

August 4, 1998

GMP #95

To: District Directors
District Environmental Health Managers
Office of Environmental Health Services

From: Donald J. Alexander, Director
Division of Onsite Sewage and Water Services

SUBJECT: Interpretation of § 330.B of the *Sewage Handling and Disposal Regulations*:
Completion Statements
Onsite - Interpretations - Completion Statements

Background: Section 330.B (formerly § 2.21.B) of the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-10 et seq., the “*Regulations*”) states, “Upon completion of the construction or modification of a sewage disposal system, the owner shall submit...a statement signed by the contractor that the construction work was completed in accordance with the construction permit, and when appropriate the plans and specifications approved for the project and substantially in accordance with Part IV of this chapter...”

The purpose and intent of this section is to ensure that a system is installed in accordance with its permit and with Part IV of the *Regulations*, to document the installer’s responsibility for the installation, and to provide documentation for the Department’s files of the name and address of the installer in case it becomes necessary in the future to contact the installer.

Contractors occasionally refuse to provide an owner with the required statement until he or she has paid for a job or for other reasons. In our increasingly contentious society, this inappropriate use of the completion statement often leaves an owner stranded without an approved system, since the Department will not issue an operation permit without the required completion statement. In many cases owners have filed requests for variances from § 330.B. This recurring problem saps valuable resources and directs our efforts away from protecting public health and the environment toward involvement in civil issues in which the Department has no authority or interest.

In addition to the problem stated above, local health departments are occasionally faced with a situation in which an owner has occupied a dwelling, even though he or she failed to submit the required completion statement at the time a system was installed and even though the local health department never issued an operation permit. Years later, because the owner needs a proper operation permit for various reasons such as selling the property, borrowing money, or constructing an addition, he or she comes to the Department seeking an operation permit. In these cases it is often impossible for the owner to obtain a completion statement.

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By occupying dwellings without a proper operation permit, the Department believes these owners are violating the provisions of the *Regulations*. However, if a system was properly installed and there is no detectable malfunction, there should be little public health significance associated with such violations. Variances from the *Regulations* are frequently requested as a means to remedy these situations, a process which is time consuming and takes away valuable resources from legitimate public health missions.

INTERPRETATION: There are other ways to realize the intent of the *Regulations*. Therefore, to assure that private contractual agreements and matters of equity are privately litigated, and so that the Department does not expend scarce resources addressing paperwork problems that, although important, have little direct public health significance, it shall be the Department's policy to accept either of the following in lieu of the statement required in § 330.B:

1. A completion statement from the licensed general contractor responsible for the construction project or from a licensed professional engineer saying that the system was installed in accordance with the construction permit and Part IV of the *Regulations*. If the system is in operation the statement must indicate that the system appears to be functioning properly. If the sewage system contractor is known the name and address of the contractor must also be provided.
2. A completion statement from the current owner of the property stating that, to the best of his or her knowledge, the system was installed in accordance with the construction permit and Part IV of the *Regulations*. If the system is in operation the statement must indicate that the system appears to be functioning properly. Along with the completion statement, the owner shall complete the attached Release and Hold Harmless agreement. If the sewage system contractor is known the name and address of the contractor must also be provided. Since the Release and Hold Harmless Agreement must be recorded in the land records of the appropriate Circuit Court, the owner must provide written documentation of such recording before an operation permit may be issued.

SCOPE: This policy is to be applied only where the Department has inspected a system and found it to be complete and without need of corrections. It is not intended to authorize re-inspection of systems by the Department, although casual, walkover inspections may be employed to assure that older systems are not malfunctioning. This policy **does not** in any way relieve septic system installers (contractors) of their responsibility to follow the *Regulations* and to install systems in accordance with properly issued permits. This policy applies only where an owner is unable to obtain the completion statement required by the *Regulations* and where that owner desires that the Department approve a system without the septic system contractor's completion statement. This policy does not apply to systems with formal plans.

ACTION: Effective immediately, whenever an owner has requested approval under this policy and has satisfied either of the items above, the local health department is authorized to issue an operation permit in accordance with this policy, unless it is aware of specific facts about the system, such as construction defects or improper functioning, that represent actual or potential threats to public health or ground and surface waters.

This RELEASE, HOLD HARMLESS, and INDEMNIFICATION AGREEMENT is made and entered into this ____ Day of _____, 199_, by and between _____, his/her HEIRS, SUCCESSORS, and ASSIGNS (“OWNER”) and the COMMONWEALTH OF VIRGINIA, acting through the Department of Health.

WHEREAS, OWNER contracted with _____ for the construction of a _____ (single family residence, etc.) on Lot ____, _____ Subdivision, _____ District, _____ County, Virginia; and

WHEREAS, pursuant to said contract _____ did install a sewage treatment and disposal system upon said property; and

WHEREAS, _____ has refused or is unable to deliver to OWNER the completion statement required pursuant to § 330.B of the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-10 et seq., the “*Regulations*”) regarding said sewage treatment and disposal system; and

WHEREAS, OWNER has requested that the _____ Health Department approve the sewage treatment and disposal system, even though the completion statement by the contractor cannot be produced.

Now, THEREFORE, in exchange for the mutual promises contained herein, the parties agree as follows: That for and in consideration of the approval of the sewage treatment and disposal system herein described, the OWNER, his/her SUCCESSORS, ASSIGNS, REPRESENTATIVES, AGENTS, and SUCCESSORS IN INTEREST, agree to, and hereby do, release the COMMONWEALTH OF VIRGINIA, including, without limitation, any and all of its agencies, boards, and commissions, their insurer(s), officers, directors, employees, representatives, and agents [hereafter referred to as the “COMMONWEALTH OF VIRGINIA”],

from any and all claims, complaints, demands, actions, causes of action, liabilities and obligations, of whatever source or nature, whether administrative, legal or equitable, whether known or unknown, which the OWNER now has or has in the future relating to or arising out of construction, installation, or approval of the aforesaid sewage treatment and disposal system described herein, including, without limitation, any and all claims due to the failure of any person to comply with federal, state, or local laws or regulations, claims under the Virginia Tort Claims Act, the Virginia Constitution, the United States Constitution and amendments thereto, or under common law. Furthermore, the OWNER expressly releases the COMMONWEALTH OF VIRGINIA from any and all claims, actions, causes of action, or obligations under the Virginia Onsite Sewage Indemnification Fund.

The OWNER also agrees to indemnify and hold harmless the COMMONWEALTH OF VIRGINIA for any sum of money or judgement against the COMMONWEALTH OF VIRGINIA as well as costs and reasonable attorneys fees incurred in the defense of any action arising out of or related to the approval of the sewage treatment and disposal system.

To provide notice of this agreement to future purchasers, the OWNER also agrees to record this agreement in the land records of the Circuit Court having jurisdiction over the site of the sewage treatment and disposal system.

Date: _____ (SEAL)
John M. Doe

COMMONWEALTH OF VIRGINIA
CITY / COUNTY OF

The foregoing instrument was signed and acknowledged before me this ____ day of _____, 199_, by _____.

Notary Public

My Commission expires: _____

