



To: Brooke Saari, Coastal Environmental Quality Extension Specialist, South Carolina Sea Grant Consortium

From: Terra Bowling, J.D., Research Counsel II, NSGLC

Re: Regulation, Litigation, and Funding for Septic Systems in South Carolina, Maryland, and Virginia (NSGLC-26-04-02)

Date: April 30, 2026

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## **Advisory Summary**

South Carolina Sea Grant Consortium (SCSGC) is working with Mount Pleasant Water Works and Clemson Extension to create a Septic Think Tank in South Carolina. They asked NSGLC to prepare an overview of septic tank regulations in South Carolina, Maryland, and Virginia. They also requested information on litigation regarding the implementation of state and local septic tank regulations.

## **Introduction**

Two federal laws, the Safe Drinking Water Act (SDWA) and the Clean Water Act (CWA), provide minimum standards that states must follow in regulating water quality. Beyond that, states may exercise their “police power” to protect the public's health, safety, and welfare. This includes enacting laws and regulations to protect water quality through septic tank regulation. States may also delegate authority to local governments to regulate septic tanks.

Below are summaries of the state and local permit, operations, and maintenance requirements for South Carolina, Maryland, and Virginia. Following these summaries is a discussion of relevant litigation surrounding the implementation of septic regulations. Finally, a section on funding gives examples of funding sources available in each state to address septic system replacement and repair.

## **South Carolina**

### *1) What permits and approvals are needed to install?*

The South Carolina Department of Environmental Services (SCDES) issues permits for installing, repairing, or replacing septic systems.<sup>1</sup> Applicants must submit an Onsite Wastewater System Application, a property plat/deed, and a site evaluation to the department.<sup>2</sup> SCDES inspectors or certified professional inspectors analyze soil for high water tables, texture, slope, and safe distances from wells/waterways.<sup>3</sup> Septic tanks must meet minimum standards regarding capacity, design, and construction.<sup>4</sup>

### *2) Are there any ongoing regulatory oversight or maintenance requirements?*

A property owner is “required to properly operate and maintain in good working order all onsite wastewater system(s) and their parts and to comply with all terms and conditions of a previously issued permit.”<sup>5</sup> Septic tanks are a type of onsite wastewater system. A new permit is required for alterations, upgrades, or expansions that change wastewater characteristics or increase wastewater flow.<sup>6</sup>

The state does not conduct routine inspections of permitted onsite wastewater systems, however, local governments may require them. For example, James Island, S.C. has an ordinance requiring routine inspections and maintenance of private septic systems every three years.<sup>7</sup> Another ordinance requires baseline inspections to be done of every septic system located within the James Island Creek Watershed.<sup>8</sup> In the event of a system failure, local governments may also have a role in declaring septic tanks a public nuisance and taking remedial action. For example, Beaufort, S.C. identifies “leaking septic tanks or sewer lines or other sewage existing in an unsanitary manner” as a public nuisance and has reporting and enforcement mechanisms in ordinances.<sup>9</sup>

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<sup>1</sup> S.C. CODE ANN. § 48-6-60; S.C. Code Ann. Regs. 61-56.103(3); Application, permit, final inspection, and approval requirements at S.C. Code Ann. Regs. 61-56.104.

<sup>2</sup> S.C. Code Ann. Regs. 61-56.201; 61-56.104.

<sup>3</sup> *Id.* 61-56.102.

<sup>4</sup> *Id.* 61-56.104.

<sup>5</sup> *Id.* 61-56.103.

<sup>6</sup> *Id.* 61-56.302.

<sup>7</sup> James Island, S.C., [Ordinance 2021-06](#).

<sup>8</sup> James Island, S.C., [Ordinance 2021-10](#).

<sup>9</sup> Beaufort, S.C. Code of Ordinances, Ch. 7 Sec. 6-8001-6-8009.

3) *What is the role of local governments?*

County health departments must approve all installed septic tanks in their jurisdiction.<sup>10</sup> A septic tank with a capacity of 1,000 gallons or more must have the approval of the county health officer before the tank is installed and must meet additional standards.<sup>11</sup> Septic tank effluent may not be discharged into any stream without special approval of the county health department.<sup>12</sup> The county health department also has the authority to permit and approve the installation of a temporary septic tank in the case of unusual, temporary, or emergency conditions.<sup>13</sup>

Local governments may develop ordinances regulating septic tank installation and operation, if they comply with the state's approved standards and requirements.<sup>14</sup>

4) *Are there any legal requirements for property owners with septic systems to connect to public sewer systems? What triggers those requirements (i.e. known failure, extension of sewer line, etc.)?*

State permits for onsite wastewater systems, including permits for repair or replacement for failing systems, will not be issued if a public sewer is accessible for connection.<sup>15</sup> Local governments are generally authorized to determine if a wastewater treatment facility is accessible to properties.<sup>16</sup> For example, the City of Folly Beach ordinances require buildings "located within the commercial district abutting any sewer main operated and maintained by the city" to be connected to the sewer.<sup>17</sup> Otherwise, a septic tank may be allowed, "where connection is technically impractical," and if approved by the county health department. However, when annexation or easements to adjacent property are required to connect, state law specifies that the sewer system is considered inaccessible.<sup>18</sup>

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<sup>10</sup> S.C. Code Ann. § 44-55-640.

<sup>11</sup> *Id.* § 44-55-630.

<sup>12</sup> *Id.* § 44-55-680.

<sup>13</sup> *Id.* § 44-55-690.

<sup>14</sup> *Id.* § 44-55-620.

<sup>15</sup> S.C. Code Ann. Regs. 61-56.300.

<sup>16</sup> S.C. Code §§ 44-55-1410 and 5-31-2010.

<sup>17</sup> City of Folley Beach, Public Works § 52.50.

<sup>18</sup> S.C. Code §§ 44-55-1410 and 5-31-2010.

## Maryland

### 1) What permits and approvals are needed to install?

Permit applications for new Onsite Sewage Disposal Systems (OSDS or septic systems) are submitted to the local Approving Authority designated by the Maryland Department of the Environment (MDE).<sup>19</sup> The applications must include soil evaluations, proposed system design, proposed Best Available Technology (BAT) if required, and information on existing and proposed wells on properties and wells or disposal systems within 100 feet of the property line.<sup>20</sup> A new permit is required to alter an OSDS or if there is an increase in flow or change in the character of the wastewater.<sup>21</sup> The MDE Onsite Systems Division provides assistance to county health departments and local Approving Authorities to implement OSDS programs.

Septic tanks must meet minimum standards regarding capacity, design, and construction.<sup>22</sup> BAT is required to install or replace OSDSs for properties in the Chesapeake Bay and the Atlantic Coastal Bays Critical Areas, as well as systems with a capacity of 5,000 gallons per day or greater.<sup>23</sup> A local government may also require BAT outside of these areas.<sup>24</sup> MDE OSDS certification is required to install sand mounds systems, at-grade systems, and BAT systems.<sup>25</sup>

### 2) Are there any ongoing regulatory oversight or maintenance requirements?

A permit issued for the construction of an on-site sewage disposal system must include the following statement, “The Maryland Department of the Environment recommends septic tanks, BAT and other pretreatment units be pumped at a frequency adequate to ensure that solids are not discharged to the disposal area.”<sup>26</sup>

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<sup>19</sup> Maryland Department of the Environment On-Site Systems Division, <https://mde.maryland.gov/programs/water/bayrestorationfund/onsitedisposalsystems/pages/onsitesystems.aspx>.

<sup>20</sup> Md. Code Regs. 26.04.02.03(A).

<sup>21</sup> *Id.* 26.04.02.03(E).

<sup>22</sup> *Id.* 26.04.02.05.

<sup>23</sup> *Id.* Generally, all land within 1,000 feet of the Mean High-Water Line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries.

<sup>24</sup> *Id.* 26.04.02.07.

<sup>25</sup> *Id.* 26.04.02.05.

<sup>26</sup> *Id.* 26.04.02.03 (K).

Further, a property owner must maintain and operate BAT systems through one of the following methods:

- 1) The BAT system is operated and maintained by a management entity approved by the Department, and established by the Approving Authority or local government, to assume operation and maintenance of BAT systems;
- 2) The BAT system is covered by a renewable operating permit, which is issued by or required by the Approving Authority and includes enforcement provisions, inspections, and monitoring; or
- 3) The BAT system is operated and maintained by a certified service provider. The owner must ensure the BAT system is inspected and has necessary operation and maintenance performed at a minimum of once per year.<sup>27</sup>

All BAT systems sold in the state must include both a two-year operation and maintenance contract and a two-year warranty.<sup>28</sup> The owner of a septic tank is required to “remove all solid and liquid contents as to prevent a nuisance or a menace to public health or comfort and shall dispose of the sewage in compliance with applicable State and local requirements.”<sup>29</sup>

### 3) What is the role of local governments?

Local Approving Authorities provide primary permitting for septic systems. They may have additional septic tank siting, design, or operation requirements not included in state regulation. For example, Baltimore County prohibits the installation of a septic system in nontidal wetlands or nontidal wetlands buffers.<sup>30</sup> In addition, the Baltimore County Plumbing Code requires a two-compartment top-seam tank with a minimum size of 1,500 gallons for septic tanks for new homes and repairs.<sup>31</sup>

- 4) Are there any legal requirements for property owners with septic systems to connect to public sewer systems? What triggers those requirements (i.e. known failure, extension of sewer line, etc.)?

The Approving Authority may require a connection to the system if “the community sewerage system is adequate and economically available to the building to be served.”<sup>32</sup>

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<sup>27</sup> *Id.* 26.04.02.07 (E).

<sup>28</sup> *Id.* 26.04.02.07 (F).

<sup>29</sup> *Id.* 26.04.02.09.

<sup>30</sup> Baltimore Code § 33-2-303.

<sup>31</sup> [Baltimore Plumbing Code](#), Ch. 16.

<sup>32</sup> *Id.* 26.04.02.02(B).

St. Mary County provides, “[w]here connections are proposed, all cesspools/septic systems, sink drains and privies located on properties connected to sewers provided by the Metropolitan Commission shall be abandoned, closed and left in a sanitary condition so that no odor or nuisance shall arise from them.”<sup>33</sup> St. Mary County ordinances also provide that the Metropolitan Commission may offer connection incentive programs and other financing mechanisms to assist owners of existing residential properties currently served by a septic system.<sup>34</sup>

## Virginia

### 1) *What permits and approvals are needed to install?*

The Virginia Department of Health (DOH) issues septic system permits, however, all permitting applications initially go to either the district or local health department.<sup>35</sup> Prior to applying for a full permit, applicants can apply to DOH for certification to determine whether their property is suitable for a septic system.<sup>36</sup> Applications for a construction permit for a septic system must be accompanied by documentation of professional evaluation and design.<sup>37</sup> Evaluation and design services for septic systems are required to be performed by a private sector consultant licensed through the Department of Professional and Occupational Regulation (DPOR); however, DOH may provide these services for residents who meet hardship requirements.<sup>38</sup> The professionals evaluate the site, including physical features of the property and soil evaluations, as prescribed by DOH regulations.<sup>39</sup>

Additional requirements for a permit application depend on the type and location of the septic system.<sup>40</sup> Type I sewage disposal systems, which consist of a septic tank and subsurface soil absorption system serving a single residence, require only an application.<sup>41</sup> Type II sewage disposal systems consist of a septic tank and subsurface soil absorption system that serves a commercial or other establishment, more than a

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<sup>33</sup> St. Mary’s County, MD, Sanitary Districts, § 113-10.

<sup>34</sup> *Id.* § 113-9.

<sup>35</sup> 12 Va. Admin. Code 5-610-250.

<sup>36</sup> *Id.* 5-610-255.

<sup>37</sup> 18 Va. Admin. Code 160-40-230.

<sup>38</sup> *Id.* 160-40-515; Virginia Department of Health, Hardship Guidelines

<https://www.vdh.virginia.gov/content/uploads/sites/20/2021/06/Hardship-Guideline-Update-6-30-21.pdf>

<sup>39</sup> 12 Va. Admin. Code 5-610.

<sup>40</sup> *Id.* 5-610-250.

<sup>41</sup> *Id.*

single family dwelling unit, or where pumping, enhanced flow distribution or low pressure distribution is necessary.<sup>42</sup> Type II systems require an application, a preliminary conference, and informal or formal plans depending on the size and complexity of the system.<sup>43</sup> Type III systems require an application, a preliminary conference, and formal plans. The requirement for formal plans is waived for certain structures that have design flows less than 1,000 gallons per day.<sup>44</sup> After construction and inspections, approved septic systems will receive an operations permit.<sup>45</sup>

DOH regulations outline sewage treatment and disposal methods, processes, and equipment for conventional systems.<sup>46</sup> The Department issues special permits to allow the use of experimental methods, processes, and equipment.<sup>47</sup> Alternative Onsite Septic Systems (AOSS) systems must comply with regulations for conventional systems, as well as additional operation and maintenance requirements.<sup>48</sup>

2) *Are there any ongoing regulatory oversight or maintenance requirements?*

After construction and inspections, approved septic systems will receive an operations permit.<sup>49</sup> Septic systems in the Chesapeake Bay Preservation Area, which is any land designated by a local government as a Resource Protection Area (RPA) or a Resource Management Area (RMA), have additional maintenance requirements. Conventional septic tanks in the Chesapeake Bay Preservation Area require a pump out at least once every five years.<sup>50</sup> AOSSs, regardless of location, require mandatory maintenance by a licensed operator, at least annually.<sup>51</sup> AOSS owners must also maintain, sample, and retain operation/maintenance logs.<sup>52</sup>

State law specifies that the presence of sewage on the ground or in waterways or the exposure of insects, animals or humans to sewage is *prima facie* evidence of septic

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* 5-610-320—340.

<sup>46</sup> *Id.* 5-610-660 et seq.

<sup>47</sup> *Id.* 5-610-441.

<sup>48</sup> *Id.* 5-613-120 –190.

<sup>49</sup> *Id.* 5-610-320–340; 5-610-441; 5-613-60.

<sup>50</sup> 9 Va. Admin. Code 25-830-130 (7).

<sup>51</sup> 12 Va. Admin. Code 5-613-140, 5-613-150.

<sup>52</sup> *Id.* 5-613-140.

system failure and violation of the regulations.<sup>53</sup> Pollution of the groundwater or backup of sewage into plumbing fixtures may also signify system failure.<sup>54</sup>

3) *What is the role of local governments?*

Construction permits are issued by the DOH but all requests for a sewage disposal construction permit must initially go to the district or local health department.<sup>55</sup> Local health officials handle site evaluations, approve system designs, inspect installations, and issue permits, including those for repairs and operation. This includes both local offices of the state Department of Health and local municipality health offices. A preliminary conference with the district or local health department is held for Type II and Type III systems.

Local governments in the Chesapeake Bay Preservation Area may have restrictions for onsite sewage systems in ordinances adopted pursuant to the Chesapeake Bay Preservation Act and the Chesapeake Bay Preservation Area Designation and Management Regulations.<sup>56</sup> For example, in Northampton County, all on-site sewage disposal systems must be pumped out at least once every five years.<sup>57</sup> The entirety of Northampton County is recognized as either a RPA or RMA qualifying all properties to comply with this program. The Accomack-Northampton Planning District Commission has programs that can provide financial assistance associated with a septic pump-out system service provided by a local provider.

4) *Are there any legal requirements for property owners with septic systems to connect to public sewer systems? What triggers those requirements (i.e. known failure, extension of sewer line, etc.)?*

Connection to public sewer services is required when a public sewer line is available adjacent to the property and required by the local government.<sup>58</sup> There is mandatory connection to water and sewer systems in certain counties; however, there may be exceptions and the property owners may be required to pay a nonuser fee if they are not connected to the sewer system.<sup>59</sup>

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<sup>53</sup> *Id.* 5-610-350.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* 5-610-250.

<sup>56</sup> VA. CODE ANN. § 10.1-2100 et seq.; 9 Va. Admin. Code 10-20.

<sup>57</sup> Chesapeake/Atlantic Preservation Areas (CAP), § 154.2.163.

<sup>58</sup> VA. CODE ANN. § 15.2-5137.

<sup>59</sup> *Id.* § 15.2-2110.

## Litigation

Litigation surrounding septic system permitting generally falls into two categories: challenges to permit denials and challenges to state or local enforcement actions following septic tank failure. In most instances, courts find that states and local governments have authority to exercise their “police power” and regulate septic systems to protect the public's health, safety, and welfare.

Challenges to permit denials often include claims of procedural or substantive due process violations, equal protection violations, or an illegal “taking” of property under the 5th Amendment of the U.S. Constitution. Substantive due process claims allege that a regulation is arbitrary and unreasonable with no rational relationship to a legitimate government interest. Procedural due process claims challenge whether the government entity provided the plaintiff with notice, a reasonable opportunity to be heard, and a fair hearing. Equal Protection claims center on whether the law treated a particular class of individuals unfairly. In regulatory takings claims, courts consider whether the regulation unfairly deprives a property owner of the use of their property. Below is a discussion of selected cases from South Carolina, Maryland, and Virginia, as well as key cases from other jurisdictions.

In South Carolina, after a restaurant owner was denied a septic permit, he filed suit alleging he was denied procedural due process by the Department of Health and Environmental Control (now the DES).<sup>60</sup> He claimed the Department violated its own regulations by not considering actual flow data for drain field and septic tank in determining whether to grant the permit. The court noted that the regulations only required consideration of water flow data if reasonably available. The Department contended that no data was available before the hearing and the data generated thereafter was unreliable, as the owner had collected data during four days he illegally operated. The court deferred to the Department's decision and upheld the permit denial.

In Maryland, a landowner challenged the denial of a permit for a septic system that was required to develop a property and sued the MDE. The circuit court affirmed MDE's decision.<sup>61</sup> On appeal, the appellate court held that 1) agency's decision was supported by substantial evidence; 2) the landowner received due process; 3) the regulation of sewage disposal was within state's police powers; 4) the property was not taken; 5)

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<sup>60</sup> S.C. Dep't of Health & Env't Control v. Armstrong, 293 S.C. 209 (Ct. App. 1987).

<sup>61</sup> Erb v. Maryland Dep't of Env't, 110 Md. App. 246, 676 A.2d 1017 (1996).

sewage regulatory scheme regulated against creation of nuisances; and 6) agency's decision was based on unique characteristics of property and was not arbitrary or capricious. The court noted substantial evidence that application was denied due to unique attributes of the landowner's property. Other similar properties that were granted variances for systems had space available in level areas and away from drainage swales that made them suitable for installation of septic systems, and landowner's property lacked those characteristics.

In another Maryland case, property owners were denied septic permits, rendering their lots undevelopable.<sup>62</sup> The property owners brought suit against the MDE, alleging that the denial of sewer service and wetland fill permits violated their equal protection rights and constituted an unconstitutional taking. The circuit court granted the MDE summary judgment. On appeal, the court agreed that the MDE's prohibition of sewer services to lots containing mapped wetlands did not violate equal protection; the denial of sewer service did not constitute a taking; and access to sewer service was not a constitutionally protected property interest. The denials did not constitute a taking because they fall within the takings "nuisance exception" recognized by the U.S. Supreme Court in *Lucas*.<sup>63</sup> Nuisances that are recognized at common law and prohibit all economically beneficial use of land do not constitute a taking. Water pollution caused by septic failure would have constituted a nuisance, and states can regulate against the creation of a nuisance.

In Virginia, property owners challenged the DOH Commissioner's denial to construct a septic system.<sup>64</sup> The appellate court held that substantial evidence supported the Health Commissioner's denial of the permit due to the presence of fill on the lot, which increased the likelihood of failure of the system. Further, the presence of gray soil beneath the fill indicated a high, seasonal water table. The DOH's decision was not arbitrary and unreasonable and had a relationship to the government's interest in protecting water quality.

In some instances, litigation occurs because septic tank owners, often in rural areas and with low to moderate income, cannot afford costly upgrades or replacement of failing septic systems. The owners find themselves fined or convicted for the failing septic tanks. In an Alabama case, a property owner in the drainage basin of a lake was convicted for failure to register a septic tank under a municipal ordinance.<sup>65</sup> The property owner filed suit claiming that the city did not have the authority to enact the ordinance. The court

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<sup>62</sup> Neifert v. Dep't of Env't, 395 Md. 486 (2006).

<sup>63</sup> Lucas v. S.C. Coastal Council, 505 U.S. 1003 (1992).

<sup>64</sup> Kenley v. Waterway Ests., Ltd., 3 Va. App. 50, 348 S.E.2d 31 (1986).

<sup>65</sup> Peak v. City of Tuscaloosa, 73 So. 3d 5 (Ala. Crim. App. 2011).

found that the city's ordinance was within its statutory police powers to protect public health. The court held the registration requirement did not violate principles of due process or equal protection. Protecting the water supply and a recreational area are legitimate interests of the government, the report from the county health department indicated that the leaking septic tanks are a source of pollution to the lake, and the provision requiring registration was rationally related to the legitimate governmental interest of protecting the lake from contaminants.

### **Funding for Septic Remediation**

In addition to regulating septic tanks, local governments may provide funding for septic systems in need of maintenance, repair or replacement. The Town of Bluffton, S.C., for example, provides support through its Neighborhood Assistance Program.<sup>66</sup> Residents whose household income does not exceed 60% of the area's median income can apply for funding.

Nonprofits are another resource for funding for septic system remediation. In South Carolina, the Edisto Island Open Land Trust (EIOLT) Septic System Improvement and Assistance Program aids homeowners with failing or outdated septic systems, especially near impaired waterways or in high-risk, flood-prone areas.<sup>67</sup> It offers free inspections and pump-outs, plus funding for repairs and replacements for qualified residents. Regionally, the Southeast Rural Community Assistance Project (SERCAP) provides low-interest loans and grants for septic system repair, replacement, and installation for low-to-moderate income homeowners in rural areas in Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, or Florida.<sup>68</sup> For example, SERCAP funds are provided through the Virginia Department of Health to Virginia homeowners with well and septic needs. These funds are available to assist homeowners at or below 200% of the federal poverty guidelines with eligible well and/or septic projects. Funds may be used to “repair failing septic systems, replace straight pipes, and replace privies. Replacement can include connection to public sewer.”

States may also provide funding. Maryland Department of the Environment funds septic system upgrades or connections through the Bay Restoration Fund (BRF) Onsite Sewer Disposal System (OSDS) grant program. The BRF prioritizes upgrades as follows: failing OSDS in the Critical Areas; failing OSDS outside the Critical Areas; Non-conforming OSDS in the Critical Areas; Non-conforming OSDS outside the Critical Areas; Other

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<sup>66</sup> [Septic Assistance Bluffton, SC.](#)

<sup>67</sup> [Septic Improvement Program - Edisto Island Open Land Trust, South Carolina](#)

<sup>68</sup> [SERCAP's Individual Household Loan Products.](#)



OSDS in the Critical Areas, including new construction; Other OSDS outside the Critical Areas, including new construction.