

Virginia Department of Health
Office of Environmental Health Services, Division of Onsite Sewage and Water Services,
Environmental Engineering and Marina Programs
June 10, 2010

Talking points for the Emergency Regulations for Alternative Onsite Sewage Systems (12VAC5-613, Effective April 7, 2010)

Purpose and Disclaimer:

This document is intended to provide general information to interested stakeholders, including VDH staff, private consultants, and the public about the Board of Health's Emergency Regulations for Alternative Onsite Sewage Systems (12VAC5-613, the "Emergency Regulations"). In some cases the information has been simplified for clarity and in the interest of brevity. This document is not intended to offer official guidance or interpretations of the Emergency Regulations. All persons are advised to consult the Emergency Regulations for specific regulatory requirements.

Effective Date, General:

The Emergency Regulations are effective from April 7, 2010 through April 6, 2011.

VDH expects permanent regulations to replace the Emergency Regulations as they expire in April 2011. The permanent regulations are still being developed, however they should be similar to the Emergency Regulations.

The Emergency Regulations were adopted pursuant to legislation approved in 2009 which required the Board to adopt regulations within 280 days. According to that legislation (Ch. 296, Acts of Assembly 2009) the regulations must establish performance and operation and maintenance requirements for AOSS as well as specific horizontal setbacks for AOSSs necessary to protect public health and the environment.

In the context of the Emergency Regulations "installation date" means the date an application was filed with the local health department.

DPOR, through the Board for Waste Water and Water Operators and Onsite Sewage Professionals, is responsible for licensing AOSS operators.

What has Changed:

As of the effective date of the Emergency Regulations each owner of an AOSS in Virginia is required to establish a relationship with a licensed AOSS operator and to have that operator visit the system at least one time per year. For single-family systems this requirement is similar to Virginia's vehicle safety inspection program- systems are examined once a year to check for major deficiencies; however, the owner, through a licensed operator, is responsible for making sure that his AOSS functions properly at all times.

VDH cannot issue an Operation Permit for a new AOSS until the owner establishes a relationship with an operator.

Owners of new AOSSs will be required to have samples taken and analyzed periodically.

Owners of new AOSSs are required to record documentation in the land records identifying the presence of an AOSS and the associated operation and maintenance requirements.

There are new performance requirements that apply to all new AOSSs.

Owners are required to keep the Operation and Maintenance Manual, along with a copy of the operator's log, on their property and to make a reasonable effort to transfer those documents to the next owner when the property is sold.

What Do I Need to Do?

If you own an existing AOSS (i.e. installed prior to April 7, 2010) that serves no more than three residential dwellings, you should contact a licensed AOSS operator and make arrangements to have the operator visit your system and file a report with VDH some time before April 6, 2011. You are not required to sign a maintenance contract, but you do need to establish a relationship with an operator. The Emergency Regulations say that a relationship means an agreement between the owner of an AOSS and operator wherein the operator has been retained by the owner to operate the AOSS in accordance with the requirements of the Emergency Regulations.

If you own an existing AOSS that serves more than three residential dwellings or has a daily flow of more than 1,000 gallons, you should contact a licensed AOSS operator to learn more about the visiting and staffing requirements for large AOSSs.

In addition to the operator requirement noted above, owners of new AOSSs (i.e. installed after the effective date) are required to have their systems sampled periodically to help monitor the performance of AOSSs in Virginia.

Practice of Engineering:

Title 54.1 of the Code of Virginia addresses the practice of engineering and prescribes those activities that require a license as a professional engineer. VDH does not have authority to interpret that law or determine when engineering plans are required.

According to the law, in order to design AOSSs in Virginia, a person must either be a licensed professional engineer or a licensed onsite soil evaluator acting under an exemption from the licensing requirement. VDH does not advise designers regarding their individual licensing requirements.

VDH will require that all plans and specifications for AOSSs show a PE seal or contain a certification statement from a licensed onsite soil evaluator stating that the plans and

specifications were prepared under an exemption from the engineering licensing requirements of Title 54.1.

In these talking points the term “designer” is used generically to refer to either a licensed professional engineer or a licensed onsite soil evaluator. The Department of Professional and Occupational Regulation (DPOR) is responsible, through its regulatory boards, for implementing these licensing requirements. Questions should be directed to the appropriate regulatory board at DPOR.

AOSS Installed Prior to the Effective Date of the Emergency Regulations:

All AOSSs, regardless of installation date, are required to be visited by an operator at least one time per year. The operator is required to file a report documenting that visit. Owners are expected to maintain a “relationship” with a licensed operator. Maintenance contracts are NOT required.

For existing AOSSs, VDH will focus its efforts on making sure that a complete inventory of systems exists and that, as far as possible, all owners have been informed of the new regulatory requirements. Routine enforcement activities pertaining to operator license requirements for existing AOSSs are not expected under the Emergency Regulations in most Virginia counties.

In a few counties where local ordinances established operation and maintenance requirements for AOSS that predate the Emergency Regulations VDH staff may begin to conduct routine enforcement activities pertaining to operator visits and reporting provided that 1) a complete inventory of AOSSs exists; and 2) local health department staff has informed all owners, within practical limits, of the regulatory requirements.

Existing AOSSs are subject to the performance requirements in effect at the time they were installed.

AOSSs Installed After the Effective Date of the Emergency Regulations:

In order to obtain an Operation Permit for a new AOSS an owner will be required to establish a relationship with a licensed operator. Maintenance contracts are NOT required.

Owners of new AOSSs are required to have their systems visited by a licensed operator during the first six (6) months of operation. In addition, a laboratory sample of the effluent from the treatment unit (excluding septic tanks) must be taken during the first six (6) months of operation.

The Emergency Regulations establish performance requirements for all AOSSs installed on or after the effective date.

Repairs of Existing Onsite Sewage Systems.

The Emergency Regulations establish O&M and performance requirements for all AOSSs. Therefore, whenever an AOSS is required to repair or replace an existing onsite sewage system,

the Emergency Regulations will apply. In particular, this means that in some cases owners will be required to provide higher levels of treatment, or to utilize more technologically advanced dispersal systems, than were required under their original permits. In these cases, an owner may obtain a waiver from the additional treatment or dispersal requirements in accordance with Va. Code § 32.1-164.1:1. An owner may waive treatment, including disinfection, and/or dispersal requirements in whole or in part under this section of the Code.

System Design Considerations:

The Emergency Regulations are supplemental to the Sewage Handling and Disposal Regulations (12VAC5-610, the "SHDR"). As such, the two regulations work together to determine many of the design considerations for AOSSs. If there is a conflict between the two, the Emergency Regulations determine the outcome.

An example of the two regulations working together can be seen in AOSSs that are designed in compliance with the prescriptive site, soil, and design criteria contained in the SHDR. The designer uses the requirements from the SHDR concerning trench depth, width, and location as well as the prescriptive vertical and horizontal separation distances and distribution methods, but looks to the Emergency Regulations for performance requirements such as treatment level and hydraulic loading rates. The Emergency Regulations do not address a performance requirement pertaining to hydraulic loading rates for septic effluent, therefore designers of AOSSs using septic effluent will continue to use the hydraulic loading rates from Table 5.4 of the SHDR.

GMP #147 remains in effect at this time, although VDH will be reviewing that guidance document for changes. Systems designed in accordance with GMP #147 substantially comply with the loading rates in Table 1 of the Emergency Regulations. GMP #147 systems constructed on sites with less than 12 inches of vertical separation to a limiting feature will require disinfection in accordance with § 70.A.9 of the Emergency Regulations.

AOSSs Under § 32.1-163.6 of the Code of Virginia:

AOSSs designed under § 32.1-163.6 of the Code of Virginia are not subject to the prescriptive design requirements of the SHDR. Instead, these systems are required to comply with the performance requirements established in the Emergency Regulations, the specific horizontal setbacks established in the Emergency Regulations, standard engineering practice, and other requirements as noted in § 32.1-163.6 of the Code of Virginia.

The Emergency Regulations contain performance requirements that pertain to AOSSs installed on sites with seasonal water tables at or very near the surface. The SHDR would normally prohibit installation of any onsite systems in wetlands, swamps, and other wet landscape positions. However, §32.1-163.6 of the Code of Virginia prevents VDH from enforcing the prescriptive site and soil requirements of the SHDR. Systems designed under § 32.1-163.6 of the Code of Virginia are required to comply with performance requirements established by the Board of Health and those horizontal setbacks deemed necessary to protect public health. For this reason, VDH felt it was important to develop performance requirements for sites with shallow seasonal water tables.

Sampling Requirements/Compliance Under the Emergency Regulations

The Emergency Regulations require owners to have samples taken and analyzed routinely from AOSSs. Most AOSSs serving single family homes will require one sample during the first six (6) months of operation and then a sample once every five years. Larger systems, and those with treatment units that are not generally approved, require more frequent sampling.

Sample results will not be used routinely to determine whether single-family systems are in compliance with the performance requirements of the Emergency Regulations. Instead, VDH will gather and analyze all of the data collected statewide to assess the overall performance of AOSSs in general. In addition, the data will be used to assess the performance of specific treatment unit designs or products. In some cases, VDH may rely on sample histories along with operator reports when considering enforcement action.

For systems serving single-family dwellings VDH will determine compliance on a routine basis using the reports filed by operators.

Operator Requirements.

An operator is required to file a report with VDH each time he accomplishes a “mandatory” visit and any time he observes a “reportable incident.”

The operator, when filing a report, is required to make a statement as to whether 1) the AOSS is functioning properly, 2) the AOSS needs maintenance in order to function properly, or 3) the AOSS is failing or out of compliance with the performance requirements of the Emergency Regulations.

Operators will file reports using VDH’s online reporting capability. Reports will be automatically routed to the appropriate local health department data base in VENISDPOR regulations allow a homeowner to operate his own system only if he is a licensed operator.

Where Can I Get More Information or Make Comments About the Program?

Understanding that people expect quality service, VDH always welcomes input from customers about their experiences working with staff. Please contact the Environmental Health Manager at (804) 748-1610.