

VIRGINIA:

BEFORE THE STATE HEALTH DEPARTMENT  
SEWAGE HANDLING AND DISPOSAL  
APPEAL REVIEW BOARD

IN RE: DONALD AND CATHERINE MAGALIS

Mr. & Mrs. Magalis appeal the Health Department's denial of their application for an onsite sewage disposal permit for year-around use on their property at lots 12 and 13, Block B, Section 4, Westmoreland Shores, Westmoreland County.

In June, 1986, Catherine Irby (now Mrs. Magalis) applied for a permit for a septic system to serve a two-bedroom dwelling for summer occupancy, weekends and holidays, on this property. The Department issued the conditional permit on July 9, 1986. Pursuant to § 2.13.J.6 of the *Sewage Handling and Disposal Regulations* (the "Regulations"), the conditional permit was placed in the land records of the Circuit Court of Westmoreland County; the permit as recorded restricted occupancy of the premises to the months from May through October, inclusive, and required notification of any future owner of the existence of the conditions. The system was installed, inspected, and approved in October, 1986.

Mr. & Mrs. Magalis built a cottage on the property, and moved in permanently in 1987. They state that changes in their financial circumstances made their home in northern Virginia prohibitively expensive, and that they did not worry about the condition on their permit because some of their neighbors permanently occupy residences served by systems in similar soils.

In early 1992, the Department began an enforcement action against Mr. & Mrs. Magalis for occupying the dwelling in violation of the condition in the permit. On February 27, 1992, Mr. & Mrs. Magalis applied to have the condition removed from their permit. The Department denied the application, and affirmed the denial after an informal hearing. Mr. & Mrs. Magalis then appealed to this Board; the Board heard the appeal on January 27, 1993.

Mr. Peacock, a VPI soil scientist who serves as consultant to the Department, reported gray soils, indicative of a water table, at depths of less than twelve inches; free water at depths of four to twenty-two inches; and impervious strata at 30-40 inches. Mr. Peacock concluded that the shallow water table is perched on the impervious strata, and that free water could be

expected at the surface after heavy rains. The lots in question clearly do not meet the requirements of the Regulations, especially as to depth to water table.

Mr. and Mrs. Magalis do not contend otherwise. Instead, they assert that their year-around occupancy of the house does not pose any different hazard from their neighbors who occupy their dwellings in all seasons, and whose septic systems are installed in soils similar to those on the Magalis' lot. There is no suggestion that any of the neighbors' permits has been issued improperly, or that Mr. & Mrs. Magalis have been singled out.

The Westmoreland Shores subdivision was developed in about 1957. About half the lots are developed, and most of the rest do not meet the requirements of the Regulations. Most of the septic systems in the subdivision were installed under earlier, less stringent versions of the Regulations, and there are a few other seasonal permits. The Department reports problems in this subdivision with failing septic systems, and states that there is no immediate prospect for community sewers in the area.

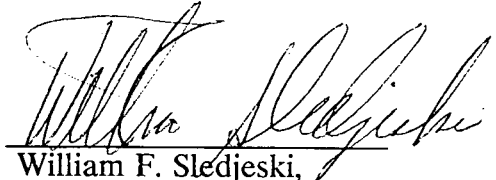
When a sewage disposal system has insufficient depth to the water table and especially where, as here, the system is subject to being *below* the water table, the effluent from the system cannot receive the aerobic treatment that is necessary for proper treatment and disinfection. Even though the system may not "fail" in the sense of backing up into the dwelling or breaking out to the surface, a too-shallow water table leads to a treatment failure and produces contaminated ground water, which can contaminate nearby surface waters or wells.

The Regulations contemplate conditional, seasonal permits for the situation where the seasonal water table drops in the summer months, allowing treatment to take place. In the case of the Magalis' lots, however, the perched water table is not subject to this seasonal variation. Although the water table may drop more rapidly when plants are growing and transpiring moisture, it nonetheless will rise after a major rain event, whatever the season. Accordingly, it appears that the Department already has stretched the Regulations by authorizing seasonal use. In any event, these soils plainly are not acceptable for year-around sewage disposal. The Department's denial of the Magalis' application is **AFFIRMED**.

Mr. & Mrs. Magalis may initiate a judicial appeal of this decision by filing a notice of appeal with the Board's Secretary, Ms. Constance Talbert, Office of Environmental Health Services, 1500 East Main Street, Richmond, Virginia 23219, within thirty-three days of the date of mailing of this order to them. Other requirements for perfecting an appeal are set out in Part 2A

of the Rules of the Supreme Court of Virginia and in the Administrative Process Act.

Although these lots are not suitable for conventional sewage treatment, the Board wishes to see every option exhausted before Mr. & Mrs. Magalis are deprived of the use of their home. Accordingly, the Board recommends that Mr. & Mrs. Magalis explore with the Department the possibility of a permanent pump and haul arrangement, of aerobic treatment, and of a recirculating sand filter.

  
William F. Sledjeski,  
Chairman

Dated: February 2, 1992

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