



Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health (VDH)
Virginia Administrative Code (VAC) citation	12VAC5-630
Regulation title	Private Well Regulations
Action title	Amend Private Well Regulations to comply with statutory changes (To provide for express permit for closed loop geothermal wells and minimum yield requirements for private residential drinking water wells)
Date this document prepared	September 25, 2009/amended December 27, 2010 and January 31, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The State Board of Health (board) proposes to amend 12VAC5-630, the Private Well Regulations (Well Regulations) by: 1) establishing requirements for express geothermal permits; and, 2) establishing minimum well yield requirements for residential drinking water wells.

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.

The State Health Commissioner, acting as vested with the authority of the board pursuant to § 32.1-20 of the *Code of Virginia*, adopted proposed amendments to the Well Regulations on September 25, 2009. On December 22, 2010, while this regulatory action was under executive review, the commissioner made adjustments to the proposed amendments concerning well yield and storage based on concerns raised by the Virginia Water Well Association (VWWA). After receiving input from the Office of the Attorney General, a further adjustment was made to the proposed amendments to insure compliance with § 32.1-20 of the *Code*.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Section 32.1-176.4 requires the board to adopt regulations pertaining to the location and construction of private wells in the Commonwealth, and § 32.1-176.5 requires any person intending to construct a private water well to apply to VDH and receive a permit before proceeding with construction. Legislation approved in 2009 (Acts of Assembly chapters 105 and 710) requires the board to adopt the proposed amendments.

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 the regulation 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 first of these two amendments establishes an express geothermal permit, allowing the construction of wells used solely for closed loop geothermal heating systems. The goals of this action are to streamline permitting processes for geothermal wells while allowing VDH an opportunity to inspect the construction and to reduce the fees charged for such wells. Prior to the 2009 legislation VDH charged an application fee for each group of 10 wells. The amendment provides that VDH will charge one fee for each geothermal heating system, regardless of the total number of wells constructed.

The second amendment establishes minimum well yield and storage requirements for residential drinking water wells. There have been several cases where a home buyer has learned of a low-yield well only after purchasing and moving into a new home. Prior to the 2009 legislation the board's regulations contained only recommended minimum yield and storage requirements.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i)

file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The enabling legislation was unopposed during the 2009 General Assembly and the language of the amendments tracks the language in the *Code* as closely as possible. VDH worked closely with the VWWA in drafting these amendments and believed that the amendments adopted September 25, 2009, accomplished the minimum requirements of the 2009 legislation.

In October 2010, while this regulatory action was under executive review, the VWWA expressed concerns about the regulatory language regarding minimum well yield and storage. VDH worked with the VWWA to adjust the proposed regulation and believes that the adjusted language accomplishes the minimum requirements of the 2009 legislation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

In drafting the geothermal heating system amendments, VDH followed the specific requirements spelled out in the 2009 legislation, which include:

- 1) The well must be constructed by a contractor properly licensed pursuant to Chapter 11 of Title 54.1 of the *Code*;
- 2) The licensed contractor must provide a registration statement to VDH prior to construction certifying compliance with the Well Regulations;
- 3) The registration statement must include accurate property location information, a description of the geothermal heating system construction, contact information for the contractor, and a detailed site plan (drawn to scale) that shows any sources of contamination;
- 4) VDH will only charge a single application fee for a geothermal heating system; and,
- 5) Once a complete application is submitted, construction may begin immediately.

In drafting the yield and storage requirements, VDH followed the specific requirements of the 2009 legislation, which requires VDH to consider the suggested minimum requirements currently contained in the well regulations. The amendment converts the recommended minimum requirements to mandatory requirements.

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.*
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The express geothermal permitting process will reduce processing times and allow contractors to begin construction immediately upon submitting a proper registration statement, thereby reducing costly

construction delays. Application fees for most geothermal systems will be reduced. No disadvantages have been identified at this time.

The amendments regarding well yield are intended to assure home buyers that an adequate supply of water exists. In some cases the minimum yield and storage requirements will result in limited economic impacts. Multiple wells, storage tanks or pumps and timers may be required to meet the minimums. In very limited cases where adequate well yield is not found, building lots may be rendered unusable. Many localities require construction of wells prior to the issuance of building permits, a requirement that may lessen some economic impacts. In those counties where building permits are issued prior to construction of a well, the potential risks associated with low-yield wells are higher.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need 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.

There are no applicable federal requirements for express geothermal well permitting or for private well yield and storage.

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.

There are no identified localities with disproportionate material impact by the adoption of these amendments to the well regulations.

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.

VDH is afforded little flexibility in this regulatory action because the amendments are specifically required by statute. VDH believes it has acted to implement only the minimum requirements.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	No projected additional cost to the state.
Projected cost of the regulation on localities	No projected additional cost to the localities.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Individual citizens (home owners) and water well professionals who install private water wells, including closed-loop geothermal wells.
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. 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.	There are approximately 540 licensed water system providers in the Commonwealth. There are an estimated 330 water well companies. Almost all of these are considered small businesses.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	No projected additional costs for affected individuals, businesses, or other entities.

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.

The proposed changes are necessary so that the board’s regulations conform to the Code; therefore, there are no viable alternatives.

VDH worked closely with the VWWA in drafting the proposed regulations. The geothermal heating system amendments will result in a reduction of permitting fees for this type of well.

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 amendments will have limited impact on families and family stability. To the extent that the geothermal heating system amendments will expedite the permitting processes, small businesses will benefit, thereby potentially increasing family incomes. By preventing problems associated with low-yield wells, the amendments will provide an assurance to families who purchase new homes with private wells that the water systems will produce an adequate amount of water.

Detail of changes

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

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

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	12VAC5-630-271		A. Issuance of express geothermal permit is contingent upon proper registration statement and payment of fees. Registration statement requires: <ol style="list-style-type: none"> 1. Property owner’s name, address, and telephone number; 2. Address of property and directions; 3. Proposed use of well; 4. Name, address, telephone number, and license number of driller; 5. Statement signed by owner allowing access by VDH; 6. Site plan drawn to scale showing proposed well location, property boundaries, easements, sources of contamination within 100 feet; and, 7. Statement signed by licensed driller that location and construction will comply with the well regulations. B. Single application fee, the same as charged for a private well.
	12VAC5-630-272		A. Upon receipt of registration statement and fee, VDH will issue permit. Construction may begin immediately. B. VDH may inspect; deficiencies must be corrected. C. VDH will approve upon receipt of Completion Report, proper inspections, and corrections if required.
12VAC5-630-460		Recommendations for yield and storage.	Amend the section to make the yield and storage recommendations mandatory:

			<p>All drinking water systems using one or more Class III private wells must be capable of supplying water in adequate quantity for the intended uses. All systems with a capacity less than three gallons per minute must have the capacity to produce and store 150 gallons per bedroom per day and to deliver sustained flow of five gallons per minute per connection. The well driller must certify the storage capacity and the yield of the well on the Uniform Water Well Completion Report</p>
12VAC5-630-998 (Forms)			<p>A new form, Registration Statement for Express Geothermal Heating System, has been added.</p>