COMMONWEALTH of VIRGINIA

Department of Health
P O BOX 2448
RICHMOND, VA 23218

Karen Remley, MD, MBA, FAAP
State Health Commissioner

TTY 7-1-1 OR
1-800-828-1120

DATE: July 1, 2009

TO: District Health Directors
District Environmental Health Managers
Authorized Onsite Soil Evaluators
Professional Engineers
Manufacturers of Proprietary Technology

GMP #148

FROM: Karen Remley, M.D., M.B.A., F.A.A.P.
State Health Commissioner

THROUGH: Jim Burns, M.D., M.B.A.
Deputy Commissioner of Public Health

Robert W. Hicks, Director
Office of Environmental Health Services

SUBJECT: Interim Policy to Implement Section 32.1-164.1:2 of the *Code of Virginia*.

Interim Guidance

HB 2646 of the 2009 General Assembly, an act to amend Title 32.1-163 and 166.6 of the *Code of Virginia* (*Code*) and create Title 32.1-164.1:2, requires the Board of Health to establish a betterment loan eligibility program to assist owners with the repair, replacement, or upgrade of failing or non-compliant onsite sewage systems. Owners may also receive a betterment loan to upgrade an onsite or alternative discharging sewage system that is not failing, provided such upgrade is for the purposes of reducing threats to public health and ground and surface waters, including the reduction of nitrogen discharges.

Purpose of Policy

1. To provide notice of and administer Title 32.1-164.1:2 of the *Code*.
2. To establish the procedure for processing requests for betterment loan eligibility letters.

Scope

This interim policy applies to owners who receive permits to repair, replace, or upgrade failing or non-compliant onsite sewage systems or alternative discharging systems. Owners of non-failing systems, who reduce the threat to public health and ground and surface waters, including the reduction of nitrogen discharges, are also eligible for betterment loans. Betterment loans are not considered for new construction.

Definitions

"Betterment loan" means a loan to be provided by private lenders either directly or through a state agency, authority or instrumentality or a locality or local or regional authority serving as a conduit lender, to repair, replace, or upgrade an onsite sewage system or an alternative discharging sewage system for the purpose of reducing threats to public health and ground and surface waters, which loan is secured by a lien with a priority equivalent to the priority of a lien securing an assessment for local improvements under Title 15.2-2411.

"Failing onsite sewage system" means an onsite sewage system that is not operating in a normal or usual manner as defined by the *Sewage Handling and Disposal Regulations*, 12 VAC 5-610, or its successor. See 12 VAC 5-610-350.

"Failing alternative discharging sewage treatment system" means any alternative discharging sewage treatment system which either fails to discharge due to exfiltration or discharges effluent having a BOD_5, total suspended solids (TSS), pH, chlorine residual, dissolved oxygen or fecal coliform greater than allowed by the General Permit as measured at the outfall.

"Onsite sewage system" means either a conventional or alternative onsite sewage system.

"Reduction of nitrogen discharges" means the percent or pounds of nitrogen reduced from the modification, replacement, alteration, or expansion of an onsite sewage system or alternative discharging system.

"Sewage system with reduced threat to public health" means that the risk to public health from an alternative discharging or onsite sewage system is lessened.

Procedural Outline:

The owner completes an application to upgrade, repair, replace, modify, or expand his existing sewage system. If the owner requests betterment eligibility letter, then the fee is paid. The owner may amend the application at a later date if he does not know whether he wants an eligibility determination at the time of application. See Appendix I.

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The local health department (LHD) processes the application.

If a permit to repair, replace upgrade, modify, or expand sewage system is issued, then the LHD determines whether the owner is eligible for a betterment loan. See criteria for determining eligibility.

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If eligible, the owner provides at least one estimate to the LHD. The LHD attaches the permit and the owner's estimate to the approval letter. See Appendix II.

If not eligible, the LHD issues a denial and the reasons for denial. The owner may appeal to the Sewage Handling and Disposal Appeals Review Board.

Criteria for Determining Eligibility

In accordance with Section 32.1-164.1:2 of the *Code*, the issuance of a permit to repair or replace a sewage system, combined with an estimate provided by the owner to the LHD, shall demonstrate eligibility for a betterment loan. Hence, every owner who receives a valid permit to repair or replace an onsite sewage system or alternative discharging system qualifies for a betterment loan. The type of repair or replacement does not matter. If an owner repairs or replaces his system with a waiver pursuant to Section 32.1-164.1:1 of the *Code* and Guidance Memoranda and Policies (GMP) #128 or its successor, then he would qualify for a betterment loan. Similarly, if an owner repairs his system using a proprietary modification or other approved repair method, then he would qualify for a betterment loan (see GMP #122). An owner who simultaneously repairs his sewage system and expands its capacity would also qualify for a betterment loan.

Owners who do not have failing systems but wish to upgrade their sewage systems to reduce the threat to public health and ground and surface waters or reduce the discharge of nitrogen may also receive betterment eligibility letters. Buyers and sellers who seek voluntary upgrades as part of a sale agreement sometimes discover a concern about the existing sewage system and wish to voluntarily upgrade, modify, or expand it. Modifications of this type will most likely qualify for a betterment loan eligibility letter when a valid permit to modify the system is issued.

Owners who expand the capacity of their sewage system to accommodate new construction (e.g., the addition of a bedroom) can qualify for a betterment loan eligibility letter when the expansion reduces the threat to public health and ground and surface waters, or reduces the discharge of nitrogen. These types of cases must be evaluated on a case-by-case basis. Examples that may qualify for a betterment loan eligibility letter include the following:

- Dispersing secondary or better effluent from something that previously dispersed septic tank effluent.
- Installing a replacement system shallower than 24 inches when the previous system was installed deeper.
- Installing a new system that has a greater vertical offset to the seasonal watertable or other soil limiting feature.
- Installing a new system with a greater horizontal separation to a water body or well.

Providing specific guidance on types of designs that will always reduce the threat to public health is difficult. Staff may need to schedule an informal fact-finding conference and/or consult with the Office of Environmental Health Services (OEHS) to determine whether a design will reduce nitrogen discharges or the threat to public health and ground and surface waters.

Identifying Private Lenders and Conduit Lenders

The *Code* states that the Virginia Department of Health (VDH) may provide a list of private lenders to help owners secure betterment loans. VDH does not anticipate maintaining a list of betterment loan providers because VDH does not have the authority to screen or evaluate private lenders or their practices. Owners who want a betterment loan should speak with legal counsel and their bank about who may qualify as a private lender. Supervisors and managers will need to work with office support staff to assure that questions can be adequately addressed since owners will likely ask about how to contact betterment loan providers.

Authority and Other Requirements

VDH does not have the authority to regulate private lenders. If owners have questions about requirements or restrictions that private lenders may dictate, then those questions should be directed to their legal counsel.

Owners should be made aware that betterment loans are secured by a lien with a priority equivalent to the priority of a lien securing an assessment for local improvements pursuant to Title 15.2-2411 of the *Code* and must be recorded in the deed book of the circuit court clerk's office for the locality in which the land is located. An abstract of the loan and betterment loan eligibility letter must be indexed in the clerk's office in the name of the owner. Betterment loans may be recorded in increments by the private lender as the repair or replacement of the onsite sewage system is completed, provided the total amount recorded does not exceed the estimate. Where agreeable to the private lender and/or the conduit

lender, a locality may act as the collection agent for the payments made by the owner on a betterment loan. Any such payments collected by the locality shall be held in trust by the locality for benefit of the private lender and/or conduit issuer. The locality may receive a fee payable by the private lender and/or conduit loan provider for such service not to exceed one-eighth of one percent of the payments collected. VDH does not enforce or monitor these allowances and requirements; questions should be referred to the owner's legal counsel.

If the owner wishes to change or revise the estimate, then a new betterment loan eligibility letter is required. An owner may attach as many estimates as they wish to the loan eligibility letter. If a new repair permit is required, then a new eligibility letter is necessary should the owner want to apply for a betterment loan.

VDH may, subject to appropriate waivers for economic hardship, waive the $50.00 fee for each betterment loan eligibility letter requested by an owner.

Appendix I

Commonwealth of Virginia

Application for: ☐ Sewage System ☐ Water Supply

VDH Use Only
Health Department ID# _____
Due Date _____

Owner _____ Phone _____
Mailing Address _____ Phone _____
_____ Fax _____
Agent _____ Phone _____
Mailing Address _____ Phone _____
_____ Fax _____
Site Address _____
_____ Email _____

Directions to Property: _____

Subdivision _____ Section _____ Block _____ Lot _____

Tax Map _____ Other Property Identification _____ Dimension/Acreage of Property _____

Sewage System (New Construction)

Construction permits are valid for 18-months. Owners are advised to apply for a construction permit if they intend to build within 18 months of completing this application. Certification letters do not expire, may be recorded in the land records, and transfer with a property sale. For which are you applying? ☐ Certification Letter ☐ Construction Permit

Sewage System (Existing Construction)

Check all that apply: ☐ Repair ☐ Modification ☐ Expansion ☐ Replacement ☐ Upgrade

Do you wish to apply for a betterment loan? _____ If yes, there is a $50.00 fee for a betterment loan determination.

Sewage System (New or Existing Construction)

☐ Single Family Home (**Number of Bedrooms** ___) ☐ Multi-Family Dwelling (**Total Number of Bedrooms** ___)

☐ Other (describe) _____

Basement? Yes/No (circle one). Walk-out Basement? Yes/No (circle one) Fixtures in Basement? Yes/No (circle one).

Conditional permit desired? Yes/No (circle one). If yes, which conditions do you want?

☐ Reduced water flow ☐ Limited occupancy ☐ Intermittent of seasonal use ☐ Seasonal or temporary use not to exceed 1 year

Water Supply

Will the water supply be Public or Private (circle one). Is the water supply Existing or Proposed (circle one).

If proposed, is this a replacement well? Yes/No (circle one). Will the old well be abandoned? Yes/No (circle one).

Will any buildings within 50' of the proposed well be termite treated? Yes /No (circle one).

Note: For sewage systems, a plat of the property may be required and a site sketch is always expected. For water supplies, a plat of the property is not required and a site sketch is always expected. The site sketch should show your property lines, actual and/or proposed buildings and the desired location of your well and/or sewage system. Your property lines, building location and the proposed well and sewage system sites must be clearly marked and sufficiently visible to see the topography.

I give permission to the Virginia Department of Health to enter onto the property during normal business hours for the purpose of processing this application and to perform quality assurance checks of evaluations and designs until an operation permit is approved.

_____ _____
Signature of Owner/Agent Date

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KAREN REMLEY, MD, MBA, FAAP
STATE HEALTH COMMISSIONER

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Appendix II

MEMORANDUM

DATE: _____

TO: PROVIDERS OF BETTERMENT LOANS

FROM: _____
Environmental Health Specialist, Sr.
Virginia Department of Health

SUBJECT: BETTERMENT LOAN ELIGIBILITY

THROUGH: PETITIONER OF BETTERMENT LOAN

Name: _____

Address: _____

_____

Property Identification: Tax Map: _____

Street Address: _____

City/Town/Zip Code: _____

County: _____

Title 32.1-164.1:2 of the *Code of Virginia* states that the issuance of a permit to repair, replace, or upgrade an onsite sewage system, combined with an estimate provided by the owner to the Virginia Department of Health (VDH), shall demonstrate eligibility for a betterment loan. Upon determination of eligibility, VDH must notify the owner in writing. This letter acknowledges eligibility for a betterment loan when joined with the following information:

1. Estimate of the approximate cost of such remedial work to repair, replace, or upgrade the sewage system located on the above referenced property.

2. Permit to repair, replace, or upgrade the sewage system on the above referenced property from the local health department holding jurisdiction.

VDH's affirmation of eligibility does not validate the estimate or affirm it is an accurate reflection of the cost to repair, replace, or upgrade the sewage system. VDH does not review estimates or substantiate their validity. Providers of betterment loans and owners must ensure loans are properly recorded, that estimates are reasonable, and that the betterment loans are proper.

Betterment loans must be recorded in the deed book of the circuit court clerk's office for the locality in which the land is located and an abstract of the loan and betterment loan eligibility letter issued by VDH must be indexed in the name of the owner. Betterment loans may be recorded in increments as the repair or replacement of the onsite sewage system is completed, provided the total amount recorded does not exceed the estimate provided to VDH unless the local health department amends the construction permit and the owner receives a revised betterment loan eligibility letter.

This letter of eligibility is not transferable to another sewage system or property and is not transferable to another owner. The statement of eligibility becomes invalid if the construction permit to which it is attached expires or is revoked. The statement of eligibility also becomes invalid if the estimate associated with the eligibility expires or becomes invalid.

Refer to the expiration date on the construction drawing page (lower right corner of the first page) to determine whether the permit has expired. Permits are valid for 18 months unless they are revoked or become void. To determine whether a permit has been revoked, you may contact the local health department in the county in which the property is located. Visit http://www.vdh.virginia.gov/lhd/ to locate and contact the local health department holding jurisdiction.

The incurrence of a betterment loan shall not be considered a breach of limitation or prohibition contained in a note, mortgage or contract on the transfer of an interest in the owner's property.