



Economic Impact Analysis Virginia Department of Planning and Budget

12 VAC 5-650 – Schedule of Civil Penalties
Virginia Department of Health
January 9, 2009

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 514 of the 2007 Virginia Acts of Assembly the State Board of Health (Board) is proposing to establish a uniform schedule of civil penalties for violations of regulations pertaining to onsite sewage and alternative discharge sewage treatment systems.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Chapter 514 of the 2007 Virginia Acts of Assembly amended Virginia Code § 32.1-164.1 to state that:

The Board shall establish a uniform schedule of civil penalties for violations of regulations (concerning the collection, conveyance, transportation, treatment and disposal of sewage by onsite sewage systems and alternative discharging sewage systems)... that are not remedied within 30 days after service of notice from the Department (of Health). Civil penalties collected pursuant to this chapter shall be credited to the Environmental Health Education and Training Fund

Further,

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be not more than \$100 for the initial violation and not more than \$150 for each additional violation. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more than once in any 10-day period, and a series of specified violations arising from the

same operative set of facts shall not result in civil penalties exceeding a total of \$3,000.

The Board proposes the following civil penalties, which are consistent with the statute:

- For installation, modification, use, or operation without a permit, \$100 for the first violation, \$150 for each additional violation.
- For the discharge of sewage onto the ground or into water without a permit, \$100 for the first violation, \$150 for each additional violation.
- For failure to obtain or maintain a contract in accordance with board regulations, \$50 for the first violation, \$100 for each additional violation.
- For failure to submit a test result or report in accordance with board regulations, \$50 for the first violation, \$100 for each additional violation.
- For engaging in unlawful transportation or handling of sewage or septage, \$100 for the first violation, \$150 for each additional violation.
- For other unlawful acts described in the regulations, \$25 for the first violation, \$50 for each additional violation.

Prior to the establishment of civil penalties, the Virginia Department of Health may only enforce the Board's regulations via permit suspension or revocation, the issuance of orders by the Board, civil actions in circuit courts, or by criminal actions, which are all relatively heavy-handed punishments. The Department and Board have at times been reluctant to issue these heavy-handed punishments for routine enforcement actions. Additionally, civil charges can only be collected with the consent of the affected party and are employed in conjunction with a consent order. The proposed civil penalties, which do not require a consent order, may be enough to discourage violations that put public health at risk and cause less harm to recipients (of the penalties) than the more heavy-handed options. Thus, providing this tool to the Board and Department will likely provide a net benefit.

Businesses and Entities Affected

The proposed amendments potentially affect homeowners and businesses who own onsite and alternative discharging sewage systems, onsite sewage system installers, and individuals and businesses that provide maintenance services such as pumpouts, and repair or replacement of systems or system components. The Virginia Department of Health estimates that between 175

and 350 entities may be affected each year because of a sewage system malfunction that is not remedied within 30 days, and approximately 66 entities may incur a civil penalty.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposal to establish a uniform schedule of civil penalties for violations of regulations pertaining to onsite sewage and alternative discharge sewage treatment systems will not likely significantly affect employment.

Effects on the Use and Value of Private Property

The proposal to establish a uniform schedule of civil penalties for violations of regulations pertaining to onsite sewage and alternative discharge sewage treatment systems may result in some homeowners and businesses receiving civil penalties who may not have otherwise been so fined. Thus, they may have a moderate reduction in property value. On the other hand, the threat of civil penalties may encourage homeowners and businesses to not violate the Board's regulations which could result in higher property values for neighboring properties.

Small Businesses: Costs and Other Effects

The proposal to establish a uniform schedule of civil penalties for violations of regulations pertaining to onsite sewage and alternative discharge sewage treatment systems may result in some small businesses receiving civil penalties who may not have otherwise been so fined. On the other hand, the threat of civil penalties may encourage homeowners and businesses to not violate the Board regulations which could result in higher property values for neighboring small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

There is no clear alternative that would produce less cost will still reaping the same benefits.

Real Estate Development Costs

For firms and other entities that abide by the Board's regulations pertaining to onsite sewage and alternative discharge sewage treatment systems, the proposal to establish a uniform

schedule of civil penalties for violations produces no cost. To the extent that the civil penalties discourage sewage violations from neighbors and previous property owners, the proposal to establish a uniform schedule of civil penalties for violations of regulations pertaining to onsite sewage and alternative discharge sewage treatment systems may reduce real estate development costs.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.