

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 747

An Act to amend and reenact §§ 32.1-163, 32.1-163.1, 32.1-164, 32.1-164.1, 32.1-164.1:1, 32.1-166.6, 32.1-166.10, and 32.1-176.4 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 32.1-163.4 and 32.1-164.1:01, relating to certain application fees and onsite sewage systems.

[S 415]

Approved April 11, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-163, 32.1-163.1, 32.1-164, 32.1-164.1, 32.1-164.1:1, 32.1-166.6, 32.1-166.10, and 32.1-176.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 32.1-163.4 and 32.1-164.1:01 as follows:

§ 32.1-163. Definitions.

As used in this article, unless the context clearly requires a different meaning:

"Alternative discharging sewage system" means any device or system which results in a point source discharge of treated sewage for which the Board may issue a permit authorizing construction and operation when such system is regulated by the State Water Control Board pursuant to a general Virginia Pollutant Discharge Elimination System permit issued for an individual single family dwelling with flows less than or equal to 1,000 gallons per day.

"Authorized onsite soil evaluator" means a person possessing the qualifications specified by the Board who has successfully completed the course and testing to be authorized to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for traditional onsite sewage disposal systems.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm or association which owns or proposes to own a sewerage system or treatment works.

"Review Board" means the State Sewage Handling and Disposal Appeals Review Board.

"Regulations" means the Sewage Handling and Disposal Regulations, heretofore or hereafter enacted or adopted by the State Board of Health.

"Sewage" means water-carried and non-water-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Sewerage system" means pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Subsurface drainfield" means a system installed within the soil and designed to accommodate treated sewage from a treatment works.

"Transportation" means the vehicular conveyance of sewage.

"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, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment.

§ 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 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 working days from the application filing date, the Commissioner shall contract with authorized 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 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.

§ 32.1-164. 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, 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 groundwater. 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. 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 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.

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) Groundwaters,

(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. ~~The Board may prescribe a reasonable A fee; not to exceed fifty dollars, to 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 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 Board prescribes such fee and 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 (§ 9-6.14:1 et seq.).

E. ~~Further, the Board may prescribe a reasonable fee; not to exceed fifty dollars, to 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 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, 1996, 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. 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.

§ 32.1-164.1. Appeals from denials of septic tank permits.

A. Whenever administrative action is taken to deny a septic tank permit or to grant a septic tank permit with conditions *or to refuse to issue, or grant with conditions*, a letter recognizing the appropriateness of onsite sewage site conditions in lieu of issuing an onsite sewage system permit, the applicant shall be advised in writing of the administrative remedies that are available to obtain a reversal of the denial *or refusal* or a modification or elimination of the conditions, or, if no further administrative remedies are available, of the right of appeal provided for hereinafter. After exhausting his administrative remedies, as set forth in § 32.1-164.1:1 et seq., any person aggrieved by a case decision of the Review Board shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

The decision 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 system is located so as to be binding notice to the public, including subsequent purchases of the land in question.

B. The holder of any permit for a septic tank issued with conditions shall have the permit recorded in the land records of the clerk of the circuit court having jurisdiction over the site of the septic system. The holder of the permit and any subsequent holders of the permit through land purchase or transfer shall be bound by the conditions stated in the permit unless the holder or subsequent holder obtains an additional permit for modification or alteration of the septic system to meet any new use conditions.

C. In adopting regulations prescribing criteria for the granting or denial of permits for septic tanks, the Board shall consider varying circumstances such as population density, extent of use of the septic tank and such other circumstances as may affect the stringency of the criteria necessary to protect the public health and promote the general welfare and may provide for the issuance of permits for septic tanks subject to such conditions as may be necessary to protect the public health.

D. Upon receipt of an application for a septic tank permit *or a letter recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits*, the local health department shall notify the governing body of the county or city where the septic tank will be located or the official designated by the governing body for the purpose and shall provide such information concerning the application and the actions taken on the application as the governing body or officer may request.

§ 32.1-164.1:01 Onsite Sewage Indemnification Fund.

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 § 32.1-164 C and E and appropriated by the Commonwealth for the purpose of assisting any Virginia real property owner holding a valid septic tank or other onsite sewage system permit when such system fails 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 onsite soil evaluators.

Ten dollars of each fee collected by the Department of Health pursuant to § 32.1-164 C and E 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.

The owner of a septic tank or other onsite sewage system permitted by the Department of Health may request the Commissioner to review the circumstances of the onsite sewage system failure and grant indemnification from the Fund, if the septic tank or other onsite sewage system is permitted by the Department and has failed within three years of construction. Upon finding that the system was permitted by the Department and has failed within three years of construction and that the failure resulted from Department of Health negligence, the Commissioner shall grant the request for indemnification. 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, the Commissioner may assist the owner of the failed system in seeking redress from the system's builder.

If the Commissioner refuses the request for indemnification, the requesting individual 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 (§ 9-6.14:1 et seq.) for the administration of the Fund consistent with this chapter.

In the event the Fund is insufficient to meet requests for indemnification, 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.

§ 32.1-164.1:1. Validity of certain septic tank permits.

Any septic tank permit issued shall be ~~deemed~~ valid for a period of ~~fifty-four~~ eighteen months from the date of issuance unless there has been a substantial, intervening change in the soil or site conditions where the septic system is to be located. *However, if a building permit has been obtained or building construction has commenced, the permit may be extended for an additional eighteen months. Applicants shall be informed of the septic tank permit validity period and advised to apply only when ready to begin construction.*

§ 32.1-166.6. Review Board to hear appeals.

The Review Board shall hear all administrative appeals of denials of onsite sewage disposal system permits *and appeals of refusals of indemnification requests filed pursuant to § 32.1-164.1:01* and render its decision on any such appeal, which decision shall be the final administrative decision. Proceedings of the Review Board and appeals of its decisions shall be governed by the provisions of Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9.

In addition to the authority to render a final administrative decision, the Review Board, in its discretion, may develop recommendations for alternative solutions to the conditions resulting in denial of the permit *or refusal to indemnify* and remand the case to the Department of Health for reconsideration.

§ 32.1-166.10. Appeals fees.

The Department shall establish a reasonable fee to be charged to the ~~applicant~~ *appealing party* commensurate with the time and expenses related to the handling of each appeal.

§ 32.1-176.4. Powers and duties of Board and Department; regulations; fees.

A. The Board shall adopt regulations pertaining to the location and construction of private wells in the Commonwealth. The Department shall enforce the provisions of this article and any rules and regulations adopted pursuant thereto. However, for private wells located in the County of James City, the County of Fairfax, and the City of Suffolk, the governing body of such county or city may, by ordinance, establish standards which are consistent with Board standards pertaining to location and testing of water therefrom and more stringent than those adopted by the Board pertaining to construction and abandonment. However, any county or city granted these additional powers shall not require certification for drillers of monitoring wells and any recovery wells associated with such monitoring wells.

B. ~~The Board may prescribe a reasonable A fee, not to exceed twenty-five of forty dollars, to~~ *shall* be charged for filing an application for a private well construction 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. 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 replacement of a well. ~~If the Board prescribes such fee and 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 the 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.