



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health (VDH)
Virginia Administrative Code (VAC) citation	12 VAC 5-620-10 et seq.
Regulation title	Regulations Governing Application Fees for Construction Permits for Onsite Sewage Disposal Systems and Private Wells
Action title	Update regulation to reflect changes to the <i>Code of Virginia</i> .
Date this document prepared	December 8, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The State Board of Health (the "board") intends to revise the Regulations Governing Application Fees for Construction Permits for Onsite Sewage Disposal Systems and Private Wells to incorporate the relevant provisions in *Code of Virginia* (the "Code") that have been added or amended since the existing regulation became effective and to incorporate by reference the provisions of the 2010-2012 Biennium Appropriations Act or its successors ("Appropriations Act") (2010 Va. Acts of Assembly, Ch. 874, Item 287). Further, the board intends to incorporate other amendments, authorized by the *Code* and the Appropriations Act, which are consistent with VDH's current policies and practices and will better enable the board to carry out its responsibilities for the safe and sanitary treatment and disposal of sewage so as to protect public health and the environment.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 32.1-164.C of the *Code* provides that a fee shall be charged for filing an application for an onsite sewage disposal system or an alternative discharging sewage system permit and requires the board to waive the fees in certain circumstances.

Section 32.1-164.G of the *Code* provides that applicants who seek a letter recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits shall pay a fee established by the board for issuance of the letter.

Section 32.1-176.4.B of the *Code* provides that the board shall charge a fee for an application for a private well construction permit and requires VDH to waive the fees in certain circumstances.

Section 32.1-176.4.C of the *Code* requires the board to charge an application fee for a permit to install a closed-loop geothermal well system that is equal to the application fee for a single private well permit.

Section 32.1-164.E of the *Code* requires the board to charge a fee for installation and monitoring inspections of alternative discharging sewage systems.

Chapter 874, Item 287 of the Appropriations Act establishes the fees that the State Health Commissioner (the "commissioner") shall charge for construction permits for onsite sewage systems, alternative discharging systems and private wells and it establishes the fees that the commissioner shall charge for onsite sewage system certification letters.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The current regulation is out of date because applicable sections of the *Code* and the Appropriations Act have been added or amended since the regulation became effective. The regulation explains to citizens the requirements for application fees, the potential right to a waiver of the fees, and their potential right to obtain a refund of the fee in the event that an application is denied, as well as the board's administrative procedures for implementation.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Amendments to the regulation will include, but are not limited to:

1. Clarifying that an application fee is required for an alternative discharging sewage system;
2. Clarifying that an application fee is required for a letter certifying that a site is suitable for installation of an onsite sewage disposal system;
3. Clarifying the application fee for closed-loop geothermal well systems;
4. Clarifying that an applicant may not receive a refund for denial of an application if the applicant is actively pursuing an administrative appeal of the denial;
5. Referencing fee changes required by the Appropriations Act; and,
6. Establishing a uniform fee schedule for onsite sewage construction permits. The fee to be assessed will vary based on the type of construction contemplated by the applicant but in no case will the fees exceed the amounts authorized by the Appropriations Act.

In addition, the board will contemplate other amendments based on feedback and input provided by the Sewage Handling and Disposal Regulations Advisory Committee and by the general public while the board develops the proposed amendments. Further, the board will examine other amendments, authorized by the Code and the Appropriations Act, which will better enable the board to carry out its responsibilities for the safe and sanitary treatment and disposal of sewage so as to protect public health and the environment

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The board is required to implement the applicable sections of the Code and the Appropriations Act. The other available alternative is to continue with the current regulations, but in light of the amendments to relevant sections of the Code and the Appropriations Act, amending the regulations will improve the board’s ability to effectively carry out its public health responsibilities under title 32.1 of the Code.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

VDH is seeking comments on the intended regulatory action, including but not limited to: 1) ideas to assist in the development of a proposal; 2) the costs and benefits of the alternatives stated in this background document or other alternatives; and, 3) potential impacts of the regulation. VDH is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code. Information may include: 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and, 3) descriptions of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to Jim Bowles, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, e-mail: Jim.Bowles@vdh.virginia.gov, fax phone: 804-864-7475. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

VDH will hold a public hearing, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not

using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

VDH will use a participatory approach to develop the proposed amendments and invites all interested parties, including the Sewage Handling and Disposal Regulations Advisory Committee, which represents citizens and businesses that may be impacted by the regulation, to participate in development of the proposed amendments. Interested parties should notify and send contact information to Jim Bowles, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, e-mail Jim.Bowles@vdh.virginia.gov or fax 804-864-7475.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

- 1) The proposed modification of these regulations will neither strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children.
- 2) The proposed modification of these regulations will neither encourage nor discourage economic self-sufficiency, self-pride, nor the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents.
- 3) The proposed modification of these regulations will neither strengthen nor erode the marital commitment.
- 4) The proposed modification of these regulations will neither increase nor decrease disposable family income.

Periodic review

*Per Executive Order 14 (2010), each existing regulation shall be reviewed **at least once every four years.***

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response

1. No comments were received during the periodic review.
2. This regulation meets the criteria set out in Executive Order 14: the regulation is clearly written and understandable and the fees established by this regulation provide the resources needed for the board to carry out its responsibilities for the safe and sanitary treatment and disposal of sewage so as to protect public health and the environment. The regulations are based on the best reasonably available and reliable, scientific, economic, and other information concerning the need for, and consequences of, the regulations. The regulations are designed to achieve their intended objective in the most efficient, cost-effective manner. In addition, the regulations are in accordance with statutory provisions related to impact on small businesses. Further, the regulations do not adversely impact existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Small business impact review

*Pursuant to § 2.2-4007.1 E and F each existing regulation shall be reviewed **at least once every five years** to ensure that it minimizes the economic impact on small businesses.*

If this NOIRA will not include a review of the entire regulation for small business impact, please delete this entire section.

If this NOIRA will include a review of the entire regulation for small business impact, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The regulation is straightforward and easy to understand and reflects the applicable requirements and provisions of the Code and the Appropriations Act. There are no federal laws or regulations governing the matters addressed. Since the regulation was last amended, the General Assembly has amended several provisions of the Code and the Appropriations Act that determine the amount of money that the board shall charge for certain onsite sewage and private well services. The board anticipates that the proposed amendments to these regulations will clarify the requirements of the Code and VDH's procedures for implementation. The board will review the proposed amendments to ensure that the proposed amendments do not impose any unnecessary burdens for small businesses that provide or that seek onsite sewage and private well services.