



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) citation</b>	12VAC5-620
<b>Regulation title</b>	Regulations Governing Fees for Onsite Sewage Disposal Systems, Alternative Discharge Systems, and Private Wells
<b>Action title</b>	The revision to the regulation is intended to incorporate changes and additions to the Code of Virginia that have been added since the existing regulation was written.
<b>Date this document prepared</b>	November 10, 2011 (Revised January 20, 2012)

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*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

Amendments to the regulation will:

1. Clarify that an application fee is required for an alternative discharging sewage system;
2. Clarify that an application fee is required for a letter certifying that a site is suitable for installation of an onsite sewage disposal system;
3. Clarify the application fee for closed-loop geothermal well systems;
4. Provide for fees of varying amounts based on the cost to the agency for processing the application;
5. Provide authority to waive the application fee where beneficial to public health and safety; and
6. Clarify 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.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

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## 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., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The authority for these regulations is found in the following sections of the *Code of Virginia*:

1. Virginia Code §32.1-12 provides the authority to make, adopt and promulgate regulations necessary to carry out the provisions of Title 32.1 of the Code of Virginia;
2. Virginia Code §32.1-164.C provides the authority to charge a fee for filing an application for an onsite sewage system or an alternative discharging sewage system permit with the Department, to waive application fees for persons whose income is below the federal poverty guidelines or whose application is for the construction of a pit privy, and to refund the application fee when the Department denies a permit for land upon which the applicant proposed to construct his principle place of residence;
3. Virginia Code §32.164.E provides the authority to charge fees for installation and monitoring inspections of alternative discharging systems;
4. Virginia Code §32.164.G provides the authority to charge fees for "letters recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits" (i.e., "certification letters");
5. Virginia Code §32.1-164.1:2.C provides the authority to charge fees for betterment loan eligibility letter requests.
6. Virginia Code §32.1-166.10 provides the authority to "establish a reasonable fee to be charged to the appealing party commensurate with the time and expenses related to the handling of each appeal to the Review Board;
7. Virginia Code §32.1-176.4.B authorizes fees for private well construction permits, the waiver of fees for persons whose incomes are below the federal poverty guideline or when the application is for a replacement well, and the refund of the application fee when a permit is denied for land on which the applicant seeks to construct his principle place of residence; and
8. Virginia Code §32.1-176.4.C authorizes a fee for geothermal well system applications which will be equal to the fee for a private well construction permit and mandates a single fee for any geothermal system.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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This action protects the public health, safety and welfare of the public by establishing fees that support the agency's ability provide services that ensure that sewage is adequately treated and disposed of, reducing the risk of sewage-borne and water-borne disease.

The current regulation is out of date because applicable sections of the Code of Virginia have been amended since the regulation was written. The regulation explains to citizens the requirements for application fees, the potential right to a waiver of the fees, their potential right to obtain a refund of the fee in the event that an application is denied, and the Board's procedures for refunds.

## Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

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The proposed changes remove references to specific fee amounts and require that the Commissioner of Health establish a schedule of fees based on current provisions of the Code of Virginia, the Appropriation Act and the cost to the agency to provide services. Additionally, the proposed regulations incorporate Code requirements related to fees for alternative discharging sewage systems for single family homes.

The proposed changes allow district health directors to reduce fee amounts for exceptional individual circumstances on a case-by-case basis; waive the fee for an application to abandon a well at the owner's primary residence; provide for a refund of the application fee for a replacement well after the existing well is properly abandoned rather than waive the fee at the time of application; and clarify that a request for refund must be made in writing and within 12 months of final agency action on the application.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

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The regulatory action poses no disadvantages to the public or the Commonwealth. The proposed changes incorporate current Code requirements and agency policy into a single, up-dated document. The advantage to the public and the Commonwealth is that the proposed regulation codifies current requirements of the Code of Virginia and agency policy. This action will reduce uncertainty and potential inconsistency in application of the Board's policies and regulations.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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There are no known localities that would be particularly affected by the proposed regulation. The regulations apply to all localities

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to:

Jim Bowles, Environmental Health Coordinator  
1900 Thomson Drive  
Lynchburg, VA 24503

Phone: (434) 947-2470  
Fax: (434) 947-2004  
E-mail: [jim.bowles@vdh.virginia.gov](mailto:jim.bowles@vdh.virginia.gov)

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b>	None
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	The proposed changes will affect applicants for onsite sewage construction permits, alternative discharging system construction permits for single family homes and private wells. The proposed changes may indirectly affect the owners of businesses providing services in these areas.
<b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	In fiscal year 2011, the agency processed applications for approximately 20,000 sewage disposal or private well construction permits, representing an estimated 15,000 individual applicants.  VDH estimates that there are approximately 350 licensed individuals providing site evaluation and/or design services for onsite sewage disposal systems, single family discharge sewage systems and installation of private wells. The vast majority of these are small businesses.
<b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b>	The proposed changes to the regulations will not add new costs to individuals or small businesses.
<b>Beneficial impact the regulation is designed to produce.</b>	This revision to the regulation should benefit applicants for services by collecting in a single document the requirements contained in various sections of the Code of Virginia.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

None

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

These regulations directly affect only individual applicants for services. The regulations directly reflect requirements of the Code of Virginia and explain the agency’s procedures for implementation; for example, when application fees may be waived and when refunds of fees may be made. The regulations are intended to minimize implementation costs to both the agency and to citizens.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Kym Harper	<p>The application fees for well and septic, certification and permit, <u>with</u> AOSE/PE documentation are only a <u>nominal</u> amount lower than the same application fees <u>without</u> AOSE/PE documentation. This has a direct impact on the Small Businesses of Virginia that provide Onsite Soil Evaluations and Onsite Septic System Design.</p> <p>A Small business impact review should definitely be done "to ensure 'this regulation' minimizes the economic impact on small businesses". And this review board should include actual small business owners, not just VDH employees.</p>	<p>This regulation does not set the specific amount of application fees. The Commissioner of Health is responsible for setting fees based on the cost to the agency of processing different types of applications, within the minimum and maximum limitations imposed by the Code of Virginia and the Appropriation Act.</p> <p>The fees for “bare applications” (i.e., those without supporting documentation from a private sector soil evaluator or professional engineer) vs. applications supported by private sector evaluations and designs are based on recovering a portion of the agency costs. The relative differences between the fees for these two categories of applications is due to the fact that VDH, on average, does less work to process an application that is supported by private sector documentation than to process a</p>

<p>J.T. Walker</p>	<p>The small business review required by the law ought to accurately determine the public cost of a VDH "bare application" site evaluation, and contrast this with the cost of reviewing an application prepared by an AOSE or PE. I believe the costs of providing a Construction and Operations Permit should be significantly altered to reflect the true cost of review and record keeping, as opposed to the cost of delivering full services for an applicant.</p>	<p>"bare application".</p>
<p>Adam Herman</p>	<p>The fees collected for AOSE permits are being WAY over charged and is subsidizing other programs which is plain unfair. Please look at the actual reasonable cost of an AOSE permit versus a Health Department permit. There should be a significant difference, maybe as much as 10 fold increase for bare applications.</p>	
<p>Rob Charnley</p>	<p>Heavily subsidized "bare" applications continue to incentivize the Public to contact VDH, not the private sector, for site evaluation and design services. The cost differential between "bare" applications and applications with supporting documentation by private sector AOSE's to the Public is nominal, and in my opinion, does not even attempt to reflect the actual costs associated with providing site evaluation and design services for a given project.</p>	
<p>Bob Savage</p>	<p>Under the current fee structure, it naturally drives the general public to apply for a bare application through VDH as it will cost them less money to pay the bare application fee than it will cost them to hire a private sector AOSE and still have to pay an only slightly reduced AOSE/PE application review fee.</p>	
<p>T.A. Houston, Jr.</p>	<p>The private sector "OSE" as a tax paying entity must charge a fee for services rendered...The VDH charges a "filing fee" to review the subject OSE submission and issues</p>	

	<p>a permit. The client is obligated to pay a double fee one for "services rendered" and one for a "septic tax".</p>	
<p>David Hall</p>	<p>VDH should widen the fee gap between AOSE and bare applications. You charge too much for AOSE supported permit preparation and these fees should be slashed drastically.</p>	
<p>Bob Marshall</p>	<p>The present fee-structure and policy are not operating in the most efficient, cost-effective manner. The Health Department is essentially giving away services and setting the stage for costly hiring to keep pace with the potential demand and workload.</p>	

**Family impact**

*Please assess the 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.*

The proposed regulatory action will have no family impact.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
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<p>12VAC5-620-20</p>		<p>Cites the authority for onsite sewage application fees and private well application fees.</p>	<p>Adds references to code sections related to alternative discharging sewage systems, certification letters, betterment loan eligibility letters, and geothermal well systems. These sections of the Code did not exist when the existing regulations were written.</p>
<p>12 VAC 5-620-70</p>	<p>12VAC5-620-75</p>	<p>Establishes application fees in the following amounts: \$50.00 for onsite sewage construction permit; \$40.00 for a private well construction permit; \$50.00 to revalidate an onsite sewage construction permit; and \$25.00 to revalidate a private well construction permit.</p>	<p>Requires the Commissioner of Health to establish a schedule of fees based on actual costs of services and the requirements of the Code of Virginia and the Appropriation Act. In recent years, Appropriation Act has led to changes in fees at a frequency that is impractical to revise the regulations to keep them up-to-date.</p> <p>Sets the fee amounts at the maximum allowed by the Code of Virginia and the 2010 Appropriation Act, except that applications for permits for minor modifications are set at 50% of the application fee for onsite sewage disposal system construction permits.</p> <p>Sets the fee for appeals to the Sewage Handling and Disposal Regulations Appeal Board at \$135.00.</p> <p>Clarifies that fees must be paid prior to delivery of service and that applications without the appropriate fee are incomplete. Adds a fee waiver for an application to properly and permanently abandon or decommission a private well located at the owner's primary residence. This may encourage the proper abandonment of wells that present health, safety and environmental hazards.</p>
<p>12VAC5-620-80</p>		<p>Waives the fee for applications to install pit privies, repair a failing onsite sewage disposal system or replace a private well. Waives any application fee for a person whose family income is below the federal poverty level.</p>	<p>Provides that construction permits may be renewed one time for a period of 18 months beyond the original expiration date when a building permit has been obtained or construction has commenced. This reflects a requirement of the Code of Virginia.</p> <p>Provides that one subsequent application for the same specific site may be submitted at no charge within 90 days following denial of the first permit application.</p>

<p>12VAC5-620-90</p>		<p>Provides for a refund of the application fee when a permit is denied.</p>	<p>Multiple submittals are frequently necessary to obtain an application that is complete and meets all regulatory requirements; allowing a 90 day period to perfect the application provides an opportunity for the applicant to correct errors without paying an additional fee.</p> <p>Removes the fee waiver for replacement wells. This is replaced by a provision in 12VAC5-620-90 that the application fee will be refunded when the existing well is properly and permanently abandoned (i.e., that the well is actually a replacement well) pursuant to 12VAC5-630-310.</p> <p>Adds a provision that the application fee may be refunded if the application is withdrawn before the agency makes a site visit. This is long-standing agency policy.</p> <p>Provides that the application fee for a replacement well will be refunded after the existing well is replaced. This change is proposed to improve compliance with the requirement to properly abandon wells when the well is replaced. Currently, many owners receive a fee waiver for a replacement well but then do not comply with the requirement to abandon the existing well.</p> <p>Provides that applications for refunds must be made in writing and within 12 months of denial of the permit, withdrawal of the application or conclusion of the appeals process. This provision is intended to limit confusion surrounding the procedures for refunds.</p> <p>States that an appeal will be heard only when the applicant has an active application before the Department. This is intended to limit the applicant to one administrative procedure at a time.</p>
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For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here