

VIRGINIA:

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

In Re: Otis Barton

ORDER

Mr. Barton appeals the denial of his application for a permit¹ for an onsite sewage disposal system on his property on Rt. 652 in Dickenson County. The site contains an existing three-bedroom house that does not have a sewage system (*i.e.*, that discharges by a straight pipe). The Department denied the application on October 7, 1999 and affirmed that decision on March 21, 2000, following an informal conference. The Board heard the appeal in Richmond on May 23, 2001. Mr. Barton elected to not appear.

The facts are not in dispute. They are set out in the Department's proposed Findings of Fact, which the Board adopts.

¹ Code § 32.1-164.B.1 authorizes the Board of Health to adopt regulations to include "[a] requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification or operation of a sewerage system" Section 2.12 of the Board's *Sewage Handling and Disposal Regulations* (the *Regulations* now are codified at 12 VAC 5-610-10 *et seq.*; § 2.12 is codified at 12 VAC 5-610-240) imposes that requirement. Section 1.4 of the *Regulations*, 12 VAC 5-610-40, authorizes the Commissioner to delegate his authority under the *Regulations* (except for variances and orders) to the Department and appoints the Department as the primary agent of the Commissioner for the purpose of administering the regulations. Pursuant to that authority, the Commissioner has delegated the authority to issue and deny permits; he has not delegated the authority to issue variances. Denials of permits and variances may be appealed to this Board for the final administrative decision pursuant to Code §§ 32.1-164.1 and 32.1-166.6.


The Department elects to treat this replacement of a straight-pipe discharge as a “repair” under the *Regulations*. Thus the Department does not demand full compliance with Part IV of the *Regulations* so long as the repair system is of a nature that “can be reasonably expected to reduce the risk to public health caused by the malfunctioning system.”²

Even by those relaxed criteria, this is not a suitable site. The Department denied the application based upon the unsuitable landscape position (subject to flooding), insufficient depth to the seasonal water table, rate of absorption too slow, and insufficient area for the drainfield. The Department’s data support these conclusions.

Mr. Barton does not offer any data to contradict the Department’s conclusions. As set forth in the Department’s proposed Findings, those conclusions are supported by overwhelming evidence that the soils simply are unsuitable. Accordingly the appeal will be DENIED.

If Mr. Barton wishes to appeal this decision, he may initiate an appeal by filing a notice of appeal with the Board's Secretary, Ms. Susan Sherertz, Division of Environmental Health Services, 1500 East Main Street, Richmond, Virginia 23219 within thirty-three days of the date of mailing of this order to her. 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.

² 12 VAC 5-610-280.C.2.



Felton T. Sessoms
Chairman

Dated: June 11, 2001

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