COMMONWEALTH of VIRGINIA

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MEMORANDUM

Date: July 1, 2008

To: Environmental Health Managers
Environmental Health Supervisors
Environmental Health Specialists
Professional Engineers
Authorized Onsite Soil Evaluators

GMP #141A

From: Donald J. Alexander, Director
Division of Onsite Sewage and Water Services

Subject: Implementation of House Bill 193

During the 2008 legislative session, the General Assembly passed, and the Governor signed into law, House Bill (HB) 193 amending § 32.1-176.5:2 of the *Code of Virginia*. HB 193 essentially added another exemption in locating a private well adjacent to an agricultural operation. As of July 1, 2008, the *Code of Virginia* includes language that a proposed new well adjacent to property "of three acres or larger" that is used for an agricultural operation is subject to certain setback requirements.

GMP #141A is essentially the same as GMP #141 with the exception that the "of three acres or larger" language is reflected in GMP #141A. GMP #141A still specifies what information is required to be submitted to the Department of Health (Department) to support an application to construct a private well within 50 of the property line adjacent to another property of three acres or larger used for an agricultural operation. It also describes the factors the Department will consider when it processes an application to construct a private well under the *Private Well Regulations* (PWR), 12 VAC 5-630-230. The effective date of GMP #141A is July 1, 2008 which is also the effective date of House Bill (HB) 193.

GMP #141 and its attachments are hereby rescinded and replaced by GMP #141A and its attachments which denotes the new language in § 32.1-176.5:2 of the *Code of Virginia* referring to "...adjacent to another property of three acres or larger used for an agricultural operation." The attachments for GMP #141A have not changed except to note GMP #141A in the title.

I. Background

A "private well" is defined § 32.1-176.3 of the *Code of Virginia* as: "any water well constructed for a person on land which is owned or leased by that person and is usually intended for household, ground water source heat pump, agricultural use, industrial use or other nonpublic water well. In accordance with § 32.1-176.5 of the *Code of Virginia* and 12 VAC 5-630-220 A. of the PWR, all private wells constructed must be permitted by the Department. In most cases, the applicant and site must meet the site and design requirements in the PWR. With the addition of § 32.1-176.5:2 to the *Code of Virginia*, if the applicant wants to install a private well within 50 feet of the property line, he must consider the use of the adjacent property. Section 32.1-176.5:2 states:

> *A. No private well shall be constructed within 50 feet of the property line with an adjacent property of three acres or larger that is used for an agricultural operation, as defined in § 3.1-22.29. The following shall be exempt: (i) the owner of the adjacent property that is used for an agricultural operation may grant written permission for construction within 50 feet of the property line; or (ii) certification that no other site on the property complies with the Board's regulations for the construction of a private well.*
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> *B. The Department shall accept private site evaluations and designs, in compliance with the Board's regulations for the construction of private wells, designed and certified by a licensed professional engineer, in consultation with an authorized onsite soil evaluator, or by an authorized onsite soil evaluator. The evaluations and designs included within such submissions shall be certified as complying with the Board's regulations implementing this chapter. The Department shall not be required to perform a field check of private evaluations and designs prior to issuing the requested letter, permit, or approval. However, the Department may conduct such review of the work and field analysis as deemed necessary to protect the public health, integrity of the Commonwealth's environment, and the provisions of this chapter.*
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> *C. The Department, prior to issuing a permit, shall require any owner applying for a permit to construct a private well pursuant to the exemptions in subsection A to submit documentation that affirms the well construction site complies with the provisions of this section.*

II. General

Pesticides, fertilizers, biosolids and other regulated materials that are applied to land generally require a setback (or buffer) from wells, surface water, homes, etc. A property owner or developer may build a house or houses served by private wells located within 50 feet of a property line where the adjacent property is used for an agricultural operation. The adjacent property owner may have traditionally used the adjacent property (up to the property line) for an agricultural operation. Because of the setback

requirements for some materials, the person may lose the ability to use part of the land for agricultural operations. HB 2102 addresses this issue and offers some protection to the person engaging in an agricultural operation.

This policy describes a process of implementing the law which involves a standoff distance between a private well and an adjacent property that is used for an agricultural operation. The *Code of Virginia* in § 3.1-22.29 defines an agricultural operation as the following:

> *B. For the purposes of this chapter, "agricultural operation" shall mean any operation devoted to the bona fide production of crops, or animals, or fowl, including but not limited to the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and the production and harvest of products from silviculture activity.*

The applicant should rely upon common sense, communication with the adjacent property owner, and the local land use officials as resources to determine if an agricultural operation exists on property adjacent to the one with the proposed private well. There is guidance in Appendix I which may be helpful in making this determination.

III. Scope

1. This policy affects construction permit applications received on or after the effective date of this policy for issuance of new private wells, replacement wells, and emergency well replacements.

2. The Department is not going to re-evaluate subdivisions and certification letters previously approved for conformance with § 32.1-176.5:2 of the *Code of* Virginia; however, if a new application is received on or after July 1, 2008 for a private well construction permit, such as when a permit expires or an applicant wishes to change a well location, the new permit shall conform to § 32.1-176.5:2 of the *Code of Virginia.*

3. This policy does not affect the following:
    a. Complete applications received prior to the effective date of this policy.
    b. Wells permitted prior to the effective date of this policy, but not yet installed.
    c. Existing wells or applications to alter, rehabilitate, abandon, or extend existing wells.
    d. Observation or monitoring wells that are properly abandoned in accordance with 12 VAC 5-630-450 of the PWR within 90 days of cessation of use.
    e. Closed-loop ground-source heat pump wells that are grouted the entire depth of the well.

IV. Implementation

1. The designer should attempt to locate the well site 50 feet or more from the adjacent property line(s).

2. Receipt of the standard application for an onsite well construction permit begins the process.
   a. "Bare Applications" - The EHSSr. will attempt to locate the well a minimum of 50 feet from adjacent property lines. If this is not possible, the EHSSr. shall document which exemption applies (See item #5). If no other site complies with the PWR, the EHSSr. shall document such on the permit.
   b. "Express Class IV Well Construction Permit Applications" - The applicant must indicate on the application if the adjacent property is used for an agricultural operation.
   c. "AOSE/PE Application Package" - The receipt of an AOSE/PE permit application shall constitute certification by the AOSE/PE that the well location complies with § 32.1-176.5:2 of the *Code of Virginia*. However, to expedite Level I reviews, the AOSE/PE is expected to complete the "Addendum to AOSE/PE Certification Statement for Private Well Construction Permit" (see Appendix I).

3. If there is uncertainty over the information submitted on the status of the adjacent property land use, the Department should use professional judgment on whether to ask for clarification. The applicant is ultimately responsible for documenting if the adjacent property is used for an agricultural operation or if it consists of <u>less than three acres</u>.

4. Prior to permitting a well within 50 feet of a property line, the applicant or the consultant shall submit one of the following documents to the Department to qualify as an exemption to the provisions of § 32.1-176.5:2 of the *Code of Virginia*:

   i. Notarized affirmation from the adjacent property owner that the property is not used for an agricultural operation.
   ii. Notarized permission from the adjacent property owner to construct the well within 50 feet of the property line.
   iii. Certification Statement from an AOSE/PE. The receipt of an AOSE/PE permit application shall constitute certification by the AOSE/PE that the well location complies with § 32.1-176.5:2 of the *Code of Virginia*.

2. Certification Letters - The certification approval letter has been modified to inform the applicant of § 32.1-176.5:2 of the *Code of Virginia* for proposed well sites within 50 feet of an adjacent property line.

3. Subdivisions - Designers are responsible for assuring that well sites are located a minimum of 50 feet from adjacent property lines where the adjacent property is used for an agricultural operation. For subdivisions where well sites are shown that do not conform to § 32.1-176.5:2 of the *Code of Virginia*, the Department shall factually comment to the county. For example, a statement may be, "Lot X shows a well site within 50 feet of the adjacent property line. Before issuance of the sewage system/well permit, compliance with § 32.1-176.5:2 of the *Code of Virginia* must be confirmed."

4. During well construction, a "dry" hole may result. If there is no other area available except within the 50 foot standoff area to a property used for an agricultural operation, this qualifies as an exemption.

5. Final Inspection/Approval: In accordance with GMP #126, Part V, Final Inspections, the EHS shall conduct an inspection of the well and complete a written inspection statement pursuant to 12 VAC 5-630-310 and 12 VAC 5-630-330 of the PWR.

LIST OF ATTACHMENTS

Appendix I

- General Guidelines to Determine an Agricultural Operation
- Affirmation Statements

Appendix II

- Implementation Flow Chart