

RECEIPT OF REQUIRED CLAIMANT INFORMATION
(To be completed and returned by the Claimant.)

THIS SECTION FOR CLAIMANT USE ONLY

Instructions to Claimant: Please complete this receipt and return to the Michigan Department of Transportation (MDOT) office using the self-addressed stamped envelope provided.

I received the required claimant information from MDOT:

Name: _____

Address: _____

City/State/Zip: _____

Date: _____

THIS SECTION FOR MDOT USE ONLY

Instructions to REGION/TSC: Contact Claimant promptly after receiving initial inquiry for information on submitting a claim and provide the required claimant information. Obtain a signed receipt documenting claimant received the required claimant information. If the required claimant information is not delivered in person to the Claimant, provide a self-addressed stamped envelope for Claimant's use in returning the signed receipt to the REGION/TSC. This receipt is not required if the claim is filed directly with the Environmental Field Services Engineer in Lansing without initial inquiry to the REGION/TSC.

Date of Notice: _____ How Notified: _____

Date Forwarded: _____ Forwarded To: _____

Date Forwarded: _____ Forwarded To: _____

Date Forwarded: _____ Forwarded To: _____

The required claimant information provided to:

Claimant Name: _____

Method of Delivery: _____

Date Sent or Delivered: _____

**SEWAGE DISPOSAL SYSTEM EVENT
FILING CLAIMS AGAINST THE MICHIGAN
DEPARTMENT OF TRANSPORTATION (MDOT)**

This notice is intended for persons who believe they may have a claim against MDOT under the "sewage disposal system event" exception to governmental immunity.

CLAIMS: Property damage or personal injuries from a "sewage disposal system event"

To file a claim against MDOT to recover compensation for property damage or physical injuries based upon a "sewage disposal system event", the procedures outlined below must be followed. Failure to comply with these procedures may result in the claim being denied.

A "sewage disposal system event" refers to:

The overflow or backup of a sewage disposal system onto real property. An overflow or backup is not a sewage disposal system event if any of the following was a substantial proximate cause of the overflow or backup:

- (i) An obstruction in a service lead that was not caused by a governmental agency.
- (ii) A connection to the sewage disposal system on the affected property, including, but not limited to, a sump system, building drain, surface drain, gutter, or downspout.
- (iii) An act of war, whether the war is declared or undeclared, or an act of terrorism.

"Substantial proximate cause" means a proximate cause that was 50% or more of the cause of the event and the property damage or physical injury.

See Sections 16 through 19 of the Governmental Tort Liability Act, MCL 691.1416 – MCL 691.1419, for details governing such claims, including definitions of terms, rights, responsibilities, and qualifications of them.

Notice Requirement

With the exceptions described below, a claimant is not entitled to compensation unless the claimant notifies MDOT's designated representative of the claim of damage or physical injury, in writing, within 45 days after the date the damage or physical injury was discovered, or in the exercise of reasonable diligence should have been discovered. That written notice shall contain the claimant's name, address, and telephone number, the address of the affected property, the date of discovery of any property damages or physical injuries, and a brief description of the claim.

Exceptions

The failure to file that notice within 45 days does not bar a claim for noneconomic damages, as described in section 17, MCL 691.1417.

The failure to file that notice within 45 days also does not bar a claim for economic damages, if:

(1) before filing the notice described in MCL 691.1419(1), the claimant notified a designated MDOT representative, described below, orally or in writing, of the sewage disposal system event within 45 days after the date the damage or physical injury was discovered, or in the exercise of reasonable diligence should have been discovered, and

(2) the failure to timely file the notice under MCL 691.1419(1) resulted from MDOT's designated representative failure to provide the claimant with both:

(a) A sufficiently detailed explanation of the notice requirements under section 19(2), MCL 691.1419, to allow a claimant to comply with the requirements, and

(b) The name and address of the individual to whom a claimant must send written notice to make a claim against MDOT.

Court of Claims Act Notice Requirement

The Court of Claims Act, MCL 600.6431(3) provides that: "In all actions for property damage or personal injuries, claimant shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action." MCL 600.6431(1) provides that the notice is to state: "the time when and the place where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths." MCL 600.6431(2) requires that: "a copy of such claim or notice shall be furnished to the clerk at the time of the filing of the original for transmittal to the attorney general and to each of the departments, commissions, boards, institutions, arms, or agencies designated." A claim might be denied if the notice is not filed.

Designated Representatives of MDOT, MCL 691.1416(d) & MCL 691.1419

The MDOT Environmental Field Services Engineer represents the "contacting agency" for the department as described in Section 16(d), MCL 691.1416. Sewage/storm water damage claims must be sent to:

Michigan Department of Transportation
Environmental Field Services Engineer
425 West Ottawa Street, Floor 2
P.O. Box 30050
Lansing, MI 48909

Notice of a civil action against MDOT for a "sewage disposal system event" may be provided to the following person, who is authorized to receive service of civil process under section 19(6), MCL 691.1419:

David Brickey
Assistant Attorney General
425 West Ottawa Street, Floor 4
P.O. Box 30050
Lansing, MI 48909

SEWAGE DISPOSAL SYSTEM EVENT
DAMAGE CLAIM NOTICE

The intent of this procedure is to provide for a due process and prompt investigation that leads to the acceptance or denial of claims for damage to private property resulting from a Sewage disposal system event.

CLAIMANT INFORMATION

INFORMATION MARKED WITH AN ASTERISK () IS REQUIRED TO IN ORDER FOR YOUR CLAIM TO BE CONSIDERED.*

NAME*	TELEPHONE NUMBER WHERE YOU CAN BE REACHED*		
MAILING ADDRESS*	CITY*	STATE*	ZIP CODE*
ADDRESS OF AFFECTED PROPERTY*	CITY*	STATE*	ZIP CODE*
DATE OF EVENT OR DISCOVERY OF DAMAGE*	AMOUNT OF CLAIM		

HOW DID YOU DETERMINE THE VALUE OF YOUR CLAIM? (Describe in detail and provide documentation to support the amount of the claim.)

(OVER)

DAMAGE CLAIM NOTICE

DESCRIPTION OF CLAIM (BE AS DETAILED AS POSSIBLE. PROVIDE COPIES OF ANY ESTIMATES, PHOTOS [IF AVAILABLE], ETC. ATTACH ADDITIONAL SHEETS IF NECESSARY.)

I CERTIFY THAT THE ABOVE INFORMATION IS, TO THE BEST OF MY KNOWLEDGE, TRUE.

CLAIMANT SIGNATURE

DATE

MCL 691.1416 Definitions.

Sec. 16.

As used in this section and sections 17 to 19:

- (a) "Affected property" means real property affected by a sewage disposal system event.
- (b) "Appropriate governmental agency" means a governmental agency that, at the time of a sewage disposal system event, owned or operated, or directly or indirectly discharged into, the portion of the sewage disposal system that allegedly caused damage or physical injury.
- (c) "Claimant" means a property owner that believes that a sewage disposal system event caused damage to the owner's property, a physically injured individual who believes that a sewage disposal system event caused the physical injury, or a person making a claim on behalf of a property owner or physically injured individual. Claimant includes a person that is subrogated to a claim of a property owner or physically injured individual described in this subdivision.
- (d) "Contacting agency" means any of the following within a governmental agency:
 - (i) The clerk of the governmental agency.
 - (ii) If the governmental agency has no clerk, an individual who may lawfully be served with civil process directed against the governmental agency.
 - (iii) Any other individual, agency, authority, department, district, or office authorized by the governmental agency to receive notice under section 19, including, but not limited to, an agency, authority, department, district, or office responsible for the operation of the sewage disposal system, such as a sewer department, water department, or department of public works.
- (e) "Defect" means a construction, design, maintenance, operation, or repair defect.
- (f) "Noneconomic damages" includes, but is not limited to, pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, and other nonpecuniary damages.
- (g) "Person" means an individual, partnership, association, corporation, other legal entity, or a political subdivision.
- (h) "Serious impairment of body function" means that term as defined in section 3135 of the insurance code of 1956, 1956 PA 218, MCL 500.3135.

(i) "Service lead" means an instrumentality that connects an affected property, including a structure, fixture, or improvement on the property, to the sewage disposal system and that is neither owned nor maintained by a governmental agency.

(j) "Sewage disposal system" means all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes, and includes a storm water drain system under the jurisdiction and control of a governmental agency.

(k) "Sewage disposal system event" or "event" means the overflow or backup of a sewage disposal system onto real property. An overflow or backup is not a sewage disposal system event if any of the following was a substantial proximate cause of the overflow or backup:

- (i) An obstruction in a service lead that was not caused by a governmental agency.
- (ii) A connection to the sewage disposal system on the affected property, including, but not limited to, a sump system, building drain, surface drain, gutter, or downspout.
- (iii) An act of war, whether the war is declared or undeclared, or an act of terrorism.

(l) "Substantial proximate cause" means a proximate cause that was 50% or more of the cause of the event and the property damage or physical injury.

MCL 691.1417 Damages or physical injuries caused by sewage disposal system event; compliance of claimant and governmental agency with relief provisions.

Sec. 17.

(1) To afford property owners, individuals, and governmental agencies greater efficiency, certainty, and consistency in the provision of relief for damages or physical injuries caused by a sewage disposal system event, a claimant and a governmental agency subject to a claim shall comply with this section and the procedures in sections 18 and 19.

(2) A governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a sewage disposal system event and the governmental agency is an appropriate governmental agency. Sections 16 to 19 abrogate common law exceptions, if any, to immunity for the overflow or backup of a sewage disposal system and provide the sole remedy for obtaining any form of relief for damages or physical injuries caused by a sewage disposal system event regardless of the legal theory.

(3) If a claimant, including a claimant seeking noneconomic damages, believes that an event caused property damage or physical injury, the claimant may seek compensation for the property damage or physical injury from a governmental agency if the claimant shows that all of the following existed at the time of the event:

- (a) The governmental agency was an appropriate governmental agency.
- (b) The sewage disposal system had a defect.

(c) The governmental agency knew, or in the exercise of reasonable diligence should have known, about the defect.

(d) The governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect.

(e) The defect was a substantial proximate cause of the event and the property damage or physical injury.

(4) In addition to the requirements of subsection (3), to obtain compensation for property damage or physical injury from a governmental agency, a claimant must show both of the following:

(a) If any of the damaged property is personal property, reasonable proof of ownership and the value of the damaged personal property. Reasonable proof may include testimony or records documenting the ownership, purchase price, or value of the property, or photographic or similar evidence showing the value of the property.

(b) The claimant complied with section 19.

MCL 691.1418 Economic damages; grounds for noneconomic damages; available defenses.

Sec. 18.

(1) Except as provided in subsection (2), economic damages are the only compensation for a claim under section 17. Except as provided in subsection (2), a court shall not award and a governmental agency shall not pay noneconomic damages as compensation for an event.

(2) A governmental agency remains subject to tort liability for noneconomic damages caused by an event only if the claimant or the individual on whose behalf the claimant is making the claim has suffered death, serious impairment of body function, or permanent serious disfigurement.

(3) In an action for noneconomic damages under section 17, the issues of whether a claimant or the individual on whose behalf the claimant is making the claim has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(a) There is no factual dispute concerning the nature and extent of the claimant's or the individual's injuries.

(b) There is a factual dispute concerning the nature and extent of the claimant's or the individual's injuries, but the dispute is not material to determining whether the claimant or the individual has suffered a serious impairment of body function or permanent serious disfigurement.

(4) Unless this act provides otherwise, a party to a civil action brought under section 17 has all applicable common law and statutory defenses ordinarily available in civil actions, and is entitled to all rights and procedures available under the Michigan court rules.

MCL 691.1419 Notice of claim; requirements.

Sec. 19.

(1) Except as provided in subsections (3) and (7), a claimant is not entitled to compensation under section 17 unless the claimant notifies the governmental agency of a claim of damage or physical injury, in writing, within 45 days after the date the damage or physical injury was discovered, or in the exercise of reasonable diligence should have been discovered. The written notice under this subsection shall contain the content required by subsection (2)(c) and shall be sent to the individual within the governmental agency designated in subsection (2)(b). To facilitate compliance with this section, a governmental agency owning or operating a sewage disposal system shall make available public information about the provision of notice under this section.

(2) If a person who owns or occupies affected property notifies a contacting agency orally or in writing of an event before providing a notice of a claim that complies with subsection (1), the contacting agency shall provide the person with all of the following information in writing:

(a) A sufficiently detailed explanation of the notice requirements of subsection (1) to allow a claimant to comply with the requirements.

(b) The name and address of the individual within the governmental agency to whom a claimant must send written notice under subsection (1).

(c) The required content of the written notice under subsection (1), which is limited to the claimant's name, address, and telephone number, the address of the affected property, the date of discovery of any property damages or physical injuries, and a brief description of the claim.

(3) A claimant's failure to comply with the notice requirements of subsection (1) does not bar the claimant from bringing a civil action under section 17 against a governmental agency notified under subsection (2) if the claimant can show both of the following:

(a) The claimant notified the contacting agency under subsection (2) during the period for giving notice under subsection (1).

(b) The claimant's failure to comply with the notice requirements of subsection (1) resulted from the contacting agency's failure to comply with subsection (2).

(4) If a governmental agency that is notified of a claim under subsection (1) believes that a different or additional governmental agency may be responsible for the claimed property damages or physical injuries, the governmental agency shall notify the contacting agency of each additional or different governmental agency of that fact, in writing, within 15 business days after the date the governmental agency receives the claimant's notice under subsection (1). This subsection is intended to allow a different or additional governmental agency to inspect a claimant's property or investigate a claimant's physical injury before litigation. Failure by a governmental agency to provide notice under this subsection to a different or additional governmental agency does not bar a civil action by the governmental agency against the different or additional governmental agency.

(5) If a governmental agency receives a notice from a claimant or a different or additional governmental agency that complies with this section, the governmental agency receiving notice may inspect the damaged property or investigate the physical injury. A claimant or the owner or occupant of affected property shall not unreasonably refuse to allow a governmental agency subject to a claim to inspect damaged property or investigate a physical injury. This subsection does not prohibit a governmental agency from subsequently inspecting damaged property or investigating a physical injury during a civil action brought under section 17.

(6) If a governmental agency notified of a claim under subsection (1) and a claimant do not reach an agreement on the amount of compensation for the property damage or physical injury within 45 days after the receipt of notice under this section, the claimant may institute a civil action. A civil action shall not be commenced under section 17 until after that 45 days.

(7) This section does not apply to claims for noneconomic damages made under section 17.