

Janice Williams

From: Richardson, Jonathan (VDH) <Jon.Richardson@vdh.virginia.gov>
Sent: Thursday, May 19, 2016 8:02 AM
To: 'jwilliams@co.northampton.va.us'; Nunez, Katie (VDSS)
Cc: Matson, David (VDH)
Subject: Proposed EMS building
Attachments: DPORcommercial.pdf

Katie/Janice,

I spoke with Keith Privett Wednesday afternoon regarding your request as to whether Health Department (HD) staff could process a sewage application for the proposed EMS facility in Northampton County. The very short answer to this question is "no" we cannot process a sewage application for this type of facility. As you are likely aware our sewage programs have evolved dramatically over the past several years. HD staff previously had a little more latitude in terms of what types of systems they could design but that latitude has essentially been reduced to sewage systems that are "residential". We have in more recent years (past 5) received guidance that if a professional engineer (PE) conducted a wastewater characterization and deemed that the effluent for a proposed facility was equal to "residential strength" and the proposed flow was less than 1000 GPD, HD staff could design a sewage system if it met certain other qualifying criteria.

More recently a HD staff member working in a District across the Bay designed a system based on this guidance for a church. A complaint was filed by a private sector PE to DPOR alleging the HD staff member was working outside of the scope of their Alternative Onsite Evaluator License (AOSE). An investigation was conducted and DPOR sent the attached letter to the HD staff member. Of particular note was the statement in the DPOR letter, "although the wastewater involved may be of residential strength and flow type, since the discharge is a church or other non-exempted site, would make it other than residential in nature." Based on this ruling, essentially the only systems a licensed AOSE, private sector or VDH, can design are those serving residences. While I am confident our HD staff is competent enough to design such a system, I cannot in good conscience ask them to do so with the knowledge that they are putting their DPOR licensure, and ultimately their career, in jeopardy.

The process would be to hire and consult a PE. The PE could then schedule a preliminary engineering conference (PEC) with the HD and our VDH engineer. Prior to the PEC, the County will need to have decided on items like number of personnel, location and square footage of building, etc. as these are germane to the sewage system design. During the PEC, the system design would be discussed in hopes to have the PE submittal in a format that would be approvable by VDH. This often helps speed up the approval process. Once the PE makes the submittal, VDH has 20 days to approve or deny the application for systems less than 1000 GPD and 60 days for those greater than 1000 GPD.

The Health Department could issue a well permit for this property if the well is not considered a public water supply. In addition, the HD could also process a certification letter for the property to ensure there are adequate soils onsite to accommodate a sewage system. Please let me know if you have further questions.

Thanks,
Jon

Jon Richardson, REHS
Environmental Health Manager, Senior
Eastern Shore Health District

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COMMONWEALTH of VIRGINIA

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Jay W. DeBoer
Director

April 30, 2015

[Redacted address lines]

District
Department

Case File Number: [Redacted]

Dear Mr. [Redacted]

I appreciated the opportunity to speak with you regarding the above-referenced complaint file and the allegation that you may be operating as a professional engineer in the Commonwealth of Virginia without a state license as related to the Virginia Department of Professional and Occupational Regulation ("the Department") and the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and landscape Architects ("the Board").

While you are currently licensed as an onsite soil evaluator pursuant to license number [Redacted] such licensure does not exempt you, in most cases, from other professional licensing requirements under Title 54.1 of the Code of Virginia. As we discussed, there are some exemptions under the professional engineers licensing law for government employees and/or onsite soil evaluators under §§ 54.1-402(A)(11), and/or 54.1-402.1, of the Code of Virginia. Please note that § 54.1-402(A)(11) deals only with conventional and alternative onsite sewage systems receiving residential wastewater, and is not applicable to church or other commercial sites. § 54.1-402.1 deals only with state and local government employees employed prior to March 8, 1992. It is my understanding that you were hired after that date.

I further understand that you based your decision to authorize the permit/work for the church project because it involved a sewage system designed by a licensed onsite soil evaluator utilizing packaged equipment of standard design coordinated and tested by the manufacturer, complied with all applicable codes, that the flow was less than

1,000 gallons per day based on your calculations, and that the sewage was gravity fed. While these applications, in part, may afford an exception to the engineers licensing law, the specific exemption in § 54.1-402(A)(11) references that conventional and alternative onsite sewage systems receive "residential" wastewater. To clarify, although the wastewater involved may be of residential strength and flow type, since the discharge source is a church or other non-exempted site, would make it other than residential in nature. As such, the exemption under 54.1-402(A)(11) would not apply. Presently, only a licensed professional engineer in Virginia is authorized to state if the actual discharge is of a residential strength or flow type, or otherwise.

Based on the information currently before the Department, it appears you may be operating without the proper license related to engineering services. You are hereby notified that no person or entity, as required by Chapter 4, Title 54.1, of the Code of Virginia, shall engage in, or offer to engage in engineering services without appropriate licensure.

If a person engages in or offers to engage in the activities of a professional engineer as defined in § 54.1-400 of the Code of Virginia, they are required to have a state license. Further, Pursuant to § 54.1-111 of the Code of Virginia, it shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:

1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.
2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.
3. Making use of any titles, words, letters or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.
4. Performing any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed.

The requirements for a state license are separate from any other licensing requirements established by any county, city, or town.

Please be advised that the consequences for engaging in unlicensed activity governed by § 54.1-111 of the Code of Virginia include the following: 1) any person operating without a required license or certification may result in a criminal prosecution of a Class 1 misdemeanor, which could result in a sentence of up to one year in jail and/or a \$2,500 fine; and 2) the third or any subsequent conviction during a 36-month period may result in a criminal prosecution of a Class 6 felony, which could result in a sentence of not less than one year and not more than five years in jail or a sentence of up to one year in jail and/or a \$2,500 fine.

In addition, notwithstanding § 54.1-111, pursuant to § 54.1-402.2 of the Code of Virginia, the Board may issue an order requiring any person to cease and desist from (i) practicing or offering to practice as an architect, professional engineer, or land surveyor when such person is not licensed or registered by the Board in accordance with this chapter or (ii) holding himself out as a landscape architect or certified landscape architect or certified interior designer when such person is not certified or registered by the Board in accordance with this chapter. If the person fails to cease and desist the unlicensed, uncertified, or unregistered activity after entry of an order, the Board may refer the matter for enforcement and may impose a civil penalty of up to \$2,500.

I have listed the following sections from the Code of Virginia for your reference regarding onsite sewage evaluations, the practice of engineering, and unlicensed activity:

§ 32.1-163.5. On-site sewage evaluations.

§ 32.1-163.6. Professional engineering of onsite treatment works.

§ 54.1-400. Definitions.

§ 54.1-401. Exemptions.

§ 54.1-402. Further exemptions from license requirements for architects, professional engineers, and land surveyors.

§ 54.1-402.1. State and local government employees; license exemptions for persons employed prior to March 8, 1992.

§ 54.1-402.2. Cease and desist orders for unlicensed activity; civil penalty.

§ 54.1-406. License required.

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.

For further questions relating to applying for a license, certificate, or registration, or regarding the Board's regulations and/or laws, please contact the Board's licensing section at (804) 367-8512. The agency website is also available at www.dpor.virginia.gov.

Based on your willingness to comply with applicable licensing laws, there are no plans to pursue a criminal prosecution central to your actions unless evidence of a continuing violation comes to the attention of the Department.

Thank you for your cooperation and future compliance with Virginia law. Should I be able to assist you further, please contact me at 757 620 0029.

Sincerely,

A handwritten signature in cursive script that reads "Earnest S. Atkins". The signature is written in black ink and is positioned above the typed name.

EARNEST S. ATKINS
Investigator