation discussed.

Balch asked if there were any homes on the other lots yet. Not at this time.

Parachini asked if this septic would harm the other two lots owners. The separation is great enough that there would be no impact.

The proposed Advantex system was introduced as the best available technology and the details were discussed.

Parachini asked who was the nearest installer for this treatment system? Rutledge responded that Valley Precast and a qualified earth mover would install the system to his engineered specifications. Rutledge asserted that there are several contractors in the subject area to provide scheduled and unscheduled maintenance.

Darien indicated that he would sign a maintenance contract for this system. Parachini asked about the frequency of maintenance for this system. Rutledge responded that a maintenance schedule of 2 times per year would be adequate. The Advantex system and the components were then discussed and reviewed with the board.

Geo flow technology performance during the winter months were discussed. Discussion of what happens to the drainage flow underneath a field during freezing temperatures. Possible freezing of this type of unit was questioned and discussed. Rutledge discussed the current systems under his inspections as examples. The ability of the system to recover and work properly after possible times of occupant absence was questioned and discussed. Rutledge discussed the use of this geo flow system on this parcel during the various weather and occupancy possibilities.

Stenson explained his experiences with frozen septic tanks in Gunnison County.

Airflow movement was questioned by Bryndal. Rutledge explained the venting of the system. Power failure and battery alarm were discussed. Resetting can be done from any computer.

Balch asked what would happen if the filters plugged up. Rutledge discussed the robustness of the filter system and explained how they are cleaned and serviced.

Parachini asked how the inspection would be handled. Rutledge then went step by step on the inspection.

Natural gas is not plumbed to this site. Grease to the unit was discussed. The filter will catch any grease. It was stressed that keeping grease out of this system is crucial. Rutledge indicated that he has designed approximately 10 of these units in various areas. One of Rutledge's oldest designs is approximately 15 years old. With the same components installed as proposed, the systems are operating properly.

Bryndal asked about the presence of surface water on the property. Valley Precast will design the septic tank to seal watertight. Due to the location of this home they will be high enough to eliminate the flooding issue. The 2 letters of opposition were discussed. The location of the leach field will not be located in standing water. The nearest well is up hill from this location. Stenson indicated that his measurements showed during high ground water setbacks would not be met. Rutledge asked questions on the prescriptive rules by the State. Stenson indicated that he was under the impression that his system was to be mounded. Stenson requested that the profile hole be reviewed again and that necessary adjustments be made. Discussion on the best method for measuring high groundwater ensued.

Parachini asked if the board could make stipulations to this request for the applicant so they would not have to return to this board. Rutledge indicated that 2.5 feet of mounding would achieve the proper separation from ground water.

Stenson asked that the board consider the monitoring and sampling requirements that this system should have.

Balch indicated that the technology is adequate but is concerned about maintenance to the system and how adherence to a maintenance would be proven and the possibility of using sampling results as indicators.

Stenson introduced the Crested Butte Watershed Individual Sewage Disposal System District monitoring and sampling requirements. Discussion of those parameters and requirements ensued.

Balch indicated that sampling of the proposed system could be done at the time of maintenance.

Discussion of costs and timing of this proceeded.

Parachini offered the possibility that a sample be taken, at a minimum, every other year.

Balch asserted that sampling should be 2 times a year initially and when results prove adequacy of the system then sampling could be relaxed to annually.

Stenson questioned what would happen if the system fails to meet the prescribed standards. Stenson then outlined the Environmental Health Office recourse that would be taken if the system failed to meet the prescribed standards.

Parachini asked the engineer if he could deal with these requirements. The engineer took a moment to review the requirements and stated that he felt they could be met. Stenson then indicated that collection of these samples can be difficult.

Parachini also discussed that medication levels in wastewater can be elevated.

Stenson commenced his review.

**GUNNISON COUNTY  
ENVIRONMENTAL HEALTH OFFICE REPORT**

**TO:** Environmental Health Board

**PREPARED BY:** Richard Stenson, Environmental Health Official

**DATE:** October 5, 2009

**APPLICANT:** Larry Darien

**STATUS of APPLICANT:**

- Work Session date: \_\_\_\_\_  
 Public hearing date: October 8, 2009  
 Action by Board date: \_\_\_\_\_

**PROPERTY LOCATION:** Lot 3, Darien River Subdivision. The application is located approximately 1 mile west of the Town of Marble.

**SPECIAL REVIEW ACTION REQUESTED:** Variance from section 6-101.13a which states that each ISDS system shall have a minimum horizontal distance from pertinent terrain features, including streams, lakes, water courses, wetlands, dwellings, property lines, etc. During the County site inspection of July 31, 2008 the required setbacks from the proposed septic system to an identified wetland were less than the required 100 feet, (approximately 50 feet).

**ATTACHMENTS:**

1. Septic permit application for permit 2009-022;
2. Gunnison County Assessor's record for parcel number 2917-210-02-003;
3. Site inspection information 7-31-08;
4. Soils Technical Inspection of 8-07-09;
5. O.W.S Schematic site plan from Sopris Engineering;
6. Copy of Denial Letter dated September 9, 2009;
7. Special Review Application and written statements by the applicant;

**SPECIAL INFORMATION:** Gunnison County Individual Sewage Disposal Regulations section 3-101.13a.

**COMMENTS:** Larry Darien has applied to construct a residential septic system on his lot. The location of the applied system does not meet the required 100-foot setbacks from watercourses, including a wetland surrounding the building site.

The lot has not yet been approved by the County Land Use Resolution approval process. In my review of the lot, I did not find another site for ISDS that would meet the required 100-foot setback from ISDS components to watercourses. The owners suggest the use of an advanced treatment septic tank and dosed advanced treatment system and mounded absorption area.

The system appears to provide opportunity for wastewater treatment prior to the absorption area. Filtering and treatment of the wastewater would probably be very consistent. The ISDS Regulations, section 3-116.3 require specific effluent quality data generated from this system and the other specifications for design included in section 3-116.3 (i.e. loading, capacity, liner material, filter media, density and species of plant material, effluent level, final discharge type).

The EH Board may approve the applications for the following reasons:

1. The application was denied;
2. The owner has demonstrated that the requested variance is warranted;
3. The approval will not result in substantial variance from the regulations;
4. Mr. Darien has shown that the approval will not be in violation of any minimum standards;
5. The owner will show that the proposed system will not be a nuisance or injurious to public health, safety or welfare;
6. The owner has shown that no substantial injury to the wetlands or streams will result from the granting of the approval.

The staff will recommend approval contingent upon a conditioned permit. It is recommended that:

1. The system be required to have a lifetime annual maintenance contract with a qualified representative, and;
2. Monitoring and sampling (11-104) of the effluent quality and the wetlands quality shall be provided by the owners, at the owner's expense. Collection and testing shall be performed two times per year and designated parameters for approved effluent and wetlands impacts shall be determined by the County Environmental Health Official. The Crested Butte ISDS District is considered as a good model for operation, maintenance, and conformance.
3. The owner is in the process of applying for a Gunnison County Land Use Change for the Lot 3, Darien River Subdivision. No ISDS permit can be issued until the Land Use Change is approved.
4. The owner had a wetlands delineation done approximately 5 years ago. That delineation has expired. The County will require a new delineation, approved by the Corps, prior to permitting this application.
5. The draft design submitted by Sopris Engineering shall be modified. It shall require the minimum setback of 6 feet from septic tank to absorption area. Additionally, it shall be given an approved engineering stamp and seal.

Name change to OWS was discussed. Driveway, reclamation permit, wetlands delineation. flood elevation certificate, set backs for cabin from water body must to be met. X times 2 requirements in a formula must be stated also. Rutledge asked is there need for this formula since this is a disposal field. Stenson indicated that this needs to carry with the property since a future owner needs to be aware of this.

Questions called for.

Parachini asked about installing a monitoring well into ground water for testing and to determine a baseline.

Stenson confirmed that base line testing of ground water in the immediate area of the system could be attained from samples taken from a stand pipe installed close to the system. System effluent could also be sampled.

Balch asserted that sample testing is the key to assuring that the system is working properly.

Stenson responded that with the maintenance and monitoring agreements in place that this should cover the requirements.

Stenson submitted letters from adjoining property owners for review.

October 4, 2009

Gunnison County Environmental Health Board 221 N.  
Wisconsin  
Gunnison, Colorado - 81230

Re: Variance Request - Darien Subdivision Lot 3

I support the Gunnison County Environmental Health Boards' decision to deny an ISDS Permit for the above referenced property.

I would be extremely concerned about possible contamination of my nearby water well if a septic system is installed. In addition, the referenced property is subject to flooding during the Spring runoff which also could result in contamination of my water well.

Therefore, I strongly urge the Board not to grant the Variance Request.

Tom Mellish  
48 Island Lake Way  
Marble, Co - 81623-7751.

48 Island Lake Way Marble, CO 81623 October 4,  
2009

Gunnison County Environmental Health 221 N. Wisconsin  
Gunnison, CO 81230

Re: Variance Request for ISDS for Darien Subdivision lot 3 Dear board members:

I am the owner of a home across the Crystal River from the lot for which the variance is being requested.

I support the board's position to deny the requested variance. I agree that the lot in question is not capable of supporting a septic system. The lot is barely above high-water levels in the spring. Even during autumn low-water months there is standing water on much of the property. Any in-ground septic system leach field would have to be located in the groundwater aquifer of the Crystal River and long term would almost certainly leach pollution into the river.

I see no reason for ignoring the guidelines established to protect the environment. I therefore request that the variance not be granted.

G. Arthur Howie

Parachini asked if these letters are responded to. Stenson responds to each letter once a decision has been made.

Special Review Action Form submitted by Stenson.

Draft—SPECIAL REVIEW ACTION FORM—

SUBJECT: Environmental Health Board action, for Larry Darien, Lot 3, Darien River Subdivision, Near the Town of Marble

ACTION: Special Review

A. PREPARED BY: Richard Stenson, Environmental Health Official

DATE: Environmental Health Board meeting *October 8, 2009*

**PROPOSED ISDS APPLICATION:**

**Larry Darien** has applied for a permit to install an individual sewage disposal system (ISDS) **Lot 3 Darien River Subdivision**. The location for this application is approximately 1 mile west of the Town of Marble.

Sections 3-116.2 states, “No ISDS facility, except an approved composting or incinerator toilet without an associated gray water system, will be allowed within a horizontal distance of 100 feet of a wetland”. 6-101.13a states, “Each component of each ISDS shall have a minimum horizontal distance from pertinent terrain features, including streams, lakes, water courses, wetlands, dwellings, property lines, etc., as listed in Table 2.” During the County site inspection of July 31, 2008 the required setbacks from the proposed septic system to an identified wetland, and to the Crystal River were less than the required 100 feet, (approximately 50 feet). The applicant has proposed an advanced treatment system, (i.e. “Advantex TM system” with an additional disposal area—see design), with Sopris Engineering and will present information about this system.

**GUNNISON COUNTY ENVIRONMENTAL HEALTH DEPARTMENT ACTION:**

The Gunnison County Environmental Health Official conducted a site inspection on July 31, 2008. Notes regarding the inspection and evaluation of the proposal relative to Sec. 1-104 of the *Gunnison County Individual Sewage Disposal System Regulations* are included in the ISDS Site Inspection. **(1. Owners have described the location of ISDS components less than 100 feet to river and wetlands; 2. Wetlands not officially located)** The Environmental Health official determined that the granting of this application would be in violation of the *Gunnison County Individual Sewage Disposal System Regulations*, and granting the application would create a nuisance or be detrimental to the public health, safety and welfare. The application was denied based upon review of the observations

made during the site inspection. Written notice of that denial, including specific reasons for the denial, was mailed, certified, to the applicant on September 9, 2009, and a copy is attached to the *Staff Report* document.

#### **APPLICANT'S REQUEST FOR SPECIAL REVIEW:**

The applicant filed a written application for special review on September 17, 2009, which was within 30 days of the postmark of the Notice of Denial. The applicant asserts the following grounds for special review:

1. *Site constraints prohibit the design of an onsite wastewater system that can meet the Gunnison County requirements for setbacks issues and wetlands.*
2. *"Due to the availability and proven performance of the advanced wastewater treatment technology option offered by the Advantex System, this lot can be served by an onsite wastewater system (OWS) design to produce high quality effluent that will not degrade the ambient water quality. The installation of this type of active secondary treatment system will also include a slightly mounded pressure dosed dispersal field that will provide additional Tertiary treatment and will be sized to allow for infiltration of treated effluent into the ground."*
3. *"This system will be monitored twice a year to insure the correct functionality of the advanced water treatment system and adherence to manufactures performance specifications."*
4. *"This is a site specific request that will not compromise public health and is the best technology currently available for this application."*
5. *"The use of advanced secondary treatment, high quality tanks, watertight risers and a pressurized controlled dosed dispersal field provides effective mitigation to the specific site constraints that limit the use of a conventional type of system."*

#### **PUBLIC HEARING:**

The Gunnison County Environmental Health Board conducted a public hearing regarding this application on October 8, 2009.

#### **FINDINGS:**

Based upon review of the information included within the Environmental Health Department file for this application, and consideration of any and all testimony and public input relative to this application, the Gunnison County Board of Environmental Health finds that: **(The Gunnison County Individual Sewage Disposal System Regulations, Section 3-127.2, requires that the Board may issue a special review approval ONLY under the following property specific conditions; additional findings or expansions of these findings may be included which more specifically address such things as grade of slope, mitigation proposed by applicant, etc.).**

1. **Action on this special review application is property-specific and limited to circumstances unique to this application.**
2. The applicant **has demonstrated** that the requested variance from the *Gunnison County Individual Sewage Disposal System Regulations* is warranted. **The specific lot configuration has made it technically, environmentally and economically infeasible to locate the ISDS in accordance with the setback requirements for watercourses.**
3. The applicant **has demonstrated** that the requested variance from the *Gunnison County Individual Sewage Disposal System Regulations* is warranted by the proposed restrictions on use. **The applicant has agreed to provide an engineered system that will provide wastewater treatment that will meet or exceed requirements of the ISDS Regulations.**

**During this hearing the Gunnison County Environmental Health Board found that engineering warranted the requested variance.**

4. The applicant **has demonstrated** that approval of this special review will not result in substantial variance from the requirements of the *Gunnison County Individual Sewage Disposal System Regulations*, including but not limited to Sec. 1-104, the general policies of the Regulations. **The applicant's specific design specifications for discharge showed a discharge that will be clarified and treated to provide for the systematic discharge to the environment.**
5. The applicant **has demonstrated** that this special review approval will not be in violation of any minimum standards established in any other applicable federal, state or local rule or regulations; including but not limited to those minimum standards issued under authority of Article 10, Title 25, C.R.S. 1973 as it may be amended. **The application meets or exceeds the State minimum setback requirement from ISDS septic tank and absorption area to watercourses. (50 feet)**
6. The applicant **has not demonstrated** that the proposed system will not be a nuisance or injurious to public health, safety or welfare. **According to the information from the design by Paul Rutledge of Sopris Engineering, the system will meet Gunnison County and State of Colorado requirements for design standards. The County has suggested that a wetland study be done in the area of the proposed ISDS. The study would show locations of the jurisdictional wetlands. A previous study was done, and approved by the U.S. Army Corps of Engineers. However, the approval date for that study has expired and a new study will need to be done.**

**The draft design submitted by Sopris Engineering shall be modified. It shall require the minimum setback of 6 feet from septic tank to absorption area. Additionally, it shall be given an approved engineering stamp and seal**

7. The applicant **has demonstrated** that no substantial injury will result from the granting of this special review approval. **The applicant has suggested an annual maintenance contract of the system. Additionally, the applicant has agreed to provide water quality monitoring of the ISDS twice per year to insure operation of the system. All requirements of the *Gunnison County ISDS Regulations*, other than the horizontal setbacks from watercourses, shall be followed.**
8. The **preponderance of evidence presented** by the applicant sufficiently proves that this application **should be granted**.

**DECISION:**

1. Based on its review of all the documentation of the file for this application, the Gunnison County Board of Environmental Health **approves** the special review application of Larry Darien, Lot 3 Darien River Subdivision septic permit application 2009-022 with the following conditions:
  1. Should a central sewer line be installed that would require a compulsory sewer connection, the applicant shall tie on in a timely manner;
  2. Prior to the issuance of the ISDS permit the applicant shall provide wetlands delineation, approved by the US Army, Corps of Engineers. That delineation shall be consistent with the site plan submitted with this application. Should there be setbacks from the wetlands that are

closer to the ISDS components than are shown on the application, this special review shall not be approved;

3. The draft design submitted by Sopris Engineering shall be modified. It shall require the minimum setback of 6 feet from septic tank to absorption area. Additionally, it shall be given an approved engineering stamp and seal.
4. An annual maintenance agreement contract for the ISDS shall be recorded with the title of the property.
5. Monitoring, sampling, and compliance standards shall be consistent with those of the Crested Butte Watershed ISDS District .
6. Prior to permitting, all other Gunnison County Land Use approvals shall be given including:
  - a. Gunnison County Land Use Resolution—Land Use Change
  - b. Access and Reclamation permits

Close the public hearing at 04:00 p.m.

Short break.

Lull indicated that the interaction of this board was very good at this meeting. Bryndal shared that he was happy to participate.

Bryndal

- 1) The mounding needs to be called out in feet
- 2) The Army Corp of Engineers' letter needs to be updated
- 3) Monitoring and sampling plan spelled out
- 4) Maintenance guide
- 5) Replacement field spelled out X times 2 and recorded
- 6) 6 foot set back needs to be adjusted
- 7) Monitoring well
- 8) Wetlands delineation update from Army Corp of Engineers' be in place

Balch

- 1) Maintenance twice a year with the sampling done for the first 2 years.

Parachini

- 1) Every other year on sampling
- 2) Down grading collecting port for monitoring at installation at the end of the absorption area.
- 3) X time 2 requirements must be stated and document recorded on the property

The engineer asked how the maintenance and sampling will be carried out.

Parachini asked about who would be residing in this residence. Darien indicated that he and his wife will be. Darien indicated that it will be a seasonal occupancy at this time.

Parachini recommended that the owner knows how this system works from beginning to end.

Balch asked if there is a certification for the inspectors of these systems. Parachini indicted yes. Rutledge responded that Advantex has a list of these vendors.

Motion Bryndal approve as described and submitted. 2<sup>nd</sup> by Parachini

1. Should a central sewer line be installed that would require a compulsory sewer connection, the applicant shall tie on in a timely manner;
2. Prior to the issuance of the ISDS permit the applicant shall provide wetlands delineation, approved by the US Army, Corps of Engineers. That delineation shall be consistent with the site plan submitted with this application. Should there be setbacks from the wetlands that are closer to the ISDS components than are shown on the application, this special review shall not be approved;
3. The draft design submitted by Sopris Engineering shall be modified. It shall require the minimum setback of 6 feet from septic tank to absorption area. Additionally, it shall be given an approved engineering stamp and seal.
4. An annual maintenance agreement contract for the ISDS shall be recorded with the title of the property.
5. Monitoring, sampling, and compliance standards shall be consistent with those of the Crested Butte Watershed ISDS District .
6. Prior to permitting, all other Gunnison County Land Use approvals shall be given including:
  - a. Gunnison County Land Use Resolution—Land Use Change
  - b. Access and Reclamation permits
7. Installation of a monitoring port down gradient of the absorption area as part of the installation (directly at end of area).
8. Recorder with Deed:
  - a. Replacement area issue
  - b. Monitoring and sampling plan
  - c. Maintenance Guide-Advantex approved or Qualified Service Provider
9. Monitoring requirements, at a minimum, twice a year for the first two (2) years, then annually from then on for the next three (3) years. After five (5) years the owner may request reduced monitoring of every other year if performance is maintained.
10. The person performing the system maintenance must be someone approved by the manufacturer, or manufacturer's representative.

Roll call vote. Parachini-yes, Bryndal-yes, Balch-yes, Lull-yes. Motioned carried.

Stenson enters a memo from him to David Baumgarten, Joanne Williams and E.H. Board. Attached to the memo are the proposed revised Gunnison County ISDS regulations. November 19<sup>th</sup> is the next scheduled meeting. Parachini is not able to attend the next meeting. Stenson asked the board to review this document prior to the next meeting.

## **ENVIRONMENTAL HEALTH MEMORANDUM**

TO: David Baumgarten  
Joanne Williams  
Environmental Health Board

FROM: Richard Stenson

RE: Draft Proposed Amendments to ISDS Regulations

DATE: October 7, 2009

I have compared the most recent draft of the Amended ISDS Regulations to David Baumgarten's written comments of May 12, 2009 and will plan to meet with the Environmental Health Board on October 8, 2009 to discuss possible revisions. David's written comments are in *italics*, below, and my responses are included in "**bold**".

## ARTICLE 1

Section 1-102 — *As noted in my memo of April 17, 2006, the purposes in this section are multiple and therefore "purpose" should be "purposes" and the word "is" should be "are"* **Those wording changes have been added to the most recent draft.**

Section 1-104:C. — *The title and first sentence use the word "encourage" however, the third sentence makes establishing performance requirements an "essential function". One has to choose between encouraging and making mandatory performance-based management.* **Wording changes reflect the intent to making performance-based management as an "essential function".**

*As noted in my memo of April 17, 2006, I suggest that, before making such a recommendation to the Commissioners, and to prepare for making this recommendation to the Commissioners, data be available on the needs, benefits, detriments, costs of implementing such a policy including how it is applied to existing systems.* **I suggest that the Gunnison County Environmental Health Board and the Environmental Health Official develop a work session with the Board of County Commissioners to provide information regarding "Performance-Based Management" and the factors involved.**

Section 1-104:1. — *As noted in my memo of April 17, 2006, what is available, other than ISDS, for a commercial operation that is unable to hook into a central system (e.g. a bed and breakfast up Ohio Creek?).* **The EH Staff and EH Board suggest that the language not be changed. Basically, the phrase, "domestic effluent" would provide opportunity for bed and breakfast, etc., but would not consider industrial waste.**

Section 1-104:J. *As noted in my memo of April 17, 2006, I suggest that the final sentence (i.e. the sentence identifying the process to appeal a repair requirement) belongs as a new section in Article 4, and needs a clearly defined standard to uphold/modify/overturn a repair requirement.* **The final sentence has been stricken from the most recent draft.**

Section 1-104:L. *As noted in my memo of April 17, 2006, the standard, as written of "In no circumstance" does not permit any waiver of any kind. While a waiver opportunity must be carefully drafted and applied to avoid abuse, I suggest a waiver opportunity exist.* **I have added wording to both 1-104:K and L in the latest draft.**

Section 1-104:M. *As noted in my memo of April 17, 2006, I cannot tell from the proposed language what is intended to be the use of the Environmental Health Board as a "technical review agency for Land Use Change Permit applications as needed." For instance, who determines the need (the BOCC, the Planning Commission, the Environmental Health official)?* **I have added the following wording in the most recent draft:** Permit applications as needed would be requested by the Board of County Commissioners of Gunnison County in response to requests from the Planning Commission, Flannigan Department or Environmental Health Official:

Section 1-104:N. *As noted in my memo of April 17, 2006, I suggest considering making this policy applicable to new installations only. Also, the language needs to more clearly define "location" (e.g. parcel map accurate to X feet) to avoid someone saying: "Its located on my parcel". Finally, a requirement belongs in an Article other than the policies article.* **The EH Board and EH Staff suggest that this concept should be moved to section 10-108 and deleted from 1-104:N from the draft.**

*Richard Stenson's memo of February 4, 2008 identified this section to be moved to Section 6-101:B and the word "location" was to be clearly defined; this has not occurred.*

## ARTICLE 2

*Environmental Health Official. As noted in my memo of April 17, 2006, I suggest making "person" plural. That way, if one person is on vacation, the whole*

*process doesn't stop. The wording has been changed in the most recent draft.*

Performance — Based Management Program. *As noted in my memo of April 17, 2006, needs informed briefing to the Board of County Commissioners. I suggest that the Gunnison County Environmental Health Board and the Environmental Health Official develop a work session with the Board of County Commissioners to provide information regarding "Performance-Based Management" and the factors involved.*

Performance — Boundaries. *As noted in my memo of April 17, 2006, there is a typo on word "de" and needs informed briefing to the Board of County Commissioners. I suggest that the Gunnison County Environmental Health Board and the Environmental Health Official develop a work session with the Board of County Commissioners to provide information regarding "Performance-Based Management" and the factors involved.*

Performance Requirement. *As noted in my memo of April 17, 2006, this is where the Board needs specifics. We could use Article 18-Crested Butte Watershed District as a model. I suggest that the Gunnison County Environmental Health Board and the Environmental Health Official develop a work session with the Board of County Commissioners to provide information regarding "Performance-Based Management" and the factors involved.*

### ARTICLE 3

Section 3-107:B. *As noted in my memo of April 17, 2006, do you want to include a provision that the applicant shall pay the cost of review by "technical consultants"? I have added wording in the section of the most recent draft.*

Section 3-109:A. *As noted in my memo of April 17, 2006, do you want to limit this prohibition to ISDS grubbing, rough grade and other site preparation? I suggest consulting with Allen Moores on this. I have added wording in the section of the most recent draft.*

Section 3-111: B. *As noted in my memo of April 17, 2006, / suggest changing "element" to "circumstance", adding the words "changes in design, insufficient information or other similar circumstance" after the word "noncompliance". I have added wording in the section of the most recent draft.*

Section 3-120:H. *This section does not allow the Board of County Commissioners to overrule the Environment Health Board; make sure the BOCC is clearly briefed on this. I suggest that the Gunnison County Environmental Health Board and the Environmental Health Official develop a work session with the Board of County Commissioners.*

Section 3-121:G. *This section does not allow the Board of County Commissioners to overrule the Environment Health Board; make sure the BOCC is clearly briefed on this. I suggest that the Gunnison County Environmental Health Board and the Environmental Health Official develop a work session with the Board of County Commissioners.*

Section 3-121. Special Review *Is it intended "special review process" continues to be an application for waiver of standards? It appears from the draft that the answer is yes; but to make that clear, the proposed 3-127:D 1 through 4 belong in 3-127:"E" and not "D". I have moved the location of 3-127-D and E in the most recent draft.*

*Also Section 16-1058:1 (Conditions of Special Review Approval) belongs here and not at 16-105. I have moved the location of 16-105B:1 to this section.*

### ARTICLE 4

Section 4-103. *As noted in my memo of April 17, 2006, I suggest adding the words "approved by the county attorney" after the words "insurance, bonding or other provision". I have added the phrase in the latest draft.*

### ARTICLE 5

Section 5-107:A.1. *As noted in my memo of April 17, 2006, I suggest leaving the language as is. The proposed change may be misconstrued to be the "effective date" of these amendments. If anything, add the word "initial" before the word "adoption". I removed the suggested wording and left the language as is then added "initial" before the word "adoption" in the latest draft.*

## ARTICLE 6

Section 6-101:A.13.a.1. *As noted in my memo of April 17, 2006, I suggest substituting the words "require for public health" for the word "warrant".* I **have removed the word "warrant" and substituted the phrase, "require for public and environmental health" in the latest draft.**

Section 6-101:A.14. *As noted in my memo of April 17, 2006, I suggest it may be impossible to demonstrate compliance with the proposed, new concept and language. Also, what is the public health, safety foundation?* **The EH Board wanted this to be considered. While I understand the difficulty with compliance, I will take this to the EH Board for their discussion.**

## ARTICLE 7

Section 7-108:A.1. *As noted in my memo of April 17, 2006, we need to define the "circumstances" which "may be approved by the Environmental Health*

*Official" I have removed the language and the sentence containing "circumstances".*

## ARTICLE 8

Section 8-107:A. *As noted in my memo of April 17, 2006, we need to identify the "conditions" Gunnison County will use as standards.* I **have removed the phrase regarding standards. It would appear to me that the phrase was unnecessary so long as the installation is according to the "Regulations".**

## ARTICLE 9

Section 9-101:C. *As noted in my memo of April 17, 2006, I suggest moving Section 9-101:D. I to 4 up to 9-101:C as the elements the applicant must prove.* **The sections have been moved in the latest draft.**

Section 9-101:F. *As noted in my memo of April 17, 2006, this section does not allow the BOCC to overrule the Environmental Health Board. Make sure the BOCC is briefed on this.* I **suggest that the Gunnison County Environmental Health Board and the Environmental Health Official develop a work session with the Board of County Commissioners. Also, this section has now become 9-101:G.**

## ARTICLE 10

Section 10-103. *As noted in my memo of April 17, 2006, I suggest leaving the language as is. The BOCC, not the Department, is the authority to adopt rules and regulations. This legal allocation of authority is significant.* I **have left the language in the second paragraph "as is" in the latest draft.**

## ARTICLE 12

Section 12-101. *As noted in my memo of April 17, 2006, the suggested language means that a dirt excavator needs a license even if only to do dirt work. I suggest the proposed language is too broad.* I **and the Board would request that this language remain even though it may seem too broad.**

## ARTICLE 13

Section 13-106:A. *As noted in my memo of April 17, 2006, Gunnison County, or the Department, not the Environmental Health Officer, should grant permits.* **The language in the latest draft is for the Department not the EH Officer.**

## ARTICLE 15

Section 15-103:C. *As noted in my memo of April 17, 2006, this section needs significant rewriting; the proposed language does not provide to landowners certain rudimentary protections. A good model for language is Land Use Resolution 15-102, Right of Entry and Inspection.* **Joanne has requested time with David to work on this section.**

Section 15-104:B. *Please add a new last sentence: "The hearing shall be conducted expeditiously but no more than five (5) working days from receipt of appeal."* **This is added to the most recent draft.**

## ARTICLE 16

Section 16-105:A.1.a. *As noted in my memo of April 17, 2006, I suggest the Board do its own mailings, at the cost of the applicant.* **Joanne has requested time with David to work on this section.**

Section 16-105:A.4.a. *As noted in my memo of April 17, 2006, I suggest deleting the last sentence.* **Joanne has requested time with David to work on this section.**

## ARTICLE 19

Section 19-101 — last sentence. *As noted in my memo of April 17, 2006, I suggest adding "by the BOCC after public notice and hearing" after the words "time to time."* **Added to the latest draft.**

Bryndal asked for a status update of the Scarps Ridge/Irwin Back Country Guides issue. Stenson explained the inspection he had made. Two violations had been corrected. A Land Use Change must be applied for and the attorney has indicated that the Environmental Health Office may continue with the ISDS permitting while the Land Use Change is in process.

Bryndal asked how the watershed permit was issued without the ISDS permit. Bryndal asked if the process of the Land Use Change permit will consider explosives handling for avalanche control. Bryndal offered a review of the public hearing held in Crested Butte.

Motion to adjourn Parachini, 2<sup>nd</sup> Balch 04:56 p.m.