

United States and Alabama Department of Public Health Interim Resolution Agreement

Questions & Answers



U.S. Department of Justice
Civil Rights Division



U.S. Department of Health and Human Services
Office for Civil Rights

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This document provides information about the Agreement. You may review the entire Agreement at: <https://www.justice.gov/opa/pr/departments-justice-and-health-and-human-services-announce-interim-resolution-agreement>

This Questions & Answers document is intended to increase awareness and understanding of the Agreement. This document is designed for those who may not have a legal background.

I. General

1. What does the Agreement require ADPH to do?

The Agreement requires ADPH to take multiple actions that fall within three major categories: (1) suspending actions which could lead to criminal penalties and liens related to possible violations of sanitation laws in Lowndes County, (2) expanding public health awareness, and (3) planning for equitable onsite wastewater solutions. More details are available in the Summary document and below.

2. What does it mean to have an “Interim” Resolution Agreement?

The Agreement consists of actions ADPH agrees to take while the United States’ investigation remains open. In other words, the interim agreement does not end or close the United States’ investigation. Instead, it suspends the investigation until ADPH takes all the actions required by the United States.

3. Will there be a Final Resolution Agreement?

Based on ADPH’s compliance with the Interim Resolution Agreement and the Public Health and Infrastructure Improvement Plan – PHIIP – it is required to develop, we expect to eventually reach a final agreement resolving this matter.

4. Is the United States continuing to investigate ADPH?

Not at this time. Based on the Agreement, the United States has agreed to suspend the investigation.

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5. Does ADPH have enough money to complete all the requirements of the Agreement?

The Agreement does not require ADPH to go beyond its current financial capacity and allows ADPH to use any available funds to comply with the terms. However, if ADPH determines that it lacks sufficient funds or resources to fulfill any of the terms of the Agreement, ADPH has agreed to seek out additional funding. The United States will provide relevant information to support these efforts, as appropriate.

6. Is the Agreement limited to Lowndes County?

Most of the terms of the Agreement, such as the comprehensive assessment, are limited to Lowndes County. However, as ADPH is a state agency, some of the terms, such as those expanding public health awareness, are expected to reach Alabamians across the state.

7. Does the Agreement address problems with the sewage lagoons or sewers?

No. The investigation and Agreement are limited to ADPH, which only has jurisdiction over onsite wastewater systems. Larger community wastewater systems, like those using lagoons and sewer systems, are overseen by a separate state agency – the Alabama Department of Environmental Management.

8. What is an onsite wastewater system?

A system that collects, transports, treats, and disperses sewage from a home. As used in this context, a common example is a septic system.

II. Suspending Criminal Penalties and Liens

1. What does the moratorium on criminal penalties and liens cover?

Under the Agreement, ADPH is prohibited from making referrals to law enforcement or taking other actions which could lead to criminal prosecution. Additionally, ADPH is prohibited from taking actions which could lead to a lien.

2. Why doesn't the Agreement require ADPH to stop prosecuting, fining, or sending residents to jail?

Under state law, ADPH itself does not prosecute residents or issue fines or fees. However, ADPH *is* authorized to refer residents for criminal prosecution. ADPH may also take related actions like swearing out warrants and summonses. Those actions then lead to criminal prosecution by other law enforcement agencies, and that criminal prosecution process could result in fines or fees. Under the Agreement, ADPH is prohibited from making referrals to law enforcement or taking other actions which could lead to criminal prosecution.

3. Why doesn't the Agreement require ADPH to stop placing liens on property?

Under state law, ADPH itself is not specifically authorized to place a lien on property. However, ADPH *is* authorized to take actions which could lead to liens. The county government, *through ADPH*, is authorized to compel (force) residents to connect to private wastewater systems. If a resident still does not connect to a private wastewater system, the county government is can make that connection for them. That connection can be costly, and under state law ADPH is required to recover the cost of the system and installation through a lien on the resident's property. Under the Agreement, ADPH is prohibited from compelling connection to a private wastewater system, which could then lead to a lien.

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4. Does the suspension of criminal penalties and liens apply to every person and every situation in Lowndes County?

No. The suspension only applies to residents and homeowners with inadequate onsite wastewater systems and who do not have the means to install or repair an ADPH-permitted onsite wastewater system. Additionally, for this policy to apply, the resident or homeowner must: (i) provide information in response to an ADPH survey about how they dispose of their wastewater; and/or (ii) apply for an onsite wastewater system through an ADPH program and confine any sewage to their own property.

5. What does it mean for a resident to have an “inadequate onsite wastewater system”?

Under the Agreement, this term means that a home is not connected to a municipal sewer system – like a sewer system run by a city – and lacks a functioning, ADPH-permitted onsite wastewater system. Situations could include having no wastewater system or using a failing septic system, unpermitted septic system, unpermitted outhouse, cesspool, or straightpipes.

6. What does it mean for a resident to “not have the means to install or repair an ADPH-permitted onsite wastewater system”?

Under the Agreement, this term means that a resident cannot obtain a functioning, ADPH-permitted onsite wastewater system for one or more of these reasons: lack of finances or assets, lack of clear title to property, or other non-legal or non-financial factors/barriers that limit their ability to complete the process of obtaining a functioning, ADPH-permitted onsite wastewater system. The term is meant to be interpreted expansively.

7. How will residents learn about the suspension of criminal penalties and liens?

ADPH is required to issue a press release and distribute it widely on the internet and by mail to Lowndes County residents. ADPH is also required to include specific language in its “Official Notice of Violation” about this policy.

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8. Could a third party working with ADPH still refer residents for criminal prosecution?

No. Third party contractors and agents working on ADPH's behalf have the same obligations as ADPH under this agreement.

9. Will ADPH pursue criminal penalties and liens after the Agreement is over?

While these enforcement measures may be available after the Agreement ends, as part of the Public Health and Infrastructure Improvement Plan, ADPH is required to develop plans to continue to suspend pursuing criminal penalties and liens for residents without the means to install/repair ADPH-permitted wastewater systems and who do not have such a system installed yet. The Agreement also requires ADPH to develop a plan for continuing this enforcement suspension after all residents have such systems installed.

III. Planning Equitable Onsite Wastewater Solutions

1. Does the Agreement require ADPH to install onsite wastewater systems?

The Agreement requires ADPH to come up with a plan for installing systems and sets the stage for that effort by collecting the information needed to determine how many systems are needed, what type of systems are needed, they will be located, and what other barriers exist – for example lack of clear title to property – that must be resolved before a system can be put in the ground. This plan will be part of the Public Health and Infrastructure Improvement Plan and may include working with a third party to install systems. The Agreement also ensures that any future initiatives that involve installation of onsite wastewater systems are administered in a way that is equitable and that prioritizes residences based on their risk of exposure to infectious diseases and public health threats.

2. How does the Agreement ensure that onsite wastewater systems installed through ADPH programs in the future won't fail?

The Agreement requires that plans to install onsite wastewater systems must involve “technically sound, ADPH-permitted onsite wastewater systems designed to function in Lowndes County site conditions.” Onsite wastewater systems that are appropriately designed for the location where they are installed and properly maintained should not be expected to fail. As part of the comprehensive assessment, ADPH is to collect the information needed to ensure each onsite wastewater system is properly designed. The Agreement also provides for expanding awareness on how to maintain onsite wastewater systems. Additionally, as part of the Public Health and Infrastructure Improvement Plan, ADPH is to set forth initiatives to expand access to functioning, ADPH-permitted onsite wastewater systems which include consideration of a parts and services warranty requirement.

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3. How will ADPH determine which residences get systems and when?

Before ADPH can determine which residences will get an ADPH-permitted system installed and when, it must first do two things. First, the Agreement requires ADPH to cooperate with the Centers for Disease Control (CDC) to measure the level of health risk that different populations groups in Lowndes County are experiencing from exposure to raw sewage. ADPH is required to implement CDC recommendations from this effort. Second, ADPH is required to conduct a comprehensive assessment to gather all the information needed before any ADPH-permitted system can be installed. This can include information such as the property's soil type and lot size to financial or legal barriers – like lack of clear title to property. Information like this is needed to determine what kind of onsite wastewater system will work at each particular location, and what additional obstacles must be addressed before a system can be installed. With the information from CDC and the information ADPH gets from the comprehensive assessment, ADPH must prioritize installation of systems based on residents' risk of exposure to infectious diseases and public health threats.

4. What is CDC's role in the Agreement?

The Agreement does not control CDC. It does not make CDC do anything, nor does it stop CDC from doing anything. The Agreement requires ADPH to request technical assistance from CDC to assess levels of health risk that different population groups in Lowndes County are experiencing from exposure to raw sewage. The Agreement also requires ADPH to cooperate with CDC, which includes providing any information or other resources requested by CDC in relation to any technical assistance.

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5. Will ADPH use the information residents gives as part of the comprehensive assessment to issue citations or fines or take other actions against them for possible violations of sanitation-related laws? Will ADPH use this information to take actions that could result in a lien on the property?

No. Under the Agreement, ADPH is required to inform residents that the information it seeks for the assessment is part of ADPH's agreement to comply with the United States' investigation of ADPH. ADPH is also required to inform residents that the information ADPH is asking will not be used by ADPH to cite or refer any resident for prosecution, which could result in fines or fees or a lien on the property.

IV. Expanding Public Health Awareness

1. What topics will ADPH's public health awareness campaign cover?

ADPH is required to expand its public health information campaign to share important health and safety information on topics such as:

- The health risks of contact with raw sewage;
- Symptoms of illnesses from contact with raw sewage;
- How to contact a health care provider about symptoms of illnesses linked to contact with raw sewage;
- Ways to prevent contact with raw sewage;
- Safe cleanup after a sewage backup inside a home;
- How to report raw sewage issues to ADPH; and
- How to properly use, care for, and maintain a septic system.

2. How will Lowndes County residents get this information?

Under the Agreement, ADPH is required to share this information widely in Lowndes County and to specifically provide informational materials to all residents who have an inadequate onsite wastewater system. ADPH is required use radio, print ads, flyers, mailers, door-to-door outreach, and other appropriate ways to make sure residents get this important information.

3. Does the public health awareness campaign include information specifically directed towards health care providers?

Yes. The Agreement contains additional requirements for ADPH to share information with health care providers for Lowndes County residents on topics such as how to identify the symptoms of sanitation-related infections and illnesses, as well as appropriate treatment.

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4. Which health care providers will get these educational materials?

The Agreement requires ADPH to share these education materials with health care providers for Lowndes County residents, including medical offices and school-based health centers and providers that serve Lowndes County residents. ADPH is also required to share these materials to healthcare providers statewide through email using Alabama Emergency Response Technology health alert network messages and on ADPH's Infectious Diseases and Outbreaks webpages.

V. Timing and Terms

1. How long does the Agreement last?

Three years after the United States approves the Final Public Health and Infrastructure Improvement Plan. The Final Public Health and Infrastructure Improvement Plan is due to the United States within one year from the effective date of the Agreement.

2. What happens if ADPH does not comply with the Agreement?

ADPH is required to comply with the Agreement. If ADPH does not comply with the terms of the Agreement, the United States will provide ADPH written notice of noncompliance and the parties will attempt to resolve any issues. If ADPH still does not comply with the terms of the Agreement, the United States will resume the investigation and take appropriate steps to achieve compliance with Title VI and Section 1557.

VI. Involving Community

1. How does the Agreement ensure that the Public Health and Infrastructure Improvement Plan reflects the needs and perspectives of community members?

In developing the Public Health and Infrastructure Improvement Plan, ADPH is required to conduct community engagement on a quarterly basis and incorporate input from community members in the Draft and Final Public Health and Infrastructure Improvement Plan. The Agreement specifically requires engagement with Lowndes County residents and their representatives, environmental justice advocates, and experts in wastewater, infrastructure, soil, and engineering.

2. Apart from developing the Public Health and Infrastructure Improvement Plan, how else is ADPH required to work with communities?

The Public Health and Infrastructure Improvement Plan requires ADPH to create a plan for ongoing community engagement on addressing the public health threats of inadequate wastewater systems. ADPH is specifically required to work with the same groups that it will consult with in developing the Public Health and Infrastructure Improvement Plan – Lowndes County residents and their representatives, environmental justice advocates, and experts in wastewater, infrastructure, soil, and engineering.

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3. How will ADPH inform residents about other terms of the Agreement?

ADPH is required to issue a press release on its suspension of criminal penalties and liens. In addition to posting the press release online, ADPH must also distribute the press release to residents and medical providers. ADPH is also required to issue a press release about the comprehensive assessment. This press release is required to include two main items: (1) the name of any third party ADPH will be working with and (2) ADPH's statement that any information provided by residents as part of the comprehensive assessment will not be used to cite or refer any resident for criminal prosecution or be used in any action that could result in a lien on the resident's property. After the comprehensive assessment is completed, ADPH will post a summary of the results on its website.