

March 19, 2020

MEMORANDUM

TO: District Health Directors
Environmental Health Managers
Office of Environmental Health Services Staff
Onsite Soil Evaluators
Professional Engineers
Onsite System Operators and Installers
Water Well System Providers

GMP #2020-01

THROUGH: M. Norman Oliver, MD, MA
State Health Commissioner

THROUGH: Dwayne Roadcap, Acting Director
Office of Environmental Health Services

FROM: Lance Gregory, Director
Division of Onsite Sewage and Water Services,
Environmental Engineering, and Marina Programs

SUBJECT: GUIDANCE MEMORANDA AND POLICY (GMP) 2020-01
Implementation of House Bill 2811; Certification of Pollution Control Equipment
for Tax Exemption Purposes

PURPOSE:

The 2019 General Assembly passed House Bill 2811 (HB 2811) amending § 58.1-3660 of the Code of Virginia for the certification of pollution control equipment and facilities. Finding an emergency existed, the General Assembly included the Virginia Department of Health (VDH) as a “state certifying authority” for water pollution control equipment and facilities, effective March 18, 2019, the date of HB 2811’s passage. Previously § 58.1-3660 of the Code of Virginia included only the State Water Control Board, the State Air Pollution Board, the Virginia Waste Management Board and the Department of Mines, Minerals and Energy as a “state certifying authority.”

The purposes of this policy are to:

1. Assist VDH staff in determining whether certain equipment and facilities are used for the abatement or prevention of pollution of waters of the Commonwealth;
2. Explain the limitations on the type of projects that are eligible for tax exemption certification;
3. Provide guidance to agency staff, owners, and private sector professionals on processing applications for tax exemption certifications; and
4. Establish expectations for processing the applications.

AUTHORITY:

HB 2811 identifies the Virginia Department of Health (VDH) as a state certifying authority for tax exemption certification for installation of water pollution control equipment and facilities under § 58.1-3660 of the Code of Virginia. The full text of Code § 58.1-3660 is found in Appendix A of this policy.

DEFINITIONS:

"Certified pollution control equipment and facilities" means any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination. (§ 58.1-3660)

"Public Funds" means money generated or collected from any source used or designated for public purposes by federal, state, or local governments, other political subdivisions, or other agencies acting for or on behalf of a controlling state, federal, or local government.

"State certifying authority" means the State Water Control Board or VDH for water pollution Control equipment and facilities.

BACKGROUND

Section 58.1-3660 of the Code of Virginia identifies certain pollution control equipment and facilities as eligible for exemption from state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia. The State Water Control Board, the Air Pollution Control Board, the Department of Mines, Minerals and Energy, and the Virginia Waste Management Board have certifying authority for projects under their authority as described in the Code. Onsite wastewater treatment systems utilize pollution control equipment, but no onsite projects were eligible for certification as VDH was not a certifying authority until amendment of the referenced Code section.

In 2019, the General Assembly passed HB 2811 which adds VDH as a state certifying authority for water pollution eligible projects, but limits the projects that may apply to onsite sewage systems that: i) serve 10 or more households; ii) use nitrogen-reducing processes and technology; and iii) are constructed, wholly or partially, with public funds.

Expenses for land on which such equipment or facilities are located are ineligible for sales tax exemption.

EVALUATING PROJECTS FOR CERTIFICATION

Pollution control equipment or facilities are eligible for certification by VDH under § 58.1-3660, if the project:

1. is an onsite sewage system serving 10 or more households;
2. uses nitrogen reducing processes and technology;
3. is constructed, wholly or in part with public funds;
4. is real or personal property, equipment, facilities or devices;
5. is used primarily for the purpose of abating or preventing pollution of the waters of the Commonwealth; and
6. is constructed, reconstructed, erected, or acquired in conformity with the VDH state program or requirements for abatement or control of water pollution.

1. *Onsite sewage system serving 10 or more households.*

The onsite sewage system (OSS) must serve 10 or more households. The households may be located within individual single family homes, duplexes, attached dwellings, condominiums, or apartments that are for residential full time uses. The OSS may serve additional uses such as commercial uses, schools, churches, etc., but it must include in its service area at least 10 households.

2. *Uses nitrogen reducing processes and technology.*

The OSS must be designed and constructed in accordance with applicable VDH regulations, including nitrogen reduction. The project must include active nitrogen reducing equipment or processes. Dilution and vegetative uptake do not qualify as active nitrogen reduction.

3. *Constructed, wholly or in part with public funds.*

Public funds must be used, either in the form of a loan or grant to fund the construction project equipment or facilities in whole or in part. Public funds used to purchase land; to fund fees of any kind such as design services or applications; or to fund any other part of the project that is not actual construction of the OSS do not count toward qualification as being wholly or partially publicly funded.

4. *Is real or personal property, equipment, facilities or devices.*

The tax exemption is limited to real property, equipment, facilities or devices that are durable in nature. Chemicals immediately consumed during the operation of the pollution control equipment are not considered real property.

5. *Used primarily for the purpose of abating or preventing pollution of the waters of the Commonwealth.*

Only equipment and materials used primarily for actual abating and preventing of pollution can be considered for sales tax exemption. For OSS, this includes collection systems, tanks, pumps, aeration equipment, piping and appurtenances, sand/select fill when used to improve vertical separation and cover; control systems; electrical wiring/conduit/controls; and control buildings (but only sections related to laboratory or housing equipment).

Not included are materials needed to construct or restore pavement, curbs, etc.; security components such as fencing; storm water control systems; administrative buildings; and educational buildings or components. If a component has dual uses, and if the pollution control or abatement component use is 50% or greater, then the component may be certified.

6. *Is constructed, reconstructed, erected, or acquired in conformity with the VDH state program or requirements for abatement or control of water pollution.*

The system design and construction must comply with all applicable VDH regulations and the owner or operator must be issued a construction permit under those regulations.

PROCESSING AN APPLICATION FOR CERTIFICATION FOR SALES TAX EXEMPTION

All applications are to be submitted to the Division of Onsite Sewage and Water, Environmental Engineering, and Marina Programs for processing. The applicant will submit the application in Appendix B with the supporting documentation. A description of the project must be provided to allow VDH and the Taxation Department to determine what the request is, without having to review a complete set of design and construction plans. For example, if the project consists of replacing a failed effluent pumping station, then the following example description is adequate.

The project consists of replacing one effluent sewage pump station comprised of the following components.

- *One 10,000 gallon concrete tank with bedding and risers*
- *Two 1 hp turbine effluent pumps*
- *A duplex, alternating control panel with float controls and an audiovisual alarm*
- *Approximately 100 ft of 4 inch PVC piping with associated appurtenances to connect the new station to the existing effluent piping*
- *Approximately 100 ft of 1.5 inch schedule 40 PVC piping with associated valves and appurtenances to connect to the existing effluent force main.*
- *All associated miscellaneous electrical and plumbing appurtenances and connections to complete.*

The VDH reviewer will complete the checklist in Appendix C. If the application is complete and the project meets the criteria, the reviewer will mark the checklist approved and send the complete package to the Department of Taxation using the letter in Appendix D.

If the reviewer has questions, they will relay the questions to the applicant via email. If no response is received within 10 business days, the reviewer will deny the application the following business day due to insufficient information to complete the application using the letter in Appendix E. If the project does not meet the criteria for sales tax exemption, the reviewer will note the deficiency on the checklist and return the application package to the applicant using the letter in Appendix E.

APPENDIX A – HB 2811

CHAPTER 441

An Act to amend and reenact § [58.1-3660](#) of the Code of Virginia, relating to tax-exempt pollution control facilities; certifying authority; Department of Health.

[H 2811]

Approved March 18, 2019 Be it enacted by the General Assembly of Virginia:

1. That § [58.1-3660](#) of the Code of Virginia is amended and reenacted as follows:

§ [58.1-3660](#). Certified pollution control equipment and facilities.

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. Certified pollution control equipment and facilities shall be exempt from state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia.

B. As used in this section:

"Certified pollution control equipment and facilities" shall mean any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination. Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas recovered from waste or other fuel, and equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified to the Department of Taxation by a state certifying authority. Such property shall also include solar energy equipment, facilities, or devices owned or operated by a business that collect, generate, transfer, or store thermal or electric energy whether or not such property has been certified to the Department of Taxation by a state certifying authority. For solar photovoltaic (electric energy) systems, this exemption applies only to (i) projects equaling 20 megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or before December 31, 2018; (ii) projects equaling 20 megawatts or less, as measured in alternating current (AC) generation capacity, that serve any of the public institutions of higher education listed in § [23.1-100](#) or any private college as defined in § [23.1-105](#); (iii) 80 percent of the assessed value of projects for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization (a) between January 1, 2015, and June 30, 2018, for projects greater than 20 megawatts or (b) on or after July

1, 2018, for projects greater than 20 megawatts and less than 150 megawatts, as measured in alternating current (AC) generation capacity, and that are first in service on or after January 1, 2017; (iv) projects equaling five megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019; and (v) 80 percent of the assessed value of all other projects equaling more than five megawatts and less than 150 megawatts, as measured in alternating current (AC) generation capacity for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019. The exemption for solar photovoltaic (electric energy) projects greater than 20 megawatts, as measured in alternating current (AC) generation capacity, shall not apply to projects upon which construction begins after January 1, 2024. ~~Such property~~ *For pollution control equipment and facilities certified by the Virginia Department of Health, this exemption applies only to onsite sewage systems that serve 10 or more households, use nitrogen-reducing processes and technology, and are constructed, wholly or partially, with public funds. All such property as described in this definition shall not include the land on which such equipment or facilities are located.*

"State certifying authority" shall mean the State Water Control Board *or the Virginia Department of Health*, for water pollution; the State Air Pollution Control Board, for air pollution; the Department of Mines, Minerals and Energy, for solar energy projects and for coal, oil, and gas production, including gas, natural gas, and coalbed methane gas; and the Virginia Waste Management Board, for waste disposal facilities, natural gas recovered from waste facilities, and landfill gas production facilities, and shall include any interstate agency authorized to act in place of a certifying authority of the Commonwealth.

2. That an emergency exists and this act is in force from its passage.

APPENDIX B. APPLICATION

Virginia Department of Health
Office of Environmental Health Services



Application Checklist

**SALES TAX EXEMPTION CERTIFICATION FOR ONSITE SEWAGE POLLUTION CONTROL
EQUIPMENT AND FACILITIES UNDER §58.1-3660 AND GMP 2019-0X**

<http://www.vdh.virginia.gov/EnvironmentalHealth/Onsite/GMP/index.htm>

Please supply all requested information (form will expand as information is entered). Incomplete applications will be returned to the applicant.

Project Name: _____	
Project Location (County): _____	
Project Address: _____	
Project Completion Date: _____	
Construction Company: _____	
Application Request: Sales Tax Exemption for Onsite Sewage Pollution Control Equipment. All of the following must apply to be eligible.	
<input type="checkbox"/> The onsite sewage system project serves a minimum of 10 households.	
<input type="checkbox"/> The onsite sewage system uses nitrogen reducing processes and technology.	
<input type="checkbox"/> Public funds are used to wholly or partially construct the project.	
OWNER INFORMATION	APPLICANT INFORMATION (if different from owner)
Name: _____	Name: _____
Company Name: _____	Company Name: _____
Signature and Date: _____	Signature and Date: _____
Address: _____	Address: _____
Telephone: _____	Telephone: _____
Email: _____	Email: _____

Attach the following:

- A copy of the construction permit for the project.
- A moderately detailed description of the equipment or facilities in the project.
- Verification of public funding.

Submit completed form with all attachments to: Virginia Department of Health
Division of Onsite Sewage and Water, Env. Eng. & Marina Programs
109 Governor Street, 5th Floor
Richmond, Virginia 23219

Electronic submittals are encouraged. Marcia.Degen@vdh.virginia.gov

APPENDIX C. REVIEW CHECKLIST
Certification for Sales Tax Exemption Checklist

Date Received: _____
Project Name: _____
Owner: _____
Location: _____

1. Has this project received a construction permit from VDH?..... Yes ___ No ___
If yes, provide date and permit number. _____
2. Does the project serve 10 or more households?..... Yes ___ No ___
3. Does the project contain nitrogen reducing processes and technology?.... Yes ___ No ___
4. Will the project be constructed wholly or in part with public funds?..... Yes ___ No ___
If so, what is the public funding source? _____
5. Does the description of the equipment and/or facilities include only real or personal property, equipment facility, or devices used primarily for the purposes of abating or preventing water pollution? Yes ___ No ___
6. Is the project in conformance with VDH state program requirements? Yes ___ No ___

Certification Granted:

Certification Denied:

Reason for Denial: _____

Reviewer: _____

APPENDIX D. TRANSMITTAL LETTER

<DATE>

<Insert Name>
Taxpayers Assistance Section
Virginia Department of Taxation
P.O. Box 1115
Richmond VA 23218-1115
<insert email address>

RE: Project Name:
 Owner:
 Construction Company:

Dear <Insert Name>:

In accordance with § 58.1-3660, Code of Virginia, the Virginia Department of Health certifies the facilities described in the attached application dated <Receipt Date> from the above referenced owner/contractor, merit classification as “certified pollution control equipment and facilities” as limited by part B of the referenced Code section.

If we may be of further assistance, do not hesitate to contact our office.

Sincerely,

<Insert Name>
Division Director

Cc: Local Health Department
 Owner
 Contractor
 VDH OEHS Technical Services

APPENDIX E. Intent to DENY Sales Tax Exemption Certification Letter

OWNER
ADDRESS

RE: Request for Certification for Sales Tax Exemption under with §58.1-3660, Code of Virginia
Project:

Date Application Received:

Dear Owner:

We received your application requesting the Virginia Department of Health (VDH) certify the referenced project as eligible for state sales tax exemption pursuant to Code of Virginia § 58.1-3660. Based on documentation submitted and subsequently reviewed by VDH, this agency intends to deny certification absent an appeal request in writing from you within 30 days of receipt of this Notice. The project is allegedly ineligible for sales tax exemption the following reason(s) [select all that apply].

1. The project does not serve 10 or more dwellings.
2. The project is not wholly or partially funded with public funds.
3. The project does not include nitrogen reducing processes and technology.
4. The project is not in conformance with state regulations. (permit denial should be referenced.)
5. The description of the equipment and/or facilities does not include only real or personal property, equipment facility, or devices used primarily for the purposes of abating or preventing water pollution
6. The submittal was incomplete. Additional information must be submitted to verify _____.

This Notice and enclosures set forth VDH's observations, but it is not a case decision as defined by Code of Virginia § 2.2-4001. If you have additional facts contrary to the observations enumerated above and choose to schedule an informal-fact finding conference (IFFC) pursuant to § 2.2-4019 of the Code of Virginia, submit a written request to Lance Gregory, Division Director, Onsite Water and Sewage, Environmental Engineering and Marina Programs at VDH, 109 Governor Street, Richmond VA 23219. Otherwise, this Notice denies your sales tax exemption request for the reasons enumerated above, effective 30 days from receipt. Bear in mind should an IFFC be scheduled and you fail to appear without good cause, the presiding officer may issue an adverse case decision as contemplated by Code of Virginia § 2.2-4020.2 (Default.).

If you have additional information that would clarify the application, please contact Reviewer at <phone number> or by email at <email>.

Sincerely,

Reviewer