

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 296

An Act to amend and reenact § 32.1-163.6 of the Code of Virginia, relating to onsite treatment works designed by engineers.

[S 1468]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-163.6 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-163.6. Professional engineering of onsite treatment works.

A. Notwithstanding other provisions of this chapter, for purposes of permit approval, the Board, Commissioner, and Department of Health shall accept treatment works designs from individuals licensed as professional engineers pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1. The designs shall (i) be compliant with standard engineering practice and performance requirements established by the Board and those horizontal setback requirements necessary to protect the public health and the environment, ~~and~~ (ii) reflect that degree of skill and care ordinarily exercised by licensed members of the engineering profession practicing at the time of performance, *and (iii) ensure that the treatment works will meet or exceed the discharge standards for systems otherwise permitted pursuant to the regulations implementing this chapter.*

B. The Department may conduct such review of the work and field analysis as deemed necessary to protect the public health and integrity of the Commonwealth's environment.

C. Within 21 calendar days from the date of application for treatment works sized at 1,000 gallons per day or smaller, and within 60 calendar days from the date of application for treatment works sized at more than 1,000 gallons per day, the Department shall (i) issue the requested approval, or (ii) set forth in writing the specific reasons for denial.

D. The Department shall establish an engineering design review panel to review the Department's decision to disapprove an onsite sewage system design. The Commissioner shall appoint four individuals licensed as professional engineers pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 with expertise in onsite sewage systems to serve on the engineering design review panel with (i) one representing the Department of Health, (ii) one representing the Department of Environmental Quality, (iii) one representing the Virginia Society of Professional Engineers, and (iv) one representing the American Council of Engineering Companies of Virginia. If a state agency is unable to provide a representative in accordance with this subsection, the Commissioner shall appoint another individual licensed as a professional engineer pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 with expertise in onsite sewage systems. The members of the design review panel shall appoint a member to serve as Chairman. The design review panel shall be designated a subordinate, as defined in § 2.2-4001, and shall meet as necessary.

E. When the Department denies an application pursuant to subsection *C* or *D*, the owner may appeal that decision in accordance with § 32.1-164.1. Alternatively, the owner, or the professional engineer responsible for an onsite sewage system design with the owner's written consent, may request an informal fact-finding conference before the engineering design review panel established in subsection D. The request must (i) be in writing, (ii) be received by the Commissioner within 30 days of the professional engineer's receipt of the Department's denial, and (iii) cite the reason or reasons for the request. The informal fact-finding conference shall be held within 45 calendar days of the request. The proceedings of the engineering design review panel shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Within 30 days following its receipt of the engineering review panel's written recommendations, the Department shall consider the recommendations of the engineering design review panel and approve the application or re-affirm its denial.

F. When the Department denies an application following review by the engineering design review panel, the owner may appeal that decision in accordance with § 32.1-164.1.

G. This section shall not be construed to require an owner to seek review by the engineering design review panel before appealing a permit denial pursuant to § 32.1-164.1.

H. This section shall not be construed to prohibit any locality from adopting or enforcing any ordinance duly enacted pursuant to Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2.

I. All treatment works designs permitted pursuant to this section shall comply with operation, maintenance, and monitoring requirements as set forth in regulations implementing this chapter.

2. That the Board shall, within 280 days, adopt regulations establishing performance requirements and horizontal setbacks necessary to protect public health and the environment for alternative systems permitted pursuant to the Board's regulations implementing this chapter. Such regulations shall include a requirement for comment period of at least 30 days, pursuant to § 2.2-4007.01, and

shall contain operation and maintenance requirements consistent with the requirements for alternative onsite sewage systems contained in § 32.1-164.