

March 5, 2010

GMP #61

MEMORANDUM

TO: District Directors
Environmental Health Managers
Environmental Health Supervisors
Environmental Health Specialists

FROM: Gary L. Hagy, Assistant Director
Division of Onsite Sewage and Water Services

SUBJECT: Questions From the Field on SB 415
Onsite - SB 415 - Questions

Attached are questions we received from field staff regarding the implementation of SB 415. I hope the answers are clear and easy to understand. If not, or if you have additional questions, please send me your questions or call me.

Attachment

cc: Project Managers
Soil Scientists
DOSWS Staff

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QUESTIONS REGARDING SB 415

GMP #61

Fees

1.If an applicant does not want a well site located at the time they apply for a letter, do they still have to pay the well fee?

A:In most cases, yes. We have to consider where the well is going to go when we finalize the location of a drainfield. The location of the well impacts the location of the drainfield as well as adjacent drainfields. A fee should be collected for both well and septic system. However, a few localities have substantial local well permit fees. These fees normally are not collected until the applicant actually applies for a well permit. In these cases, it may be easier to deal with all well fees at one time rather than collecting the state fee with the letter and the local fees with the application for a permit. Regardless, the location of the well must be determined and documented prior to issuance of a letter.

2.Is the \$10 portion of the fee that goes to the indemnification fund refundable if the application is denied.

A:Yes.

3.Are certification letter fees refundable to individuals for denials for primary residences?

A:The refund of certification letter fees are refundable under the same circumstances as permit fees.

4.Have the fees for ATUs and discharge systems also changed to \$75?

A:Yes.

5.Do the Fee Regulations need to be rewritten before we can charge the new fees for letter and permits?

A:No. The General Assembly amended the Code of Virginia and set the fees. The amendment removed the Board of Health's discretion to set the fees.

Subdivisions

6.Do we collect a fee for subdivision reviews?

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A. The answer to this question depends upon your subdivision ordinance and how subdivisions are reviewed by the local health department. If your local ordinance requires that a permit (or a certification letter now) be issued for each proposed lot, then an application must be filed **for each proposed lot in the subdivision at the time of submission**, and a fee should be collected for each application. If you require such an application, then you must either issue a permit, a certification letter or a denial letter for **each proposed lot in the proposed subdivision** upon completion of the evaluation.

If your local ordinance does not require the issuance of a permit for each lot in the subdivision, then you do not require an application for each lot, and you simply sign off on the plat or otherwise provide the local government with an approval of the subdivision. In this case a state fee should not be collected.

7. It is understood that present subdivision evaluation procedures still apply. Once a developer requests a permit or letter, will the developer be required to submit an application for each individual lot in a subdivision for a permit or a letter, or just one application?

A: Review and approval of subdivisions are local functions operating under local ordinances. However, after the subdivision review, if the developer wants a letter or a permit for a specific lot (or for each of the lots), he must submit an application and pay the fee for each lot for which he wants a letter or a permit.

Backlog

8. How often do I need to measure my backlog?

A: The backlog should be measured as often as the director or manager deems necessary to make sure they are adequately managing the backlog. The Office of Environmental Health Services wants the information sent to them quarterly.

9. Many districts have historically calculated backlogs on the time period to initial site visit. Is it permissible to calculate all applications with site visits prior to July 1 as before and all applications after July 1 under the new

criteria? (It does not seem fair to change calculation methods as of July 1 which could put a district in a questionable backlog situation when they were not in such as of July 1.)

A:As unfair as it may seem to some, no. The backlog is calculated based on the complete application receipt date and the date the permit is issued. That is what the legislature is interested in - how long are citizens waiting for the issuance of a permit when they are ready to build. No one should have been caught off guard regarding the concern of the legislature about backlogs. The subcommittee began hearings last year about it and expressed their concerns. The purpose of defining the backlog is not to "define a backlog out of existence" but to reflect the time it takes one who is ready to build to receive a permit after one submits an application.

10.Will a GMP or other information be forthcoming concerning a formula to calculate backlogs?

A:GMP 54 defines what a backlog is and how it is calculated.

11.Who needs to be contacted, or have a report submitted to, if a district has a backlog exceeding 15 working days?

A:The first person that should be notified, if he or she has not been already notified, is the district health director. Then the Office of Environmental Health Services should be notified.

12.How often will average processing time reports have to be submitted by districts (<15 working day backlog or not) and to whom?

A:Send average processing time reports quarterly to Robert W. Hicks Director, Office of Environmental Health Services.

AOSEs

13.When will a GMP or other direction come out on how to handle the bid process or other processes for hiring Authorized Onsite Soil Evaluators?

A: That is the next priority with SB 415.

14.Who determines when an AOSE must be hired?

Questions

A:The district health director after conferring with the environmental health manager will make this decision.

15.How long does a district have to get an AOSE hired and processing applications once a 15 day backlog occurs? What if the average processing time is less than 15 days before the AOSE is functioning? Is there a provision not to hire and AOSE if the district feels that the average processing time will soon drop or be reduced to less than 15 working days?

A:It is difficult to answer the first question at this time since we don't yet have a procedure for hiring AOSEs. Ideally, an AOSE should be hired as soon as possible after 10% of the backlog exceeds 15 days old. The AOSE is hired to conduct field evaluations for those applications greater than 15 work days old only. These applications should receive high priority. If they are handled before an AOSE is able to contract to do the work, and there no longer exists a backlog of greater than 15 working days for more than 10% of the active applications, an AOSE is no longer required. If the processing time will drop below 15 days within a day or two, you can probably get by without hiring an AOSE.

16.What if there are no AOSEs available or willing to work in a particular district or area, what must the Department do to comply with SB 415 other than continue their application processing?

A:Nothing. If no one is available or no one will contract to do the work, the department should document their attempts to contract with an AOSE and continue application processing and try to reduce the backlog ASAP. Remember, the use of overtime, getting assistance from other districts, or other actions to process applications are options to be used.

Wells

17.How can we issue letters for neighboring sites if we don't know where the wells will be?

A:The well has to be located on the plat provided with the letter. The location of existing and proposed wells, both on the property in question and adjacent properties must be determined before a letter can be issued.

Questions

18. Certification letters are good forever unless site conditions change. Can a well be included in certification (either separately or in conjunction with a drainfield)?

If a certification letter can show a well, but the property is not developed for some time, then does this mean that all adjacent property must have the area within the well arc excluded from future sewage system use? (This leads to potential exclusion of property just by issuance of a certification letter. Problems could also come from dry holes, changes from IIIC to IIIB construction later, and extension of public water into an area, etc.). Is a well on a certification letter good for the lifetime of the lot?

A: When certification letters are issued for lots that will have both a sewage disposal system and a well, both the sewage disposal system and the well should be located on the plat.

The impact of this letter on adjacent properties is the same as, if not greater than, if a permit had been issued; i.e., minimum separation distances from these areas must be maintained when evaluating sites on adjacent properties. The certification letter is valid until the permit for the construction of the sewage disposal system is issued and the system installed, inspected and approved. When the permit for the construction of the sewage disposal system is issued, if a well is still needed, the permit will show the well site. If the well site is not needed, the previously approved well site is void.

19. Is a well required for the issuance of a certification letter or can the application be processed for a sewage disposal system only (assuming there is not public water or another water supply available)?

A: Unless there is a water supply available at the time of application for a letter, the well site should be located and documented prior to the issuance of the letter.

20. Is it possible to issue a certification letter for a well only?

A: No. A permit should be issued when the application is for a well only.

21. Is there a conflict between the Private Well Regulations which requires a well permit to be issued within 60 days and the issuance of a certification letter which contains a well, where they may be a lengthy period of time before the letter is reclaimed as a permit?

A:No.

Validity

22.Is a well-only permit good for 18 months or 54 months?

A:54 months.

23.If an application for a sewage system was submitted prior to July 1, 1994, will the construction permit be valid for 18 months or 54 months? If a permit was issued prior to July 1, 1994, will a reissued permit be valid for 18 months or 54 months? The basic question is which set of regulations and procedures do we apply to be fair, those at the time of application or permitting or those in effect at a later date?

A:Permits issued for applications received prior to July 1, 1994 are valid for 54 months. If you issued such permits for only 18 months, don't worry about it. However, you should change the file copies to reflect 54 months so the applicant does not have to reapply in 18 months and pay another fee. All permits issued pursuant to applications received after July 1, 1994 (including applications for renewals of permits issued prior to July 1, 1994) are valid for 18 months.

Administration

24.Do we have the authority to ask for documentation that one is ready to build?

A:Yes. The Code of Virginia says that we are to inform the applicants of the septic tank permit validity period and advise them to apply for permits only when ready to begin construction.

25.If the applicant wishes to meet the department on the site but he wants to schedule the appointment 3 weeks or longer in advance, is application considered active or inactive?

A:Inactive. The Department should not be penalized by classifying this application as a "backlogged" application because we are waiting on the applicant.

26. Soil consultant onsite information does not always tie the sewage system location down to 10 feet. Will this now be required of consultants?

A: Prior to the issuance of a certification letter, if the approved area is not located on a survey plat, the department must be assured that the area boundaries can be located within 10 feet. How that is done, and by whom, is up to the discretion of the district health department.

27. How is it suggested that counties which do not have tax maps or property locating methods keep track of issued certification letters and their specific requirements so they can be applied to applications for letters and permits on adjacent properties? (Certification letters are transferable to other owners without notification to the local health department until application for a permit is made.)

A: I would imagine they would use the same type of system they are using now to keep track of permits issued on adjacent properties. The type of system used is largely up to the local health department and what they feel works for them. How do these counties keep track of issued permits and their specific requirements?

28. Are building officials authorized to issue a building permit on a certification letter?

A: A good question, which should probably be answered by the local building official. Different local building officials will probably issue permits based on letters and others won't. However, § 32.1-165 of the Code of Virginia states:

No county, city, town or employee thereof shall issue a permit for a building designed for human occupancy without the prior written authorization of the Commissioner or his agent. The Commissioner or his agent shall authorize the issuance of such permit upon his finding that safe, adequate and proper sewage treatment is or will be made available to such building, or upon finding that the issuance of said permit has been approved by the Review Board.

Some building officials may interpret the certification letter as "written authorization of the Commissioner or his

agent" and that "safe, adequate and proper sewage ... treatment will be made available."

29.If county building officials/administrators/boards of supervisors fail to cooperate in building permit application and issuance and state that it is the responsibility of the Department, what is suggested to be done to obtain compliance with the GMP?

A:Try to get some type of verification from the applicant that he or she intends to begin construction within 18 months (copy of contract with builder, copy of loan commitment, statement from applicant, etc.). Most people will probably be honest about their intentions. In other words, try to do the best you can, that is all anyone can ask.

30.What plans are in place to rework onsite applications to address public information on the process itself and blocks which could be checked for permits, certification letters, and other information which would make processing more user-friendly and uniform for the public?

A:At this time we don't have any definite plans on this subject. However, the Sewage Handling and Disposal Regulations will have to be amended and other regulations may have to be drafted to fully implement SB 415. During this process we will consider whether the applications, permits, etc., should be amended. Any suggestions should be sent to the Division of Onsite Sewage and Water Services.

Permits & Letters

31.If someone wants to get a permit to install the system within 18 months, but is not planning to build the structure within that time frame, can we issue them a permit even though they are not applying for a building permit?

A:Yes, if they say they want to install the system now (or within 18 months) but are not planning to build for a while, issue them a permit. However, it is a good idea to advise the owner (verbally and on the permit) that they need to take care when constructing the structure so they do not damage or destroy the system during construction. They should not drive equipment or place construction materials on the system.

32.If someone wants to install the drainfield now and the pump station and appurtenances later, do they have to re-apply for a permit after 18 months?

A:Yes.

33.Are permits issued prior to July 1, 1994 transferable?

A: Yes.

34.Are permits issued prior to July 1, 1994 redeemable for a letter?

A:No. The owner must apply for and pay the fee for a letter as if he was applying for a renewal of a permit.

35.What are we notarizing if the letter is being notarized?

A:The requirement to notarize the letter is optional. However, if the letter is to be recorded, the clerk of the court will most likely require an original letter that has been notarized. Some districts may elect to have all letters notarized so in the future they can verify the signature on the letter is actually the signature of health department personnel.

36.If the site will require an easement or a remote drainfield site, can a letter be issued?

A:The letter can only be issued after an easement in perpetuity has been recorded and is a part of the letter.

37.How do we handle letters for sites that require GMP 20 variances or variances issued by the commissioner?

A:The letter should be revised to state that at the time of issuance, the Department would issue a permit for a specific type of system; however, there is no guarantee that the type of system specified will be the one permitted in the future. However, that Department acknowledges that a permit will be issued unless there have been substantial physical changes in the soil or site conditions where the system would be located.

A revised draft letter will be prepared soon that will include such a paragraph for all letters.

38. Is there any difference in how close the sewage system location is to be noted for certification letters (10 feet) and permits?

A: The approved sewage disposal system area must be identified for letters. A survey plat showing the sewage disposal system area, provided by the owner, is one method (not the ONLY method) of identification. However, if the district health department so chooses, it may elect to document the location in other ways as long as the boundaries (all four corners if square or rectangular) of the area can later be located within 10 feet.

Please note, it is not the intent of the Department to require surveyed drainfield sites for ALL certification letters. To do so in all cases would be overly bureaucratic and an unnecessary expense and burden for the public. Common sense and a degree of reasonableness should be used.

Permits, on the other hand, should identify the approved area as definitively as possible. In many cases, the contractor must be able to locate approved drainfield more accurately than within 10 feet.

39. What type or notation could or should be made by a present environmental health specialist senior (EHS Sr.) who must issue a permit or approve construction of a system which was issued on a certification letter by a past EHS Sr. and the present EHS Sr. feels the letter should not have been issued or system not approved?

A: Once the certification letter is issued, the Department is committed to issuing a permit for a sewage disposal system unless there are substantial physical changes in the soil or site conditions where the system is to be located. If, at the time of application for a permit, it is discovered that the certification letter should not have been issued, and there has not been a substantial change in the soil or site conditions, a system should be designed that best fits the conditions on the site. A notation that the system being designed is deemed to be the best for the specific site and soil conditions may be added to the permit. Also, a statement that says the permit is being issued based on the certification letter probably should be added to all permits issued subsequent to certification letters.

40. Certification letters may be voided because of site changes. Does this include site changes on neighboring property

(barns, termite treatment, lot grading, illegal wells, etc.) which are not under the owner's control, or are we still obligated to accept a letter if no site change has occurred on the owner's property? If we are not obligated due to a neighbor's change, where do we stand in a liability issue?

A: If significant changes take place on neighboring property that would have prevented the issuance of the certification letter, the permit should not be issued and the owner notified in writing of the reasons why. However, most changes listed in the question (a barn or a termite treated building foundation) should not affect the issuance of a permit for a sewage disposal construction permit. However, the construction of a well could potentially be affected. This is where your relationship with the building official is important. Hopefully, the building official will not issue the permit for such construction without consulting the Department. It is then the Department's responsibility to check their records on adjacent properties to determine if the proposed construction impacts any letters or permits the Department has issued. The construction of an illegal well could impact the location of a sewage disposal system. (I assume by "illegal" you mean it was constructed without a permit.) If an illegal well is discovered, action should be taken against the driller and the owner should be advised that the well must be abandoned because it impacts the neighboring permit or letter. Another option that can be pursued is another site for the sewage disposal system. Just because the Department has issued a certification letter for a specific site does not necessarily mean that it is the only site on the property. If the owner agrees, the Department may look in other areas for a sewage disposal system site. However, in these instances, the owner's wishes should be followed.

41. If a permit issued prior to July 1, 1994, comes back in for reissuance and they do not wish to build, should the permit be revalidated and reissued or should a certification letter be issued? If a certification letter is needed, will the survey or 10 foot designation be necessary or is the past permit sketch satisfactory? Could the old prior permit be reissued as a permit, even though they are not planning to build within 18 months?

A: The preferred action would be to issue a certification letter so the individual would not have to keep revalidating the permit. This applies to permits that have not expired as well as those that have. The location of the drainfield

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should be identified as with any other letter or permit. If the sketch on the permit is good enough, it may suffice as a method of identifying the approved area. In any event, the process should be explained to the owner. I believe in most cases, if the owner does not plan to build within 18 months, he or she will opt for a letter that has no expiration date and is transferable over a permit that is good for only 18 months and is not transferable.

42. What is the priority for letters which are requested to be changed to permits to build? Once the request is made to change a letter to a permit, how long does the Department have to issue the permit? If the 15 day processing applies, when does the clock start?

A: Someone who wishes to change the letter to a permit will be prioritized the same as someone applying for permit who is ready to build (priority number 2 in GMP 51). The Department should issue the permit within 15 working days of when the owner requests the letter be converted to a permit. Since most of the work has already been completed, this should be attainable in most cases. The clock starts when the owner requests the conversion by filing an application and paying the fee (if an additional fee is required).

43. If a certification letter is issued with a surveyed drainfield location or otherwise located to within 10 feet, can that area be varied later to allow installation of a sewage system and/or a well? If so, is there any limit on the future permitted and installed location?

A: The letter certifies that the location noted is approved for a sewage disposal system. It does not mean that it is the only site on the property. The site can be varied later if the owner requests or if necessary. However, care must be taken to make sure that any changes do not impact any letters or permits issued on neighboring properties.

44. If an application for a sewage system was submitted prior to July 1, 1994 but has not been processed, do we need to advise the applicant about letters and building permits or require the applicant to obtain an application for a building permit?

A: Hopefully, by the time you read this, all applications submitted prior to July 1, 1994 have been processed. I would guess that some localities issued permits for all applications received prior to July 1 while other localities

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issued letters to some of these applicants. At this time I don't think it is (or was) critical whether a letter or a permit was issued in these cases.

45. Can all non-processed applications submitted prior to July 1, 1994 which do not have applications from building permits be excluded from the calculation of backlogs? (No application for building permit requirement was in place at that time, so all could possibly be excluded or the local department could go back and verify with the building official's office.)

A: Again, by the time you read this, I hope you do not have any active applications that were filed prior to July 1, 1994 (or at least very few)! Are you issuing letters or permits for these? If you are issuing letters, they would not be counted. If you are issuing permits, they should be counted.

Miscellaneous

46. Is SB 415 possibly an indication of future downsizing or de-emphasis of environmental health?

A: We have had not had any indication that is the case. The sub-committee appeared to pretty firm in their position that permitting of sewage disposal systems remain with the health department. However, they want to see the process speeded up.

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