

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 32.1-164 of the Code of Virginia, relating to intentional discharge of*
 3 *untreated sewage; civil penalty.*

4 [S 453]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 32.1-164 of the Code of Virginia is amended and reenacted as follows:**8 **§ 32.1-164. Powers and duties of Board; regulations; fees; onsite soil evaluators; letters in lieu of**
 9 **permits; inspections; civil penalty.**

10 A. The Board shall have supervision and control over the safe and sanitary collection, conveyance,
 11 transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging
 12 sewage systems, and treatment works as they affect the public health and welfare. The Board shall also have
 13 supervision and control over the maintenance, inspection, and reuse of alternative onsite sewage systems as
 14 they affect the public health and welfare. In discharging the responsibility to supervise and control the safe
 15 and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall
 16 exercise due diligence to protect the quality of both surface water and ground water. Upon the final adoption
 17 of a general Virginia Pollutant Discharge Elimination permit by the State Water Control Board, the Board of
 18 Health shall assume the responsibility for permitting alternative discharging sewage systems as defined in
 19 § 32.1-163. All such permits shall comply with the applicable regulations of the State Water Control Board
 20 and be registered with the State Water Control Board.

21 In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board shall
 22 require and the Department shall conduct regular inspections of alternative discharging sewage systems. The
 23 Board shall also establish requirements for maintenance contracts for alternative discharging sewage systems.
 24 The Board may require, as a condition for issuing a permit to operate an alternative discharging sewage
 25 system, that the applicant present an executed maintenance contract. Such contract shall be maintained for the
 26 life of any general Virginia Pollutant Discharge Elimination System permit issued by the State Water Control
 27 Board.

28 B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and
 29 disposal of sewage by onsite sewage systems and alternative discharging sewage systems and the
 30 maintenance, inspection, and reuse of alternative onsite sewage systems. Such regulations shall be designed
 31 to protect the public health and promote the public welfare and may include, without limitation:

32 1. A requirement that the owner obtain a permit from the Commissioner prior to the construction,
 33 installation, modification or operation of a sewerage system or treatment works except in those instances
 34 where a permit is required pursuant to Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1.

35 2. Criteria for the granting or denial of such permits.

36 3. Standards for the design, construction, installation, modification and operation of sewerage systems and
 37 treatment works for permits issued by the Commissioner.

38 4. Standards governing disposal of sewage on or in soils.

39 5. Standards specifying the minimum distance between sewerage systems or treatment works and:

40 a. Public and private wells supplying water for human consumption,

41 b. Lakes and other impounded waters,

42 c. Streams and rivers,

43 d. Shellfish waters,

44 e. Ground waters,

45 f. Areas and places of human habitation,

46 g. Property lines.

47 6. Standards as to the adequacy of an approved water supply.

48 7. Standards governing the transportation of sewage.

49 8. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth.

50 9. A requirement that such residences, buildings, structures and other places designed for human
 51 occupancy as the Board may prescribe be provided with a sewerage system or treatment works.52 10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted
 53 through the then current sewage handling and disposal regulations, to treat and dispose of sewage as
 54 effectively as approved methods.55 11. Standards for inspections of and requirements for maintenance contracts for alternative discharging
 56 sewage systems.

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57 12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a requirement
58 that the owner obtain a permit from the Commissioner prior to the construction, installation, modification, or
59 operation of an alternative discharging sewage system as defined in § 32.1-163.

60 13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage systems.

61 14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage system
62 permits.

63 15. Performance requirements for nitrogen discharged from alternative onsite sewage systems that protect
64 public health and ground and surface water quality.

65 16. Consideration of the impacts of climate change on proposed treatment works based on research and
66 analysis from the Center for Coastal Resources Management at the Virginia Institute of Marine Science at
67 The College of William and Mary in Virginia.

68 C. A fee of \$75 shall be charged for filing an application for an onsite sewage system or an alternative
69 discharging sewage system permit with the Department. Funds received in payment of such charges shall be
70 transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a special fund to be
71 appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying
72 out the provisions of this title. However, \$10 of each fee shall be credited to the Onsite Sewage
73 Indemnification Fund established pursuant to § 32.1-164.1:01.

74 The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes
75 are below the federal poverty guidelines established by the United States Department of Health and Human
76 Services or when the application is for a pit privy or the repair of a failing onsite sewage system. If the
77 Department denies the permit for land on which the applicant seeks to construct his principal place of
78 residence, then such fee shall be refunded to the applicant.

79 From such funds as are appropriated to the Department from the special fund, the Board shall apportion a
80 share to local or district health departments to be allocated in the same ratios as provided for the operation of
81 such health departments pursuant to § 32.1-31. Such funds shall be transmitted to the local or district health
82 departments on a quarterly basis.

83 D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and
84 disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards,
85 give due consideration to economic costs of such standards in accordance with the applicable provisions of
86 the Administrative Process Act (§ 2.2-4000 et seq.).

87 E. Further a fee of \$75 shall be charged for such installation and monitoring inspections of alternative
88 discharging sewage systems as may be required by the Board. The funds received in payment of such fees
89 shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the
90 Department for the purpose of carrying out the provisions of this section. However, \$10 of each fee shall be
91 credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

92 The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes
93 are below the federal poverty guidelines established by the United States Department of Health and Human
94 Services.

95 F. Any owner who violates any provision of this section or any regulation of the Board of Health or the
96 State Water Control Board relating to alternative discharging sewage systems or who fails to comply with
97 any order of the Board of Health or any special final order of the State Water Control Board shall be subject
98 to the penalties provided in §§ 32.1-27 and 62.1-44.32.

99 In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its agent
100 may initiate a civil action against any user or users of an alternative discharging sewage system to recover
101 that portion of any civil penalty imposed against the owner which directly resulted from violations by the user
102 or users of any applicable federal, state, or local laws, regulations, or ordinances.

103 G. The Board shall establish and implement procedures for issuance of letters recognizing the
104 appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. The Board
105 may require that a survey plat be included with an application for such letter. Such letters shall state, in
106 language determined by the Office of the Attorney General and approved by the Board, the appropriateness
107 of the soil for an onsite sewage system; no system design shall be required for issuance of such letter. The
108 letter may be recorded in the land records of the clerk of the circuit court in the jurisdiction where all or part
109 of the site or proposed site of the onsite sewage system is to be located so as to be a binding notice to the
110 public, including subsequent purchases of the land in question. Upon the sale or transfer of the land which is
111 the subject of any letter, the letter shall be transferred with the title to the property. A permit shall be issued
112 on the basis of such letter unless, from the date of the letter's issuance, there has been a substantial,
113 intervening change in the soil or site conditions where the onsite sewage system is to be located. The Board,
114 Commissioner, and the Department shall accept evaluations from licensed onsite soil evaluators for the
115 issuance of such letters, if they are produced in accordance with the Board's established procedures for
116 issuance of letters. The Department shall issue such letters within 20 working days of the application filing
117 date when evaluations produced by licensed onsite soil evaluators are submitted as supporting
118 documentation. The Department shall not be required to do a field check of the evaluation prior to issuing

119 such a letter or a permit based on such letter; however, the Department may conduct such field analyses as
120 deemed necessary to protect the integrity of the Commonwealth's environment. Applicants for such letters in
121 lieu of onsite sewage system permits shall pay the fee established by the Board for the letters' issuance and,
122 upon application for an onsite sewage system permit, shall pay the permit application fee.

123 H. The Board shall establish a program for the operation and maintenance of alternative onsite systems.
124 The program shall require:

125 1. The owner of an alternative onsite sewage system, as defined in § 32.1-163, to have that system
126 operated by a licensed operator, as defined in § 32.1-163, and visited by the operator as specified in the
127 operation permit;

128 2. The licensed operator to provide a report on the results of the site visit utilizing the web-based system
129 required by this subsection. A fee of \$1 shall be paid by the licensed operator at the time the report is filed.
130 Such fees shall be credited to the Onsite Operation and Maintenance Fund established pursuant to
131 § 32.1-164.8;

132 3. A statewide web-based reporting system to track the operation, monitoring, and maintenance
133 requirements of each system, including its components. The system shall have the capability for pre-
134 notification of operation, maintenance, or monitoring to the operator or owner. Licensed operators shall be
135 required to enter their reports onto the system. The Department of Health shall utilize the system to provide
136 for compliance monitoring of operation and maintenance requirements throughout the state. The
137 Commissioner shall consider readily available commercial systems currently utilized within the
138 Commonwealth; and

139 4. Any additional requirements deemed necessary by the Board.

140 I. The Board shall promulgate regulations governing the requirements for maintaining alternative onsite
141 sewage systems.

142 J. The Board shall establish a uniform schedule of civil penalties for violations of (i) regulations
143 promulgated pursuant to subsection B and (ii) onsite treatment system pump-out requirements promulgated
144 pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) in localities in which compliance
145 with such onsite treatment system pump-out requirements is managed and enforced by the Department that
146 are not remedied within 30 days after service of notice from the Department. Civil penalties collected
147 pursuant to this chapter shall be credited to the Environmental Health Education and Training Fund
148 established pursuant to § 32.1-248.3.

149 This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for
150 any one violation shall be not more than \$100 for the initial violation and not more than \$150 for each
151 additional violation. Each day during which the violation is found to have existed shall constitute a separate
152 offense. However, specified violations arising from the same operative set of facts shall not be charged more
153 than once in any 10-day period, and a series of specified violations arising from the same operative set of
154 facts shall not result in civil penalties exceeding a total of \$3,000. Penalties shall not apply to unoccupied
155 structures which do not contribute to the pollution of public or private water supplies or the contraction or
156 spread of infectious, contagious, or dangerous diseases. The Department may pursue other remedies as
157 provided by law; however, designation of a particular violation for a civil penalty pursuant to this section
158 shall be in lieu of criminal penalties, except for any violation that contributes to or is likely to contribute to
159 the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or
160 dangerous diseases.

161 The Department may issue a civil summons ticket as provided by law for a scheduled violation. Any
162 person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing
163 by mail to the Department prior to the date fixed for trial in court. Any person so appearing may enter a
164 waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

165 If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability,
166 the violation shall be tried in the general district court with jurisdiction in the same manner and with the same
167 right of appeal as provided for by law. In any trial for a scheduled violation, the Department shall have the
168 burden of proving by a preponderance of the evidence the liability of the alleged violator. An admission of
169 liability or finding of liability under this section shall not be deemed an admission at a criminal proceeding.

170 This section shall not be interpreted to allow the imposition of civil penalties for activities related to land
171 development.

172 K. *Notwithstanding the provisions of subsection J, any person found to have intentionally discharged*
173 *untreated sewage onto land or into waters of the Commonwealth shall be subject to a civil penalty of not*
174 *more than \$50,000 per violation.*

175 L. The Department shall establish procedures for requiring a survey plat as part of an application for a
176 permit or letter for any onsite sewage or alternative discharging sewage system, and for granting waivers for
177 such requirements. In all cases, it shall be the landowner's responsibility to ensure that the system is properly
178 located as permitted.

179 ~~L. M.~~ Effective July 1, 2023, requirements promulgated under the Chesapeake Bay Preservation Act
180 (§ 62.1-44.15:67 et seq.) directly related to compliance with onsite sewage treatment system pump-outs shall

181 be managed and enforced by the Department in Accomack, Essex, Gloucester, King and Queen, King
182 William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland
183 Counties, and the incorporated towns within those counties. Licensed operators conducting onsite sewage
184 treatment system pump-outs pursuant to requirements promulgated under the Chesapeake Bay Preservation
185 Act (§ 62.1-44.15:67 et seq.) in localities managed and enforced by the Department shall provide a report on
186 the results of the site visit using a web-based reporting system developed by the Department. Any person who
187 violates the onsite treatment system pump-out requirements promulgated pursuant to the Chesapeake Bay
188 Preservation Act (§ 62.1-44.15:67 et seq.) in a locality in which compliance with such onsite treatment
189 system pump-out requirements is managed and enforced by the Department is guilty of a Class 3
190 misdemeanor.