

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 90

An Act to amend and reenact §§ 32.1-163.1, 32.1-163.4, 32.1-163.5, 32.1-164.1:01, 32.1-176.5:2, and 32.1-248.3 of the Code of Virginia, relating to licensed onsite soil evaluators; terminology.

[H 566]

Approved March 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-163.1, 32.1-163.4, 32.1-163.5, 32.1-164.1:01, 32.1-176.5:2, and 32.1-248.3 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-163.1. Personal liability of sanitarians defined.

A sanitarian while acting within the scope of his employment in approving or denying applications for permits for onsite sewage disposal systems or while performing checks of or reviewing and approving field evaluations completed by ~~authorized~~ *licensed* onsite soil evaluators shall be subject to personal liability only for his gross negligence or intentional misconduct.

§ 32.1-163.4. Procedures for application backlogs; individuals approved to conduct evaluations for septic system or other onsite sewage system permit applications.

A. In any case where the local or district health department experiences a septic system or other onsite sewage system permit backlog of ~~fifteen~~ 15 working days from the application filing date, the Commissioner shall contract with ~~authorized~~ *licensed* onsite soil evaluators for the field evaluation of the backlogged application sites. The Department shall review these evaluations and may approve the permit applications upon finding that the evaluations are in compliance with the Board's regulations implementing this chapter. The Department shall not be required to do a field check of the evaluation prior to issuing the permit; however, the Department may conduct such field analyses as deemed necessary to protect the integrity of the Commonwealth's environment.

B. The Board, Commissioner, and Department of Health shall accept private evaluations for septic system or other onsite sewage system permit applications only from ~~authorized~~ *licensed* onsite soil evaluators.

C. The Board's regulations shall include a definition of backlog providing a set number or a percent of the received applications.

§ 32.1-163.5. Onsite sewage evaluations.

A. Notwithstanding other provisions of this chapter, for purposes of subdivision review, permit approval, and issuance of letters for residential development, the Board, Commissioner, and Department of Health shall accept private site evaluations and designs, in compliance with the Board's regulations for septic systems and other ~~on-site~~ *onsite* sewage systems, designed and certified by a licensed professional engineer, in consultation with an ~~authorized on-site~~ *licensed onsite* soil evaluator, or by an ~~authorized on-site~~ *a licensed onsite* soil evaluator. The evaluations and designs included within such submissions shall be certified as complying with the Board's regulations implementing this chapter.

B. The Department shall not be required to perform a field check of private evaluations and designs prior to issuing the requested letter, permit or approval; however, 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. Within ~~fifteen~~ 15 working days from the date of written submission of a request for approval of a site evaluation and design for a single lot construction permit, and within ~~sixty~~ 60 days from the date of written submission of a request for approval of a site evaluation and design for multiple lot certification letters or subdivision review, the Department shall (i) issue the requested letter, permit or approval or (ii) set forth in writing the specific reasons for denial. If the Department fails to take action to approve or disapprove the designs, evaluations, or subdivision reviews within the time specified herein, the designs, evaluations or subdivision reviews shall be deemed approved and the appropriate letter, permit or approval shall be issued. Notwithstanding any other provision of law or the provisions of any local ordinance, counties, cities and towns shall comply with the time limits set forth in this subsection.

C. Nothing in this section shall authorize anyone other than an individual licensed as a professional engineer pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 to engage in the practice of engineering.

D. The provisions of this section shall not apply to any locality that has entered into a contract with the Board of Health in accordance with Chapter 678 of the 1994 Acts of Assembly nor to a proprietary, pre-engineered septic system deemed by the Department to comply with the Board's regulations.

§ 32.1-164.1:01. Onsite Sewage Indemnification fund.

A. There is hereby created the Onsite Sewage Indemnification fund whose purpose is to receive moneys generated by a portion of the fees collected by the Department of Health pursuant to subsections

C and E of § 32.1-164 and appropriated by the Commonwealth for the purpose of assisting any Virginia real property owner holding a valid permit to operate an onsite sewage system when such system or components thereof fail within three years of construction and such failure results from the negligence of the Department of Health. The fund may also be used, in the discretion of the Board, to support the program for training and recognition of ~~authorized~~ *licensed* onsite soil evaluators.

B. Ten dollars of each fee collected by the Department of Health pursuant to subsections C and E of § 32.1-164 shall be deposited by the Comptroller to this fund to be appropriated for the purposes of this section to the Department of Health by the General Assembly as it deems necessary.

C. The owner of an onsite sewage system that has been permitted by the Department of Health may cause, by filing a request for payment from the fund within one year from the date the system or components thereof failed, the Commissioner to review the circumstances of the onsite sewage system failure, if the onsite sewage system has failed within three years of construction. Upon the Commissioner's finding that the onsite sewage system was permitted by the Department and (i) the system or components thereof failed within three years of construction; (ii) that specific actions of the Department were negligent and that those actions caused the failure; and (iii) that the owner filed a request for payment from the fund within one year from the date the system or components thereof failed, the Commissioner shall, subject to the limitations stated herein, reimburse the owner for the reasonable cost of following the Board's regulations to repair or replace the failed onsite sewage system or components thereof.

D. Prior to receiving payment from the fund, the owner shall follow the requirements in the Board's regulations to repair or replace the failed onsite sewage system or components thereof.

E. The total amount an owner may receive in payment from the fund shall not exceed \$30,000. Only the costs of the system that failed or the costs of labor and equipment required to repair or replace the failed onsite sewage system or components thereof are reimbursable by the fund.

F. If the Commissioner finds that the system was permitted by the Department and has failed within three years of construction and that the failure resulted from faulty construction or other private party error, the Commissioner may assist the owner of the failed system in seeking redress from the system's builder or other private party.

G. Every request for payment from the fund shall be forever barred unless the owner has filed a complete application as required by the Department. The request shall be filed with the Commissioner within one year from the date that the onsite sewage system or components thereof first failed. However, if the owner was under a disability at the time the cause of action accrued, the tolling provisions of § 8.01-229 shall apply. The owner shall mail the request for payment from the fund via the United States Postal Service by certified mail, return receipt requested, addressed to the Commissioner.

In any action contesting the filing of the request for payment from the fund, the burden of proof shall be on the owner to establish mailing and receipt of the notice in conformity with this section. The signed receipt indicating delivery to the Commissioner, when admitted into evidence, shall be prima facie evidence of filing of the request for payment from the fund under this section. The request for payment from the fund shall be deemed to be timely filed if it is sent by certified mail, return receipt requested, and if the official receipt shows that the mailing was within the prescribed time limits.

Notwithstanding any provision of this article, the liability for any payment from the fund shall be conditioned upon the execution by the owner of a release approved by the Attorney General of all claims against the Commonwealth, its political subdivisions, agencies, and instrumentalities and against any officer or employee of the Commonwealth in connection with or arising out of the occurrence complained of.

H. The Commissioner and the Attorney General shall cooperatively develop an actuarially sound program and policy for identifying, evaluating, and processing requests for payment from the fund.

I. If the Commissioner refuses the request for payment from the fund, the owner may appeal the refusal to the State Health Department Sewage Handling and Disposal Appeal Review Board.

The Board may promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) for the administration of the fund consistent with this chapter.

In the event the fund is insufficient to meet requests for payment from the fund, this section and the creation of the fund shall not be construed to provide liability on the part of the Department or any of its personnel where no such liability existed prior to July 1, 1994.

§ 32.1-176.5:2. Prohibition on private well construction.

A. No private well shall be constructed within 50 feet of the property line with an adjacent property of three acres or larger that is used for an agricultural operation, as defined in § 3.2-300. The following shall be exempt: (i) the owner of the adjacent property that is used for an agricultural operation may grant written permission for construction within 50 feet of the property line; or (ii) certification that no other site on the property complies with the Board's regulations for the construction of a private well.

B. The Department shall accept private site evaluations and designs, in compliance with the Board's regulations for the construction of private wells, designed and certified by a licensed professional engineer, in consultation with ~~an authorized~~ *a licensed* onsite soil evaluator, or by ~~an authorized~~ *a*

licensed onsite soil evaluator. The evaluations and designs included within such submissions shall be certified as complying with the Board's regulations implementing this chapter. The Department shall not be required to perform a field check of private evaluations and designs prior to issuing the requested letter, permit, or approval. However, the Department may conduct such review of the work and field analysis as deemed necessary to protect the public health, integrity of the Commonwealth's environment, and the provisions of this chapter.

C. The Department, prior to issuing a permit, shall require any owner applying for a permit to construct a private well pursuant to the exemptions in subsection A to submit documentation that affirms the well construction site complies with the provisions of this section.

§ 32.1-248.3. Environmental Health Education and Training Fund.

There is hereby created the Environmental Health Education and Training Fund, whose purpose is to receive moneys generated by the civil penalties collected by the Department pursuant to § 32.1-164 and appropriated by the Commonwealth for the purpose of supporting, training, educating, and recognizing public- and private-sector individuals in all areas of ~~Environmental Health~~ *environmental health*, including ~~Authorized Onsite Soil Evaluators~~ *licensed onsite soil evaluators* and Department employees. Civil penalties collected by the Department shall be deposited by the Comptroller to this fund to be appropriated for the purposes of this section to the Department by the General Assembly as it deems necessary. The fund may also be used, in the discretion of the Board, for research to improve public health and for protection of the environment.