

1974 WL 27707 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 10, 1974

***1 RE: Percolation Test Technicians.**

Board of Certification of Environmental Systems Operators

401 J. Marion Sims Building

2600 Bull Street

Columbia, S. C. 29201

Dear Board Members:

By letter dated March 6, 1974, you ask that this office provide an opinion regarding who must sign the paperwork on a percolation test.

I advise that existing law governing environmental systems operators does not consider that question, but rather deals with the licensure of operators to perform the percolation tests. See Sections 56-1544(2)(B), 56-1544.8, 56-1544.13 (C & E), S. C. Code of Laws, as amended; Board Regulation, Article VII, Section 2, Paragraph III(a). The Board may pass those regulations necessary to implement the provisions of the law governing the licensing of percolation test technicians. However, these regulations must relate to some statutorily assigned duty and there is no duty assigned the Board to regulate the signing of percolation test results.

Nevertheless, it is clearly illegal under the provisions of Section 56-1544.13 for anyone who is not either licensed by the Board or a registered engineer to perform percolation tests. Any person who would intentionally employ or solicit an unlicensed person to conduct such percolation tests and then sign the results is guilty of aiding and abetting the offense, or perhaps of a criminal conspiracy.

In summary, whereas the law does not specify who should sign percolation test results and does not permit the Board to regulate who signs percolation test results, the law does prohibit any unlicensed persons, registered engineers excluded, from conducting the percolation tests and provides penalties for those who either violate, or promote the violation of, these requirements. The decision as to who is to be required to sign such test results should be made by the Department of Health and Environmental Control.

Very truly yours,

John B. Grimball

Assistant Attorney General

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