

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 614

An Act to amend and reenact §§ 32.1-164, 62.1-44.3, 62.1-44.18 and 62.1-44.19 of the Code of Virginia, relating to responsibility for reviewing plans and specifications for wastewater treatment plants.

[H 2602]

Approved March 18, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-164, 62.1-44.3, 62.1-44.18 and 62.1-44.19 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-164. Powers and duties of Board; regulations; fees; authorized onsite soil evaluators; letters in lieu of permits.

A. The Board shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage, ~~all sewerage systems by onsite sewage systems and alternative discharging sewage systems~~, and treatment works as they affect the public health and welfare. In discharging the responsibility to supervise and control the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall exercise due diligence to protect the quality of both surface water and ground water. ~~The regulation of sewage, as it may affect the public health, shall be primarily the responsibility of the Board and, in cases to which the provisions of Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 are applicable, the joint responsibility of the Board and the State Water Control Board in accordance with such chapter. However,~~ Upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by the State Water Control Board, the Board of Health shall assume the responsibility for permitting alternative discharging sewage systems as defined in § 32.1-163. All such permits shall comply with the applicable regulations of the State Water Control Board and be registered with the State Water Control Board.

In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board shall require and the Department shall conduct regular inspections of alternative discharging sewage systems. The Board shall also establish requirements for maintenance contracts for alternative discharging sewage systems. The Board may require, as a condition for issuing a permit to operate an alternative discharging sewage system, that the applicant present an executed maintenance contract. Such contract shall be maintained for the life of any general Virginia Pollutant Discharge Elimination System permit issued by the State Water Control Board.

B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and disposal of sewage ~~by onsite sewage systems and alternative discharging sewage systems~~. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification or operation of a sewerage system or treatment works except in those instances where a permit is required pursuant to Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1.

2. Criteria for the granting or denial of such permits.

3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works ~~for permits issued by the Commissioner~~.

4. Standards governing disposal of sewage on or in soils.

5. Standards specifying the minimum distance between sewerage systems or treatment works and:

(a) Public and private wells supplying water for human consumption,

(b) Lakes and other impounded waters,

(c) Streams and rivers,

(d) Shellfish waters,

(e) Ground waters,

(f) Areas and places of human habitation,

(g) Property lines.

6. Standards as to the adequacy of an approved water supply.

7. Standards governing the transportation of sewage.

8. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth.

9. A requirement that such residences, buildings, structures and other places designed for human occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted through the then current sewage handling and disposal regulations, to treat and dispose of

sewage as effectively as approved methods.

11. Standards for inspections of and requirements for maintenance contracts for alternative discharging sewage systems.

12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification, or operation of an alternative discharging sewage system as defined in § 32.1-163.

13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage systems.

14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage system permits.

15. Criteria for approved training courses, testing requirements, and application fees for persons wishing to be authorized onsite soil evaluators.

16. Procedures for listing, removing from the list, and reinstating on the list those persons who have successfully qualified to be authorized onsite soil evaluators.

C. A fee of \$75 shall be charged for filing an application for an onsite sewage disposal system or an alternative discharging sewage system permit with the Department. Funds received in payment of such charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this title. However, ~~ten dollars~~ \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services or when the application is for a pit privy or the repair of a failing onsite sewage disposal system. If the Department denies the permit for land on which the applicant seeks to construct his principal place of residence, then such fee shall be refunded to the applicant.

From such funds as are appropriated to the Department from the special fund, the Board shall apportion a share to local or district health departments to be allocated in the same ratios as provided for the operation of such health departments pursuant to § 32.1-31. Such funds shall be transmitted to the local or district health departments on a quarterly basis.

D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Further a fee of \$75 shall be charged for such installation and monitoring inspections of alternative discharging sewage systems as may be required by the Board. The funds received in payment of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this section. However, ~~ten dollars~~ \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services.

F. Any owner who violates any provision of this section or any regulation of the Board of Health or the State Water Control Board relating to alternative discharging sewage systems or who fails to comply with any order of the Board of Health or any special final order of the State Water Control Board shall be subject to the penalties provided in §§ 32.1-27 and 62.1-44.32.

In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its agent may initiate a civil action against any user or users of an alternative discharging sewage system to recover that portion of any civil penalty imposed against the owner which directly resulted from violations by the user or users of any applicable federal, state, or local laws, regulations, or ordinances.

G. The Board shall establish a program for qualifying individuals as authorized onsite soil evaluators. The Board's program shall include, but not be limited to, approved training courses, written and field tests, application fees to cover the costs of the program, renewal fees and schedules, and procedures for listing, removing from the list, and reinstating individuals as authorized onsite soil evaluators. To contain costs, the Board shall use or enhance the written and field tests given to Department of Health sanitarians as the testing vehicle for authorized onsite soil evaluators. Until July 1, 2001, a person holding a certificate as a Virginia certified professional soil scientist from the Board of Professional Soil Scientists shall be deemed to be qualified, upon application and demonstration of the knowledge, skills, and abilities necessary to conduct onsite soil evaluations, as an authorized onsite soil evaluator without completing the Board's training courses and taking the written and field tests. The Board shall furnish the list of authorized onsite soil evaluators to all local and district health departments.

H. The Board shall establish and implement procedures for issuance of letters recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. Such letters shall state, in language determined by the Office of the Attorney General and approved by the

Board, the appropriateness of the soil for a traditional septic or other onsite sewage system; no system design shall be required for issuance of such letter. The letter may be recorded in the land records of the clerk of the circuit court in the jurisdiction where all or part of the site or proposed site of the septic or other onsite sewage system is to be located so as to be a binding notice to the public, including subsequent purchases of the land in question. Upon the sale or transfer of the land which is the subject of any letter, the letter shall be transferred with the title to the property. A permit shall be issued on the basis of such letter unless, from the date of the letter's issuance, there has been a substantial, intervening change in the soil or site conditions where the septic system or other onsite sewage system is to be located. The Board, Commissioner, and the Department shall accept evaluations from authorized onsite soil evaluators for the issuance of such letters, if they are produced in accordance with the Board's established procedures for issuance of letters. The Department shall issue such letters within ~~twenty~~ 20 working days of the application filing date when evaluations produced by authorized onsite soil evaluators are submitted as supporting documentation. The Department shall not be required to do a field check of the evaluation prior to issuing such a letter or a permit based on such letter; however, the Department may conduct such field analyses as deemed necessary to protect the integrity of the Commonwealth's environment. Applicants for such letters in lieu of onsite sewage system permits shall pay the fee established by the Board for the letters' issuance and, upon application for a septic system permit or other onsite sewage system permit, shall pay the permit application fee.

§ 62.1-44.3. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the meanings hereinafter respectively ascribed to them:

"Board" means the State Water Control Board.

"Member" means a member of the Board.

"Certificate" means any certificate issued by the Board.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands;

"Owner" means the Commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution" for the terms and purposes of this chapter.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances, except industrial wastes and sewage, which may cause pollution in any state waters.

"Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any state waters.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal.

"Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in accordance with the requirements of the Board.

"Reclaimed water" means water resulting from the treatment of domestic, municipal or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur.

Specifically excluded from this definition is "gray water."

"Reclamation" means the treatment of domestic, municipal or industrial wastewater or sewage to produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

"The law" or "this law" means the law contained in this chapter as now existing or hereafter amended.

"Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to § 62.1-44.15 (7).

"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

"Ruling" means a ruling issued under § 62.1-44.15 (9).

"Regulation" means a regulation issued under § 62.1-44.15 (10).

"Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.

"Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation or any other legal entity.

"Pretreatment requirements" means any requirements arising under the Board's pretreatment regulations including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the Board.

"Pretreatment standards" means any standards of performance or other requirements imposed by regulation of the Board upon an industrial user of a publicly owned treatment works.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.1-22.29, and any activity that is conducted as part of or in furtherance of such agricultural operation, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Normal silvicultural activities" means any silvicultural activity, as defined in § 10.1-1181.1, and any activity that is conducted as part of or in furtherance of such silvicultural activity, but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Sewage treatment works" or "treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power and other equipment, and appurtenances, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative discharging sewage systems.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

§ 62.1-44.18. Sewerage systems, etc., under supervision of Board and Department of Environmental Quality; Board to regulate design specification and plans.

A. All sewerage systems and sewage treatment works shall be under the general supervision of the State Department of Health and the Board jointly as prescribed in this article.

B. The State Department of Health Department of Environmental Quality shall, when requested, consult with and advise the authorities of cities, towns, sanitary districts, and any owner having or intending to have installed sewage treatment works as to the most appropriate type of treatment, but the Department shall not prepare plans, specifications, or detailed estimates of cost for any improvement of an existing or proposed sewage treatment works.

C. It shall be the duty of the owner of any such sewerage system or sewage treatment works from which sewage is being discharged into any state waters to furnish, when requested by the Board, to the State Department of Health from time to time information with regard to the quantities and character of the raw and treated sewage and the operation results obtained in the removal and disposal of organic matter and other pertinent information as is required. The State Department of Health shall furnish the Board with such available information as the Board requires.

D. The regulations of the Board shall govern the collection, conveyance, treatment and disposal of sewage. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit prior to the construction, installation, modification or operation of a sewerage system or treatment;
2. Criteria for the granting or denial of such permits;
3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works;
4. Standards specifying the minimum distance between sewerage systems or treatment works and:

- (a) *Public and private wells supplying water for human consumption,*
- (b) *Lakes and other impounded waters,*
- (c) *Streams and rivers,*
- (d) *Shellfish waters,*
- (e) *Ground waters,*
- (f) *Areas and places of human habitation, and*
- (g) *Property lines;*

5. *Standards as to the adequacy of an approved water supply;*

6. *A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth; and*

7. *Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted through the then current sewage handling and disposal regulations, to treat and dispose of sewage as effectively as approved methods.*

E. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 62.1-44.19. Approval of sewerage systems and sewage treatment works.

A. Before any owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the Board an application for a certificate in scope and detail satisfactory to the Board.

B. If the application involves a system or works from which there is or is to be a discharge to state waters, the application shall be given public notice by publication once a week for two successive weeks in a newspaper of general circulation in the county or city where the certificate is applied for or by such other means as the Board may prescribe. Before issuing the certificate, the Board shall consult with and give consideration to the written recommendations of the State Department of Health pertaining to the protection of public health. Upon completion of advertising, the Board shall determine if the application is complete, and if so, shall act upon it within ~~twenty-one~~ 21 days of such determination. The Board shall approve such application if it determines that minimum treatment requirements will be met and that the discharge will not result in violations of water quality standards. If the Board disapproves the application, it shall state what modifications or changes, if any, will be required for approval.

C. After the certificate has been issued or amended by the Board, the owner shall acquire from the ~~State Department of Health~~ *Department of Environmental Quality* (i) authorization to construct the systems or works for which the Board has issued a discharge certificate and (ii) upon completion of construction, authorization to operate the sewerage system or sewage treatment works. These authorizations shall be obtained in accordance with regulations promulgated by the ~~State Board of Health~~ *under § 32.1-164*. ~~The State Department of Health shall promptly notify the Board when such authorizations are granted.~~

D. Any owner operating under a valid certificate issued by the Board who fails to meet water quality standards established by the Board solely as a result of a change in water quality standards or in the law shall provide the necessary facilities approved by the ~~State Department of Health~~ *Department of Environmental Quality*, in accordance with the provisions of subsection C of this section, within a reasonable time to meet such new requirements. The Board may amend such certificate, or revoke it and issue a new one to reflect such facilities after proper hearing, with at least ~~thirty~~ 30 days' notice to the owner of the time, place and purpose thereof. If such revocation or amendment of a certificate is mutually agreeable to the Board and the owner involved, the hearing and notice may be dispensed with.

E. The Board shall revoke the certificate in case of a failure to comply with all such requirements and may issue a special order under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

2. That the Sewage Collection and Treatment regulations promulgated by the Virginia Board of Health that are in effect as of the effective date of this act shall remain in full force and effect until altered, amended or rescinded by the State Water Control Board pursuant to its authority under subsection D of § 62.1-44.18 of this act.