

## Part 9. Administrative

### 12 VAC 5-611-. Administration of regulations.

This chapter is administered by the following:

A. State Board of Health. The State Board of Health, hereinafter referred to as the board, has the authority and responsibility to promulgate, amend, and repeal, and enforce regulations necessary to ensure the safe and sanitary handling and disposal of sewage. Nothing in this chapter shall be construed to limit the board's authority to enforce any law administered by it, any regulation promulgated by it, or any case decision rendered by it or the Commissioner.

B. State Health Commissioner. The State Health Commissioner, hereinafter referred to as the commissioner, is the chief executive officer of the State Department of Health. The commissioner has the authority to act, within the scope of regulations promulgated by the board, for the board when it is not in session. The commissioner may delegate his powers under this chapter with the exception of his power to issue orders under § 32.1-26 of the Code of Virginia and 12 VAC 5-611-XXX. The commissioner has final authority to adjudicate contested decisions of subordinate delegated powers under this section prior to appeal of such decisions to the circuit court.

**Comment [DJA1]:** Reference to orders in this regulation.

C. State Department of Health. The State Department of Health, hereinafter referred to as the department, is designated as the primary agent of the commissioner for the purpose of administering this chapter.

D. District or local health directors. By delegation from the commissioner, the district or local health director is responsible for implementing and enforcing the operational activities as required by this chapter. The district or local health director may delegate to subordinates the authority to implement and enforce this chapter, including the authority to initiate administrative, civil, and criminal actions authorized pursuant to this chapter or any other lawful means.....

**Comment [ALK2]:** Trying to include language here that makes explicit the ability of the EHSS to seek summons for criminal actions as well as to implement civil penalties when they come along, etc....

E. Authorized Onsite Soil Evaluators (AOSE) and Professional Engineers in consultation with an AOSE. AOSEs and Professional Engineers in consultation with an AOSE have the authority to certify evaluations and designs and have those subject to deemed approval pursuant to Va. Code 32.1-163.5 and 32.1-164, they are authorized to implement this chapter and are responsible for complying this chapter.

### 12 VAC 5-611-. Sewage Handling and Disposal Advisory Committee.

The commissioner shall appoint a Decentralized Wastewater Management Advisory Committee consisting of 16 appointed members and five ex officio members. The commissioner shall appoint to the Decentralized Wastewater Management Advisory Committee one individual each from the following: a member of the Virginia Society of Professional Engineers; a member of the

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Consulting Engineers Council of Virginia; a member of the Virginia Association of Professional Soil Scientists who is an Authorized Onsite Soil Evaluator; a member of the Home Builders Association of Virginia; a member of the Virginia Association of Counties; a member of the Virginia Municipal League; a member of the Virginia Association of Realtors; a state university or college whose principal field of teaching is soil science; a member of the Virginia Environmental Health Association; a member of the Virginia Onsite Wastewater Recycling Association; a member of the Virginia Coalition of Environmental Associations and two citizens at large. Ex officio members shall consist of the Director, Division of Wastewater Engineering; an environmental engineer from Chesapeake Bay Local Assistance Department; a person with nonpoint source experience from the Department of Conservation and Recreation; Director, Bureau of Applied Technology, Department of Environmental Quality; and the Director, Division of Onsite Sewage; and Water Services; or their designees. The commissioner shall designate the chairperson.

Members shall serve at the discretion of the commissioner. The Advisory Committee may make recommendations to the board and the commissioner regarding decentralized wastewater treatment, handling and disposal regulations, policies, procedures, and programs of the department as it deems necessary. The committee shall meet at least annually. The committee shall establish its rules of order.

#### **12 VAC 5-611- . The State Health Department Sewage Handling and Disposal Appeals Review Board.**

There is established within the Department of Health under §32.1-166.1 the Sewage Handling and Disposal Appeals Review Board, hereinafter referred to as the Appeals Review Board. The Review Board is authorized to hear the appeals of permit denials, including denials of requests for variances, and the appeals of refusals of indemnification under the Onsite Sewage Indemnification Fund. In reviewing cases and rendering a final administrative decision, the Appeal Review Board shall be bound by the statutes, regulations, and policies in the same as the Department.

#### **12 VAC 5-611-. The Indemnification Fund**

*(Place holder language) An owner shall be responsible for repairing a failing or malfunctioning system as soon as practicable. An application for indemnification shall not be a stay of responsibility or a reason for delay, etc, etc...owner must install repair pursuant to proper permit before applying for indemnification...*

#### **12 VAC 5-611-. Permits valid on the effective date of this chapter.**

*(We need to wait and see what the impacts will be)*

**12 VAC 5-611-XX. Sewerage systems and/or treatment works required.**

A. The discharge of untreated sewage onto the land or into the waters of the Commonwealth is prohibited.

B. No owner, person, or occupant shall discharge treated or untreated sewage onto the land, into the soil or into the waters of the Commonwealth without a valid operating permit from the commissioner issued pursuant to the chapter or, as appropriate, a certificate issued by the Department of Environmental Quality in accordance with Title 62.1 of the Code of Virginia.

C. All buildings, residences, and structures designed for human occupancy, employment or habitation and other places where humans congregate shall be served by an approved sewerage system and/or treatment works. An approved sewerage system or treatment works is a system for which a certificate to operate has been issued jointly by the department and the Department of Environmental Quality or a system which has been issued a separate permit by the commissioner.

**12 VAC 5-611-. Right of entry.**

The commissioner or his designee shall have the right to enter any property to assure compliance with this chapter in accordance with the provisions of § 32.1-25 of the Code of Virginia.

**12 VAC 5-611-. Compliance with Virginia Administrative Process Act.**

The provisions of the Virginia Administrative Process Act of the Code of Virginia shall govern the promulgation and administration of this chapter and shall be applicable to the appeal of any case decision based upon this chapter.

**Comment [ALK3]:** This one seems obvious...we really don't have any choice. I think we can cut it.

**12 VAC 5-611- . Enforcement.** All decentralized wastewater systems governed by this chapter shall be constructed, maintained, and operated in compliance with the requirements as set forth in the Code of Virginia and this chapter. The commissioner may enforce this chapter through any means lawfully available.

A. Notice. Whenever the commissioner has reason to believe a violation of any law administered by the board or a violation of this chapter has occurred or is occurring, he may issue notice to the alleged violator. Such notice shall be made in writing, shall be delivered personally or sent by certified mail, shall cite the law, regulation, or regulations allegedly violated, shall state the facts which form the basis for believing the violation has occurred or is occurring, shall include a request for a specific action by the recipient by a specified time and shall state the penalties associated with such violations (See § 32.1-27 of the Code of Virginia).

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B. Criminal actions. When the commissioner deems it necessary he may, prior to giving notice, initiate criminal actions by requesting the Commonwealth's Attorney to bring such action or directly by requesting the magistrate to issue a summons.

C. When the commissioner deems it necessary he may, prior to giving notice, initiate administrative proceedings, seek civil relief through mandamus or injunctive relief, or any other lawful enforcement action.

D. Orders. Pursuant to § 32.1-26 of the Code of Virginia the board may issue orders to require any person to comply with the provisions of any law administered by it, the Commissioner or the Department or any regulations promulgated by the Board or to comply with any case decision of the Board or Commissioner. Such orders may require:

1. The immediate cessation or correction, or both, of the violation;
2. The acquisition or use of additional land, equipment, supplies or personnel to assure that the violation does not recur;
3. The submission of a plan to prevent future violations to the commissioner for review and approval;
4. The submission of an application for a variance; and
5. Any other corrective action deemed necessary for proper compliance with the regulations.

E. Hearing before the issuance of an order. Before the issuance of an order described in subsection D of this section, a hearing must be held with at least 30 days notice to the affected party of the time, place and purpose thereof, for the purpose of adjudicating the alleged violation or violations. The procedure at the hearing shall be in accordance with § 2.2-2040 of the Code of Virginia. The affected party may waive its right to hearing and consent to the issuance of an order.

F. Order; when effective. All orders shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of the affected party. Violation of an order is a misdemeanor. (See § 32.1-27 of the Code of Virginia.)

G. Emergency order or rule. The board may find that an emergency exists and issue an emergency order or rule in accordance with Va. Code 32.1-13 and -26 as is necessary for preservation of public health, safety, and welfare. The emergency order or rule shall state the reasons and precise factual basis upon which the emergency rule or order is issued. The emergency order or rule shall state the time period for which it is effective. An affected party may request a hearing pursuant to Va. Code § 2.2-4020 (formal hearing) within 30 days of the

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effective date of an emergency order for the purpose of adjudicating an emergency order or rule.

H. Compliance with effective orders. The commissioner may enforce all orders. Should any party fail or refuse to comply with any order, the commissioner may:

1. Apply to an appropriate court for an injunction or other legal process to prevent or stop any practice in violation of the order;
2. Seek mandamus against any owner that is a municipal corporation;
3. Request the Attorney General to bring an action for civil penalty;
4. Request the Commonwealth's Attorney to bring a criminal action or initiate a criminal action directly by requesting the magistrate to issue summons.

I. Not exclusive means of enforcement. Nothing contained in this section shall be interpreted to require the commissioner to issue an order prior to seeking enforcement of any regulations or statute through an injunction, mandamus or criminal prosecution.

**12 VAC 5-610-180. Suspension of regulations during disasters.**

If in the case of a man-made or natural disaster, the commissioner finds that certain regulations cannot be complied with and that the public health is better served by not fully complying with this chapter, he may authorize the suspension of the application of the regulations for specifically affected localities and institute a provisional regulatory plan until the disaster is abated.