

Off-Site Systems

Permitting and Legal Issues

Tom Konsler

Orange County Health Department

Prior to Issuance of Improvement Permit

- Drainfield laterals/contours must be laid out
- Allowance for extra space as needed for equipment/materials
- Site drawing or plat must be prepared with corresponding stakes in the field
- Advanced site information as needed:
 - Deep borings, flow analyses, mounding analyses...

Authorization to Construct

- All components must be installed by a Registered Contractor
- Must have an Authorization and inspection for every system component
- Limited Authorization to Construct

Limited Authorization to Construct

- Allows installation of individual system components:
 - Force mains
 - Drainfields
 - Tanks, pump, and controls
- Operation Permit is held until all system components are in

Prior to Issuance of Authorization to Construct

- All easements must be executed and recorded
- Easement and property lines must be surveyed/permanently marked in field
- Encroachment agreements must be obtained
- Draft Tri-party agreement must be submitted to the local health department

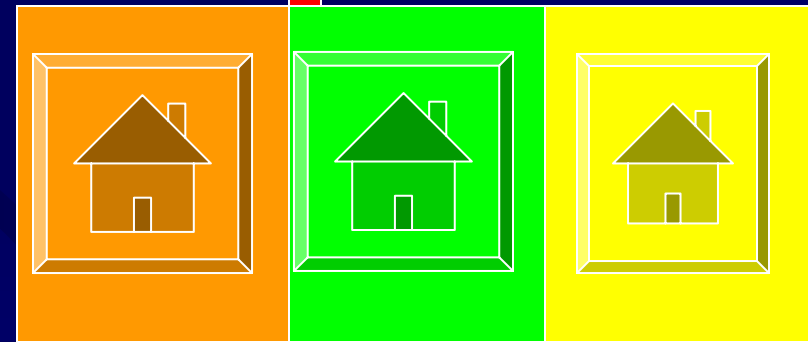
Easement

- Necessary when all of the wastewater system is not located on property owned (controlled) by the system owner.
- Allows for system construction, inspection, operation, maintenance and repair, and right-of-entry .

Easement Lines



- Connectivity
- Access
- Prevent trespass
- Equivalent to property lines



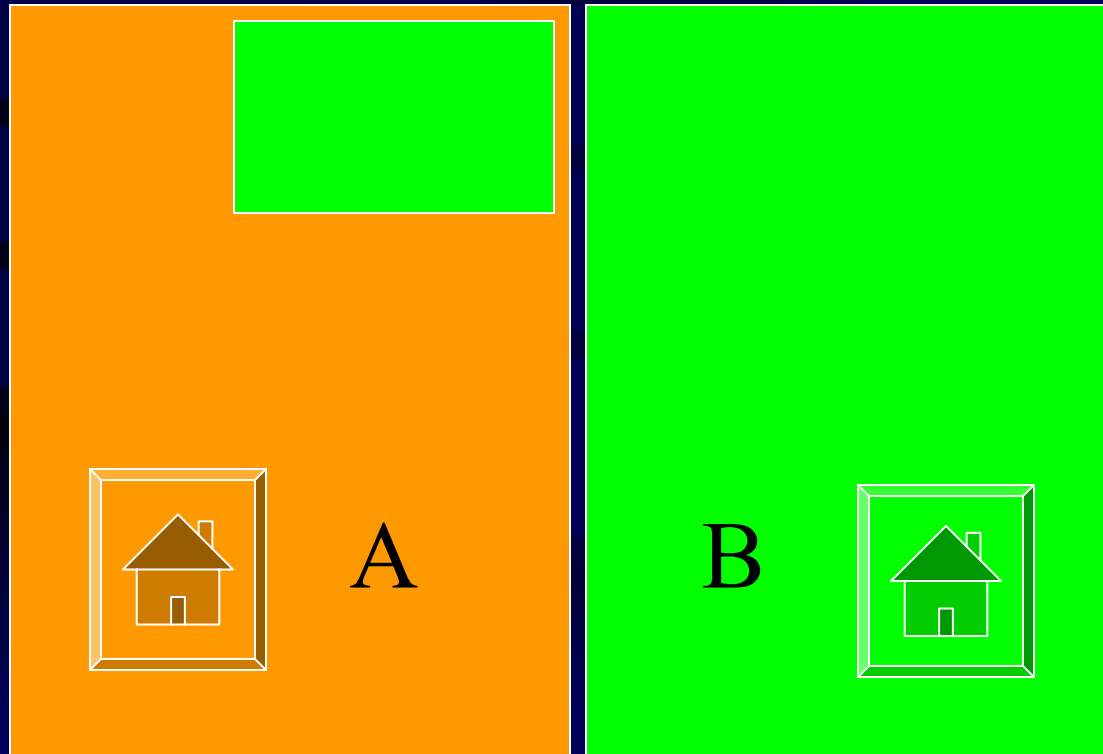
Easement

- Describes the specific area for the system (metes & bounds, plat reference).
- Granted use is perpetual and transcends ownership.
- Excludes non-compatible uses.
- Provides notification to future owners.

Subordination Statement

- Recorded with each easement.
- Lien created by the Deed of Trust is subordinated to this document.
- Protects the system owner in case of foreclosure.

Subordination Statement



Encroachment

- When the easement or land for the septic system intersects another *exclusive* easement or right of way.
 - Power lines
 - Utilities
 - Roads
 - Railroads

Tri-Party Agreement

- What is it?
- Why is it needed?
- Is it needed?

Tri-Party Agreement

- An agreement executed between
 - The developer
 - The local health department
 - The special homeowners association

Special Homeowners Association

- Articles of Incorporation required
- Perpetual
- Non-profit
- Purpose
 - System construction, operation, maintenance and repair
 - Describes extent of system under joint control
 - Fee collection, assessment

Tri-Party Agreement Addresses

- Ownership
- Transfer of ownership
- Operation
- Maintenance
- Repairs
- Funding for operation, maintenance, and repairs

Tri-Party Agreement

- Needed when individual system components are located on property under joint control.
- Specifically for “ganged” force mains within the force main easement.

Tri-Party Agreement

Are they required for remote systems



Tri-Party Agreement

Are they required for remote systems



Yes

Tri-Party Agreement

Are they required for remote systems ?

Yes

No

Tri-Party Agreement

Are they required for remote systems ?

Yes
Maybe
No

Tri-Party Agreement

- Not required by virtue of .1937 (h)
- The facility is not a “condominium or multiple ownership development”

Tri-Party Agreement

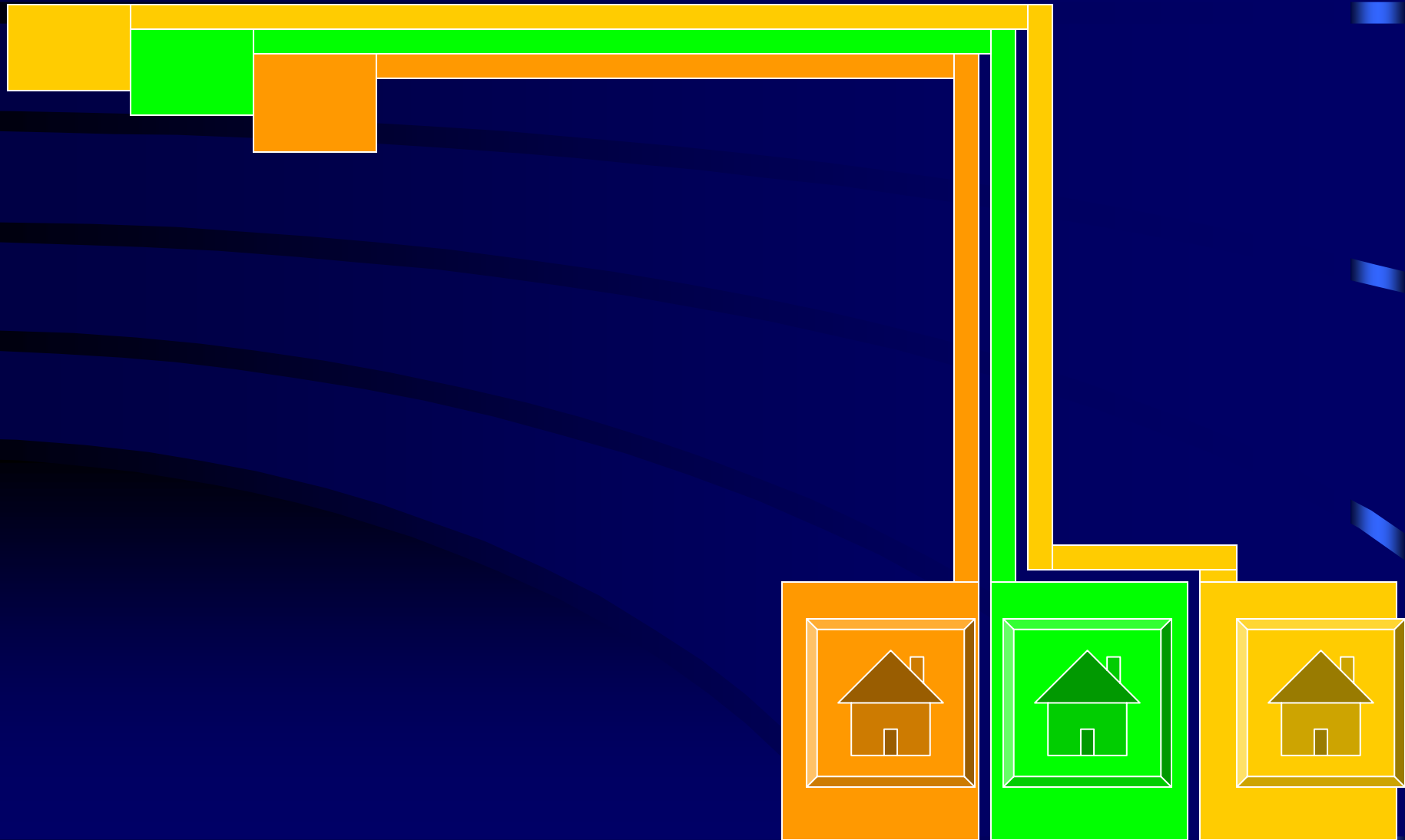
However...

- Should be required as necessary
 - When components are “ganged”
 - Jointly owned property

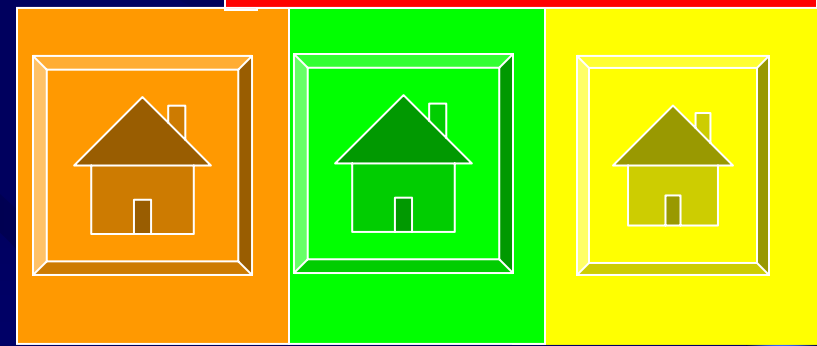
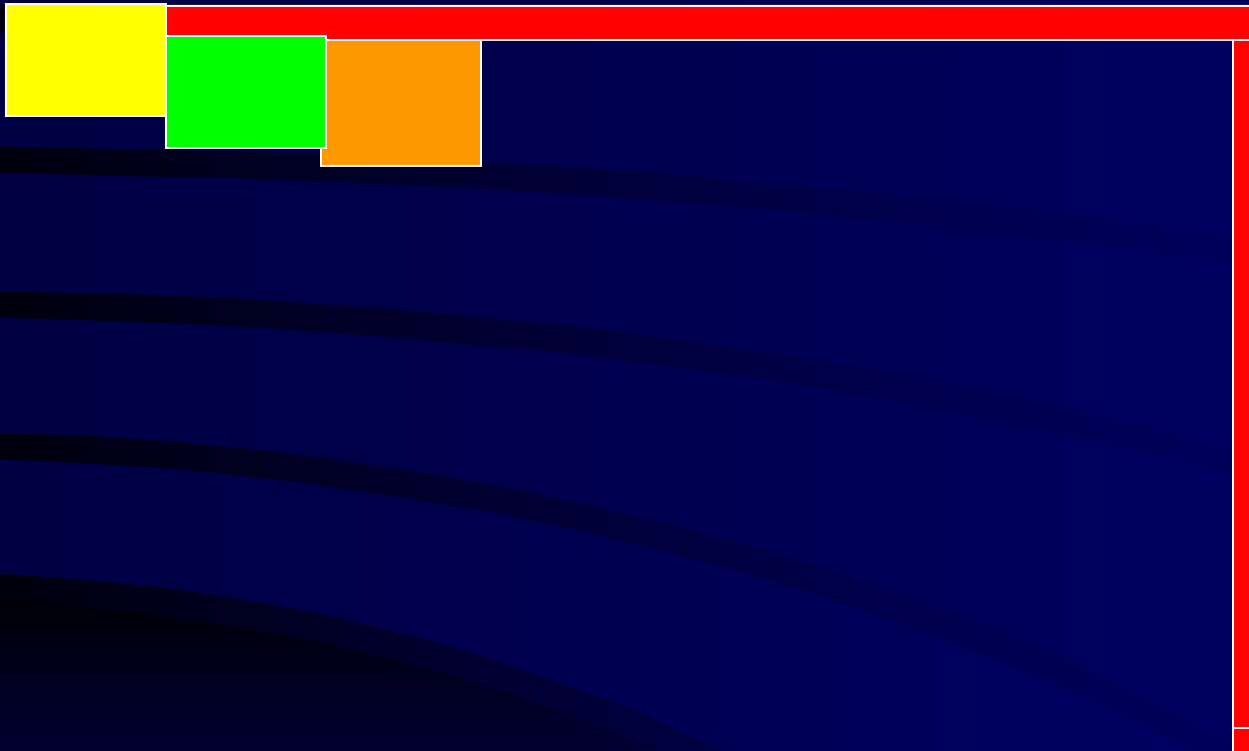
Who Pays to Find the Leak?



No tri-party agreement needed



Tri-Party agreement necessary



Responsibilities

- Engineer Design
 - Pretreatment components w/o prior approval
 - 3000 + GPD
 - Duplex pumps
 - Supply line networks > 1500 GPD
 - As required by the LHD

Review of Documents

- Easements, tri-party agreements, encroachments
- Review by LHD
- Review by county attorney
- Verification after recording

Prior to Issuance of Operation Permit

- Contract with ORC
- Permanent survey markers installed
- Final tri-party agreement executed and recorded
- As-built drawings (certified)
- System start-up

Future Problems / Opportunities

- Building structures
- Obstacles to entry
- Maintenance of remote components
- System failure on other properties