



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC5-610
<b>Regulation title</b>	Sewage Handling and Disposal Regulations
<b>Action title</b>	Action to amend the Sewage Handling and Disposal Regulations to incorporate statutory changes as a result of House Bill 1231
<b>Final agency action date</b>	September 28, 2012
<b>Document preparation date</b>	August 7, 2012

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The agency is amending section 320 and section 330 of the Sewage Handling and Disposal Regulations (12VAC5-610-20 et seq.; "Regulations") to conform to recent changes in statutory law. House Bill 1231 (2012 Acts of Assembly, Ch. 184) amended § 32.1-164.1 of the Code of Virginia to require licensed onsite soil evaluators and licensed professional engineers who certify evaluations and designs of onsite sewage systems to inspect the installations of the onsite sewage systems that they design. The Virginia Department of Health (Department) may, in its sole discretion, inspect the installation of such onsite sewage systems but the Department is not required to do so. The amendments also specifically require the licensed individual responsible for the design to submit an inspection report to the Department.

Section 320 of the Regulations currently requires the Department to inspect and approve an onsite sewage system installation prior to the installation being covered with earth unless the Department expressly authorizes coverage prior to approval. While the Department retains this responsibility with respect to onsite sewage system designs produced by the Department's employees, House Bill 1231 abrogates the requirement that the Department inspect onsite sewage system installations that are pursuant to evaluations and designs certified by licensed private sector professional engineers and onsite soil evaluators. Thus, in order to conform to the statutory amendments provoked by House Bill 1231, the agency proposes to amend section 320 to exempt these certified private sector designs from the Department's inspection and coverage requirements.

Section 330 of the Regulations requires that an owner submit "a statement signed by a licensed professional engineer stating that the construction work was completed substantially in accordance with approved plans and specifications" after the licensed professional engineer has inspected the completed installation of the onsite sewage system. As it stands now, Section 330 of the Regulations put the onus on the owner to submit this statement and it limits its applicability to statements by licensed professional engineers. Additionally, Section 330 currently only requires the statement from "a licensed professional engineer" (emphasis added) as opposed to the licensed individual responsible for the design. House Bill 1231 amended §2.2-164.1 of the Code of Virginia to require licensed professional engineers to provide an inspection report directly to the Department; the amendments also authorize licensed onsite soil evaluators to submit this inspection report. Furthermore, the amendments require that the licensed onsite soil evaluator or professional engineer who certified the evaluation and design submit this inspection report. The agency proposes to amend Section 330 of the Regulations in a manner consistent with the statutory amendments engendered by House Bill 1231.

The proposed amendments to the Regulations are necessary to conform to changes in Virginia statutory law and no agency discretion is involved. Therefore, the agency seeks to amend this regulation through the Administrative Process Act (APA) exemption enumerated in § 2.2-4006(A)(4)(a) of the Code of Virginia.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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House Bill 1231 took effect on July 1, 2012. § 2.2-4006(A)(4)(a) of the Code of Virginia authorizes the agency to file an APA-exempt regulatory action when such action is "necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved." However, the agency must file the regulatory action with the Virginia Registrar of Regulations within 90 days of the law's effective date. Thus, the Virginia Department of Health is now taking action to amend the Sewage Handling and Disposal Regulations within the timeframe mandated by § 2.2-4006(A)(4)(a) of the Code of Virginia in order to conform to the changes in statutory law prompted by House Bill 1231.

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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This regulatory action will have no impact on the institution of family and family stability.