



Virginia

Regulatory
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Final Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12VAC5-620
Regulation title	Regulations Governing Fees for Onsite Sewage Disposal Systems, Alternative Discharge Systems, and Private Wells
Action title	Amendments following a periodic review
Date this document prepared	April 21, 2014

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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

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. Establish fees for various applications;
5. Provide for the waiver of fees in certain situations; 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.

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 or board taking the action, and (3) the title of the regulation.

On June 5, 2014 the Board of Health approved final amendments to the Regulations Governing Fees for Onsite Sewage Disposal Systems, Alternative Discharge Systems and Private Wells (12VAC5-620).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The current regulation is out of date because applicable sections of the Code of Virginia have been amended since the regulation was initially promulgated. The regulation is essential to protecting the public in that it explains to individuals 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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The proposed regulation incorporates the current schedule of fees established by policy, and in response to the Appropriations Act, for private well and sewage applications. The schedule of fees establishes a lower fee for applications considered to be minor modifications of an existing system, where an application is required but the amount of work required to process the application is minimal. Additionally, the proposed regulations incorporate Code requirements related to fees for alternative discharging sewage systems for single family homes.

The proposed changes 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 there are no disadvantages to the public or the Commonwealth, please indicate.

The proposed changes incorporate current Code requirements and agency policy into a single, up-dated document. Both the agency and the public may experience some benefit from the revisions due to better clarity and more consistent application of regulations and policies. There are no disadvantages to the public or to the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
12VAC5-620-10	None	Added definition of "decommission" in regard to wells	Provide clarity
12VAC5-620-10	Definition of "minor modification" did not mention voluntary upgrades	Added voluntary upgrade to the definition	Clarify that voluntary upgrades are not included in the definition of minor modification
12VAC5-620-10	Defined "voluntary upgrade"	Modified definition	Clarify definition
12VAC5-620.70.C	Stated that the current fees would be the maximum allowed by the Appropriations Act	Removed the language and inserted a table listing the fees by category	Provide clarity
12VAC5-620.70.C	Stated that the application fee for a minor modification would be one-half the regular fee	Removed the language from the text and added a \$100 fee for minor modification to the table	Provides clarity and simplifies the fee structure; \$100 is less than one-half the lowest regular application fee
12VAC5-620.70.D	Stated that the fee for a hearing before the Sewage Handling and Disposal Appeal Review Board shall be \$135	Removed the language and added the fee to the table	Provide clarity
12VAC5-620.75.B	Required the owner of a newly installed alternative discharge system to pay an inspection fee prior to the required inspection	Deleted the section	Conflicts with requirement of the Alternative Discharge Regulations
12VAC5-620.80.F	None	Added a statement alternative discharge permits will only be renewed if the construction permit complies with the requirements of DEQ's VPDES general permit	Clarify the requirements; VDH does not have the authority to issue or renew a construction permit that does not comply with the VPDES permit

12VAC5-620-80.G	None	Added denial of application for a certification letter to the items for which the application fee would be waived if a subsequent application is received within 90 days	Correct an oversight in construction of the previous language
12VAC5-620-100	Required documented proof of income	Added language to clarify that income includes both employment and non-employment income and that documentation in additional forms of documentation may be acceptable	Provide clarity

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Whitney Wright, VDH	<p>Proposed language addition to 12VAC5-620-80 G.</p> <p>Propose the following language addition to 12VAC5-620-80. Waiver of Fees:</p> <p>G. Any person whose application for a certification letter or permit to construct an onsite sewage disposal system, alternative discharging system, or private well is denied may file one subsequent application for the same site-specific construction permit for which the application fee shall be waived, provided that:</p> <p>The addition of certification letter in this section is consistent with the proposed revisions in 12VAC5-620-90. Refunds of application fees. If left unchanged it may take away the Departments ability to waive the state fees when an applicant files an application within 90 days of a certification letter denial.</p>	<p>The omission noted by the commenter was an unintentional oversight during the drafting of the regulations. The language has been added.</p>
Robert B. Charnley III	<p>Prior to updating the Fee Regulations, the appropriation act deserves clarification. The 2014 Budget Bill still</p>	<p>Although the Appropriations Act language may not be completely up-to-date, we believe that</p>

<p>Jeff T. Walker; President of VAPSS</p>	<p>references "authorized" onsite soil evaluator on several occasions. VDH authorization of onsite soil evaluators expired in 2009.</p> <p>In addition, the 2014 Budget Bill appears to promote a "fee for service" expectation that the VDH will perform site evaluation and design services that are in direct competition with private sector small business. It is my understanding that the VDH will be expected to:</p> <ol style="list-style-type: none"> 1.) Address direct competition with private sector small business. 2.) Define the role of the VDH to avoid direct competition with small business. 3.) Develop a plan to cease delivery of services in direct competition with small business. 4.) Identify legislative and regulatory changes to implement the plan. <p>I believe this was agreed to in lieu of HB 409 (2014), and the VDH will report their findings to members of the Health, Welfare, and Institutions committee later this year. The Fee Regulations should reflect these findings.</p> <p>The Fee Regulations should be updated once these issues are addressed. Thank you for your consideration.</p> <p>I object to the Economic Impact Analysis which shows no impact to small business or use of private property.</p> <p>While I acknowledge the need to consider revisions to the fee schedule I believe further consideration must be given to small businesses than has been reported. Specifically according to the report the proposed regulations "do not impose any direct costs on these small businesses," and "The proposed changes are not expected to have a significant direct effect on the use and value of private</p>	<p>the intent of the legislation is clear and that where the term "authorized onsite soil evaluators" is used, the legislation can be applied to licensed onsite soil evaluators.</p> <p>The agency has not yet received any communication and so cannot respond directly to this comment. The agency recognizes that changes to the Code of Virginia or to public policy may require future changes to these regulations.</p> <p>These regulations make only a single change to existing fees. The fees, with the exception of an application for a "minor modification to an existing system" will remain the maximum allowed by the Appropriations Act until such time as the regulations are revised. The proposed regulations establish some of the items that must be considered by the Commissioner in establishing changes to the fees. The primary purpose of the currently proposed regulations is to up-date certain sections due to changes to the Code of Virginia.</p>
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	<p>property.”</p> <p>No analysis is offered the consequence of fees or refunds to small business. and the value of private property. Specifically consider: <i>12VAC5-620-90. Refunds of application fee.</i></p> <p><u><i>An applicant for a construction permit or certification letter whose application is denied may apply for a refund of the application fee.</i></u></p> <p>In my opinion the refund policy clearly impacts small business:</p> <ol style="list-style-type: none"> 1. A design firm cannot compete with free services, and is restrained from trade by any offer of free or subsidized services. 2. Following evaluation and denial of a site application by VDH staff a design firm has a higher burden of proof which must be paid for by our client. A consequence to the consumer is the additional expense of site evaluation and design for an advanced or engineered design. 3. A denial casts an encumbrance on that parcel despite being an incomplete evaluation. (VDH policy allows for evaluation of 2 sites for conventional design) These limitations are not disclosed in writing to the applicant. 4. The VDH local offices do not disclose to applicants that public servants are limited in consideration of the owner's interests and may not design advanced systems which a consulting firm is authorized to provide. <p>Consider further: <i>2VAC5-620-70.</i></p>	<p>The refund policy applies to all applications for a construction permit where the construction is to serve the actual or intended primary residence of the applicant. The Code of Virginia §32.1-164.C requires the agency to refund the application fee in this circumstance.</p>
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	<p><u>Application Establishing fees.</u></p> <p><u>"fees to be charged by the department for services related to construction, maintenance, and repair or replacement of onsite sewage disposal systems."</u></p> <p>Small business owners are in direct competition with the services offered for a subsidized fee by VDH offices.</p> <p>Dr. Larry Getzler (DPB) provided fee analysis during SHIFT indicating that application fees support ~20-23% of the cost of delivering services by VDH onsite program. VDH's Environmental Health Director acknowledged that the agency does not know the cost of providing this service. In documents released since 2010 there is no indication of any time or cost studies by the agency.</p> <p>The cost to the VDH for delivering services has a fiscal impact which should be considered by the fee regulations. During FY2012, refunds of fees for denied or withdrawn applications exceeded \$232,300. FY 2012 data showed 10,736 permit applications, including well, septic, OSE and "bare applications" Total permit revenue is reported as \$4,219,253.</p> <p>In light of the incomplete analysis in support of this fee regulation, I believe the report should be revised to reflect current costs of VDH providing direct services, and changing economic and policy considerations including the concern over public services in competition with licensed professionals and engineering design firms.</p> <p>I also suggest that the comments offered in a previous Town Hall Comment forum which closed in May of 2011 have not been addressed in a public response by the responsible agencies which should include VDH, DPOR and Department of Planning & Budget.</p> <p>In light of these shortcomings, and the history of these problems which were considered by JLARC 2002, and</p>	
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<p>James B Slusser</p>	<p>other studies I ask that consideration of the impact of fees and policies on professionals licensed to serve the public be incorporated into any regulatory changes.</p> <p>12VAC 5-620-80 Waiver of Fees 1- G1: Should be made consistent with current Agency processing of applications and utilize a consistent schedule of business days</p> <p>2- Language should be incorporated to resolve denial of permits due to LOCAL ORDINANCES. Local requirements that exceed the State Regulations often require the use of additional licensed professionals, reviews by other local departments, etc., all of which typically takes more than 90 days to accomplish.</p>	<p>The Code of Virginia establishes multiple requirements for timely processing of applications in a mix of business days and calendar days. In this instance, the agency believes that a 90 calendar day limit is more clear than 56 business day limit.</p> <p>The agency believes that licensed professionals are responsible for being aware of local government requirements that exceed state requirements when working in that locality.</p>
<p>Mark Knowles</p>	<p>Fee Schedule I do not think it is good for any agency to set fees without a legislative disclosure. The current fees do not capture the FULL task of VDH duties.</p>	<p>The agency agrees that the fees allowed by the Appropriations Act are insufficient to fully fund the agency.</p>
<p>Janet Swords</p>	<p>12VAC5-620 After reading this document I say "no" to VDH controlling the fee schedule. I say "yes" to needed changes such as a reduced fee for component replacement that is not covered otherwise along with a need for a change in well permits that require a fee for abandonment only this should not be required. But don't change fees for well replacement with proper abandonment leave this alone. I don't understand the numbers stated in the <i>Business and Entities Affected</i> and again under <i>Small Business</i>, are the 350 individuals both private and public sector individuals combined? Under <i>Projected Impact on Employment</i> it is stated that these proposed changes are expected to reduce administrative staff time that would be necessary to update the regulations through the standard regulatory process on a frequent basis. If these administrative staff people will be constantly looking at</p>	<p>VDH only controls the fee schedule to the extent of the authority provided by the General Assembly in the Code of Virginia and the Appropriations Act.</p>

	<p>the "high frequency of legislative actions affecting fees" to adjust the VDH fee schedule, then these same staff people should not have to spend any more time on taking the changes through the Regulatory process.</p>	
<p>Joel S. Pinnix, PE</p>	<p>12VAC5-620-80.F Waiver of Fees This section appears to conflict with 12VAC5-630-220, 12VAC5-630-300, 12VAC5-640-220 and 12VAC5-640-220.</p>	<p>This section extends a benefit (waiving the fee for a one-time renewal of the permit) to private well and alternative discharge regulations. The agency is in the process of up-dating the 12VAC5-640 and will do the same for 12VAC5-630.</p>
<p>Joel S. Pinnix, PE</p>	<p>12VAC5-620-80.G I have personally experienced the abuse of the 90-day, one-time resubmittal regulation. In several instances my permits were denied based on trivial issues and I was "put on notice" that if I did not correct ALL DEFECTS on the next submittal, my client would be charged a new fee.</p> <p>In another instance, Loudoun County waited until the 58th day of the 60-day time allotment to deny my client's permit for the second time. There was no dialog or notice that a defect in the permit application existed until the denial letter was sent. There was no opportunity to perfect the application before the second denial was issued. The defect noted on the denial concerned an old easement that was being abandoned and the client was trying to coordinate with various entities, including the County Circuit Court Clerk's office. The result of the health department's action required a new \$1,400 permit fee.</p>	<p>The agency is not required to waive the fees for resubmittals of incomplete or imperfect applications. However, the agency is aware that even in the best of circumstances, errors and omissions may occur. Therefore, the agency has opted, when an application is denied, to allow one resubmittal of a corrected application within with no additional application fee. The 90 day time limit starts on the date that the notice of denial of the original application is received by the applicant.</p>
<p>Joel S. Pinnix, PE</p>	<p>I strongly object to the 90-day one time submittal rule. An applicant should have a total of 90-days to perfect the application with as many corrections and submittals as necessary before incurring a new application fee.</p>	<p>The agency believes that it is important to limit the number of re-submittals to provide for orderly administration of the program. We believe that a single fee waiver is reasonable, since each re-submittal requires additional staff time for tracking, reviewing and responding to application materials.</p>
<p>Joel S. Pinnix, PE</p>	<p>12VAC5-620-10 - Definition of Owner The proposed definition of "Owner" is not consistent with the statutory</p>	<p>The agency believes that the definition of "owner", when read in conjunction with the definition of "person" is consistent with the definitions in the Code of Virginia.</p>

<p>Morgan A Kash</p>	<p>definition in 32.1-163 and 32.1-167.</p> <p>12VAC5-620-70 The regulations should be amended to identify that all “schedule of fees” disclose those fees necessary for administering Title 32.1 by the Agency</p> <p>This disclosure will enable greater transparency to the consumer.</p>	<p>The schedule of fees is based on legislation which authorizes the agency to implement fees determined to be necessary by the legislature.</p>
<p>Joel S. Pinnix, PE</p>	<p>12VAC5-620-10 - Definition of Voluntary Upgrade The definition should read: <u>"Voluntary upgrade" means a change to or replacement of an existing non-failing onsite or alternative discharging sewage disposal system for the purposes of reducing threats to the public health, or to ground and surface waters, including the reduction of nitrogen discharges, without an increase in the permitted volume or strength of the sewage, in accordance with the regulations for repairing failing systems.</u></p>	<p>The definition of “voluntary up-grade” has been modified to provide clarity.</p>
<p>Joel S. Pinnix, PE</p>	<p>12VAC5-620-70. A - Maintenance Fees</p> <p>Regarding: <u>A. The commissioner shall establish a schedule of fees to be charged by the department for services related to construction, maintenance, and repair or replacement of onsite sewage disposal systems, alternative discharge systems, and private wells and for appeals before the Review Board.</u></p> <p>Why is the term "maintenance" included in the above? Is it VDH's intention to establish "maintenance fees"?</p> <p>I strongly object to the term maintenance and request that it be removed.</p>	<p>The agency does not anticipate establishing any fees not explicitly authorized by legislation. The term “maintenance” was included because certain fees established by Code might be considered to be related to maintenance; for example, the annual inspection fee for alternative discharging systems and the operation and maintenance reporting fee.</p>

<p>Joel S. Pinnix, PE</p>	<p>12VAC5-620-75. B - Installation Inspection Fee What is an "Installation Inspection Fee"? Where is the statutory authority to establish and charge this fee? Why would an applicant pay for an application fee (that supposedly includes inspection) and then have to pay an inspection fee? I object to the inclusion of the Installation Inspection Fee.</p>	<p>This section of the regulations has been removed. Determination of when an alternative discharging system must be inspected will be determined in the proposed alternative discharging regulations.</p>
<p>Joel S. Pinnix, PE</p>	<p>12VAC5-620-90.F - currently active application What is a "Currently Active Application"? It appears from the narrative that a case decision would have been made resulting in a denial. The narrative suggests that an applicant would have to pay another application in order to appeal the denial.</p>	<p>This section has been revised to eliminate reference to "currently active application" and to provide clarity. The intent is that a person who requests a refund of the application fee may not simultaneously pursue an appeal of the denial.</p>
<p>Joel S. Pinnix, PE</p>	<p>12VAC5-620-100 - proof of income From B. ..."check stubs, written letter from an employer, W-2 forms, etc., in order to..." The term "etc." is not appropriate for the Virginia's Administrative Code. Something more formal like: "...shall include, but not limited to check stubs, written letter from an employer, and W-2 forms, in order to..." Also - there is no mention of Virginia or Federal Income Tax Returns. I suggest adding both of these to list. From C. "Proof of income must include:..." How is someone of a fixed income - such as disability, social security, or retirement income going to provide proof of income from an employer?</p>	<p>The regulations intend to consider all sources of income, whether from employment or non-employment. This section of the proposed regulations has been edited to provide clarity in that regard.</p>
<p>Joel S. Pinnix, PE</p>	<p>Regarding the Economic Impact Analysis</p>	<p>The comments will be considered as the agency develops and revises policies related to the onsite sewage program.</p>

	<p>The economic impact analysis on the effect on small businesses is cursory – at best. These regulations and implied authority claimed by the Virginia Health Department (VDH) as a direct service provider of proprietary services is devastating to the private sector. The EIA states the “majority” of the private sector service providers are estimated to be small businesses. In my opinion, “majority” underestimates the number of small businesses in this particular industry. My experience over the past 12 years is that ALL of the private sector providers are small businesses. The overarching analysis that the proposed changes “do not impose any significant adverse impact on the small businesses” may be technically correct given the narrow scope of the EIA. The reality of VDH, Inc.’s current business model is:</p> <ol style="list-style-type: none"> 1. VDH, Inc. is the largest single provider of direct site evaluation and design services in the Commonwealth of the Virginia – providing between 7,000 and 10,000 fee-for-hire service contracts per year. 2. The gross income of the fee-for-hire services ranges between \$2.5 million and \$4.25 million per year. 3. All of VDH, Inc.’s fee-for-hire services are almost entirely tax subsidized. 4. VDH, Inc.’s net fee for a certification letter is \$30 per site. 5. VDH, Inc.’s net fee for a conventional site evaluation and septic system design is \$200 per site. <p>Compare VDH, Inc. with a private sector small business - the real cost of a site evaluation and preparation a certification letter submittal ranges between \$500 and \$1,500 per site. The real cost of a conventional septic system evaluation and design ranges</p>	
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<p>Virginia Association of Onsite Soil Evaluators ("VAAOSE")</p>	<p>\$800 and \$2,500 per site. Therefore, tax payers subsidize nearly 100% of the cost of service for VDH, Inc.'s direct service business. It is easy to recognize the devastating impact on small businesses when forced to compete with a competitor of such magnitude coupled with the advantage of tax payer funding. Consider the loss of tax revenue to the Commonwealth of Virginia. If the private sector provided 100% of the fee-for-service business in this industry, the tax revenue would be about \$1 million per year. Contrast this revenue stream with the tax subsidy cost of \$3.4 million per year. The economics do not work. Instead of gaining \$1 million per year, the Commonwealth of Virginia is actually spending \$3.4 million per year to provide a fee-for-service to individuals for improvements to their real property.</p> <p>Another way to analyze the issue is the overall cost of this service to lot owner. Consider the cost of a house is about \$250,000 and the cost of the lot is \$75,000. The subsidy provided by the tax payer amounts to a trivial 0.5% of the overall project cost. Of course this percentage drops proportionally as the cost of the project increases. In many cases, the subsidy amounts to less than 0.1%. Why is the Commonwealth of Virginia subsidizing a service to some of its citizens that the private sector can provide at a significant cost to the entire taxpaying citizenry? This regulation should be put on hold until the fee-for-service issue is resolved.</p> <p>Respectfully Request VDH to Seek Attorney General Perspicuity</p> <p>The Virginia Department of Health ("VDH" or "Agency") is attempting to promulgate broad-ranging Regulations to adjust and or recover fees not historically collected. The current proposal may have a greater probability of affecting small businesses than reported or was investigated. Additionally, clarity is sought to better understand the underlying administrative duties</p>	<p>The proposed regulations do not add any new fees. The proposed regulations mirror the current agency policy of charging the maximum fees allowed, except in the case of "minor modifications" or where the fee is waived entirely.</p> <p>The agency may in the future and within the limits established by legislation, establish lower fees than the maximum allowed. Such changes would be required to follow the requirements of the Administrative Process Act.</p>
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	<p>expressed under Title 32.1 et. seq. and regulated duties within Title 54.1 Code of Virginia.</p> <p>In the Proposed Fee regulations, VDH acknowledges that the Agency seeks to recover and amend costs without legislative review. At this time, we respectfully request VDH to seek Attorney General perspicuity on all <i>anti competitive effects</i> as required in Title 59.1_9.4.b of the Code of Virginia.</p> <p>The questions present are:</p> <ol style="list-style-type: none"> 1. Whether existing Agency fees utilized to administer Title 32.1 of the Code of Virginia cover actual or estimated cost. 2. Whether the Fee Regulations authorize VDH to charge a fee for duties provided under Title 54.1 of the Code of Virginia. 3. Whether a conflict exists whereas the Agency may be collecting ministerial fees for administration of Title 32.1 of the Code of Virginia and fees for service delivery of a regulated professional trade by Title 54.1 of the Code of Virginia. 4. Whether the Department of Planning and Budget (“DPB”) incorrectly assessed the impact(s) on small businesses within the Economic Impact Analysis, whereas the current practice of VDH providing “free soil evaluation and design services” have established <i>anti competitive effects and restraints of trade</i>. <p>In 2007, the General Assembly mandated licensure to best protect public health, safety, and welfare within the Commonwealth. Confusion</p>	
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<p>Bill Sledjeski</p>	<p>between purpose and authority has perpetuated disparity within the industry. As a result, VDH has evolved into the largest provider of soil evaluation and design services within the Commonwealth.</p> <p>Greater understanding of VDH continuing to offer “free” services of a regulated trade is not without conflict. The deleterious impact of a State Agency competing with a regulated trade was neither the purpose nor intent of licensure. The proposed Fee Regulations should be revised to reflect <i>only</i> the authority granted under Title 32.1, Code of Virginia. Therefore, given the significance and importance of supporting small businesses in the Commonwealth, the VAAOSE strongly objects in authorizing VDH to update any fee schedule without further legislative input.</p> <p>Fee Structure 12VAC5-620-30, 70, 80 12VAC5-620-30</p> <p>Apparently a distinction is being made between an “application fee” and a “services provided fee”. Fees should be established for both conditions. Application fees should be strictly administrative</p> <p>VDH “services provided fee” should encompass the total hourly process of administrative services, technical siting and planning discussions, FOIA requests, site visits, sanitary surveys, field evaluations, client discussions, percolation testing, surveys, system specifications, abbreviated designs, level 1 and 2 reviews and document revisions, et. al. <i>(A. The commissioner shall establish a schedule of fees to be charged by the department for services related to construction, maintenance, and repair or replacement of onsite sewage disposal systems, alternative discharge systems, and private wells and for appeals before the Review Board. B. In establishing fees, the commissioner shall consider the actual or estimated average cost to the agency of delivering each service</i></p>	<p>The Code of Virginia and the Appropriations Act authorize or require the agency to establish certain fees. Some are specifically referred to as application fees in the legislation; others might be considered service fees, since they are not tied directly to an application for a permit.</p> <p>The agency gives consideration to the costs associated with processing applications and providing services, but in many cases, the maximum fees authorized by legislation are insufficient to cover the entire cost.</p>
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<p>Manufacture / Virginia residence</p>	<p><i>included in the schedule of fees.)</i></p> <p>OSE/PE supported documentation should require an application fee only. VDH will require “services provided and application fees”</p> <p>12VAC5-620-70 A.B. appears to satisfy this distinction.</p> <p>12VAC5-620-80 F5, G1. There should be no time constraints placed on any application.</p> <p>Property Transfer fees I have two concerns that I hope can be addressed.</p> <p>1. As a homeowner I want to know, when I purchase a home the septic / treatment works has been inspected by a licensed, experienced, and trained individual. It is not of matter who does the inspection, just that the inspection is carried out. I will submit that anyone that is not licensed by DPOR as a service provider, an employee of the VDH or a licensed engineer is not and should not be doing these types of inspections. It would seem to me that anyone who markets themselves as a home inspector and does not have a DPOR license as a service provider to inspect septic systems is breaking the law. I think it is only a matter of time before, an informed homeowner who understands the regulations will successfully sue a home inspector, who does not have a DPOR license for a treatment works problem that is unforeseen. As a homebuyer I might realize I can hire my own inspector, but I also realize that most homeowners would believe that a generic home inspector is good enough. I think at a minimum the home buyer needs to understand what he or she is purchasing and that information should be part of a property transaction.</p> <p>2. As a manufactures representative of alternative treatment systems we get calls from homeowners who want to understand what they just purchased.</p>	<p>VDH is aware that transfers of property served by onsite sewage or alternative discharging sewage systems sometimes create problems, especially when the new owner is not fully aware of the condition of the existing system or the operation and maintenance requirements of the system. VDH's regulations for alternative onsite sewage disposal systems attempt to address this issue to some extent by requiring that operation and maintenance manuals be provided for alternative onsite sewage systems.</p> <p>The agency may not have the authority to require inspections of sewage disposal systems at the time of property transfer and does not believe that this set of regulations would be the most appropriate place to do so in any case. The Department of Professional and Occupational Regulation may be the most appropriate agency to establish requirements for persons who do such inspections.</p>
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<p>W.R. Willoughby Jr.</p>	<p>Of course we lead the homeowner to a service provider and it is only then they understand the cost of owning a home with an alternative treatment works. In some cases this leads to extensive repairs.</p> <p>In the interest of protecting uninformed homebuyers, I believe there needs to be an inspection of treatment works at the time of property transfer. The inspection should be done by a licensed DPOR service provider, a VDH employee, or an engineer. It could be a combination of anyone of the two. I have done some research and there are two states that I can find already doing this Rhode Island and Iowa and there may be more. I believe that a fee should be incorporated into the new fee structure for the VDH to do these inspections. The inspection could be done with a licensed service provider or engineer. I would submit a total fee of \$200-\$400 at time of property transfer would be reasonable and would protect the home buyer. This is a small cost to pay and could be rolled into closing cost of the property transfer. Another reasonable advantage would be that this fee would help already financially strapped Health Departments fund their programs.</p> <p>While I am an industry stakeholder I do not write this as a stakeholder, As a stakeholder there is no advantage for manufactures. I write this as an informed citizen interested in protecting homebuyers, thus I choose to remain anonymous.</p> <p>Proposed changes to Regulations Governing Fees for Construction Permits for Onsite Sewage Disposal</p> <p>Regulations Governing Applications Fees for Construction Permits for Onsite Sewage Disposal Systems and Private Wells (12 VAC 5 - 602) should not be amended by VDH for the following reasons:</p>	<p>The agency believes that it is acting within the authority provided by the Code of Virginia in making the proposed regulatory changes.</p> <p>As of this date, VDH has not received any communication from the Health, Welfare and Institutions Committee referenced by the commenter.</p>
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	<p>1. The change should be made by the Legislators not by VDH</p> <p>2. VDH has been directed by the Health, Welfare, and Institutions Committee to provide an impact report on the private sector to the Committee by Oct. 1, 2014 and no changes to fees by VDH should be proposed before this report is given to the Committee. This impact statement was directed in lieu of H B 409.</p> <p>3. It appears to me that VDH is trying to get more money from the tax payers so that they can continue to unfairly compete with the private sector. This opinion is based on my prior experience with VDH.</p>	
<p>James B Slusser, AOSE</p>	<p>Definition of "Fee Schedule" 12VAC5-620-10 Consider addition of "LOCAL FEE SCHEDULE" to 12VAC5-620-10 <i>Definitions</i> of the proposed regulations. I would suggest adding language to create disclosure whereas the commissioner shall keep a record of all localities authorized by the General Assembly to establish local fees (see 15.2-2157.1 Code of Virginia) that are in addition to the Virginia Department Health (VDH) Fee Schedule.</p>	<p>The agency does not have the authority to regulate fees established by local governments and therefore declines to add reference to such fees to these regulations.</p> <p>The agency will consider how it might increase awareness among applicants of fees related to onsite sewage systems, alternative discharge systems and private wells that are established by local governments.</p>
<p>James B Slusser, AOSE</p>	<p>12VAC 5-620-10 "Minor Modification of an existing sewage disposal system" 1) 12VAC5-620-10 is not clear if a permit is required to "modify an existing system". Lacking the necessity of a permit, this regulation may be in conflict with Local Ordinances that do require permits for modifications and alterations. 2) Are Local Fees for Service applicable to <i>Minor Modifications</i> as defined by these proposed regulations?</p>	<p>The requirements for submitting applications are included in the relevant regulations governing onsite sewage disposal systems, alternative discharge systems and private wells. This set of regulations is intended to implement the collection of fees when an application is required.</p> <p>VDH does not have the authority to interpret the applicability of fees established by local governments.</p>
<p>James B Slusser, AOSE</p>	<p>12VAC5-620-90 (C) Add language to identify "decommissioned".</p>	<p>The term "decommissioned", in reference to wells, is the industry standard for what in the past was referred to as "permanent abandonment". The definition has been added.</p>

<p>James B Slusser, AOSE</p>	<p>Pulling a well pump may be considered "decommissioned", thus rendering the well inoperable.</p> <p>FEES FOR SERVICE Authorizing the Commissioner of Health to charge the maximum allowable fees per the Code of Virginia or Appropriations Act ignores local fees. A reduction in states fees provides no incentive to owners if localities are allowed to continue marking up state FEE FOR SERVICES without legislative consideration.</p>	<p>The agency does not have the authority to limit fees imposed through local government ordinances.</p>
<p>Bob Marshall / cloverleaf env. cnslt., inc</p>	<p>Proposed Amendments to 12 VAC 5? 620 As others have already expressed their concerns about the direction of any such amendments, please consider the following points:</p> <p>(i) New amendments should reflect Virginia's decade long transition to a performance-based regulatory program in onsite sewage. The regulatory framework is currently overdue for synthesizing this transition into the policies of the Onsite Sewage Program "with the least possible intrusion in the lives of citizens".</p> <p>(ii) Regulatory alternatives were established in 2007 for VA licensed individuals to provide supporting documents necessary for approval of certification letters and construction permits. This opportunity has been under utilized in several Health Districts across the State.</p> <p>(iii) The <i>Regulations Governing Application Fees for Construction Permits for Onsite Sewage Disposal Systems & Private Wells</i> (12VAC5-620 et seq.) remained unchanged until the 2010-2012 Biennium Appropriations Act. As result, specific limits were set on a variety of application fees with amounts "<i>not to be exceeded</i>". These amounts effective July 1, 2010 have become</p>	<p>The department has considered these comments and believes that the proposed regulation addresses the comments insofar as practical at this time. Some of the comments are beyond the scope of this regulatory action and will be considered further as the agency undertakes future policy and regulatory change.</p>

<p>Tony Bible, SWEC</p>	<p>problematic on a variety of levels. Several counties and health districts have add-on fees that, in some cases, increase the cost of all applications (with/without supporting documentation) by several hundred dollars or more.</p> <p>(iv) Looking over the revenues recently collected from the source codes for onsite sewage fees under REVENUE CLASS: 02 RIGHTS AND PRIVILEGES, as of 12/31/2010, it could be argued that 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> <p>(v) There's a certain sense of confusion in some Health Districts that the AUTHORIZED ONSITE SOIL EVALUATOR REGULATIONS (12 VAC 5-615) obligates these District to pursue "bare applications" as long as no 15-day backlog exists for processing applications submitted without supporting documentation from an AOSE/PE.</p> <p>(vi) Small businesses providing documentation with client applications are required to pay fees only slightly lower than the Health District charges for performing the work themselves.</p> <p>Keep feeding the VDH, Inc. BEAST! While many businesses have suffered from the building recession, the Virginia Department of Health (VDH, Inc.) remains healthy. VDH staffing levels remain virtually unchanged even though the number of permits has decreased substantially since 2008. VDH, Inc. has accomplished this by taking market share from private sector designers many or most of whom are now essentially defunct due to unfair competition from VDH, Inc.</p> <p>I am convinced that VDH, Inc. will go to any length necessary to keep designing septic systems even</p>	<p>The agency will consider the comments in developing future policies and regulations.</p>
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	<p>though they have no mandate to do so and refuse to accept liability for damages that occur due to their design decisions. So go ahead and give them the ability to do whatever they want to do with fees. This would be the final tool VDH, Inc. needs to function as an effective monopoly on design services.</p> <p>With all the focus on VDH, Inc. designing septic systems, is anyone actually following up to see if they are keeping their food inspections complete and recent? That would seem like a more important public health issue than designing septic systems.</p>	
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All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
12VAC5-620-20		Cites the authority for onsite sewage application fees and private well application fees.	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.
12 VAC 5-620-70		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.	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, and includes a list of current fees. The fees are the maximum currently allowed by the Code of Virginia and the Appropriations Act, except that that the application fee for a minor modification is set at \$100 and the fee for an appeal to the Sewage Handling and Disposal Regulations Appeal Board is \$135.

<p>12VAC5-620-80</p>	<p>12VAC5-620-75</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>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>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. 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>12VAC5-620-90</p>		<p>Provides for a refund of the application fee when a permit is denied.</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>Provides that an applicant may not receive a refund of the application fee while pursuing an appeal of the denial of an application. This is intended to limit the applicant to one administrative procedure at a time.</p>
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