

July 1, 2019

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

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

THROUGH: Allen Knapp, 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) 2019-01
House Bill 888; Hardship Guidelines

PURPOSE: This policy outlines the procedure for means testing of applicants who petition the Virginia Department of Health (VDH) for evaluation and design services for onsite sewage systems and private well pursuant to Chapter 831 of the 2018 Virginia Acts of Assembly. This policy also establishes Hardship Guidelines whereby the Virginia Department of Health (VDH) may serve as a provider of last resort for evaluation and design services for onsite sewage systems and private wells pursuant to Chapter 831 of the 2018 Virginia Acts of Assembly.

SCOPE:

This policy outlines the procedure for means testing of applicants who petition the Virginia Department of Health (VDH) for evaluation and design services for onsite sewage

systems and private well pursuant to Chapter 831 of the 2018 Virginia Acts of Assembly ([HB 888](#)). This policy also establishes Hardship Guidelines necessary to implement the transition of evaluation and design services for onsite sewage systems and private wells to the private sector, while maintaining VDH as a provider of last resort as outlined in HB 888. Property owners that do not meet these Hardship Guidelines or the income eligibility criteria established in HB 888 are required to obtain evaluation and design services from the private sector.

AUTHORITY:

HB 888, as amended and effective July 1, 2018, provides authority for VDH to gradually transition evaluation and design services for onsite sewage systems and private wells to the private sector. HB 888 provides authority for VDH to continue providing evaluation and design services associated with a building permit for a principal place of residence or the repair of a system that is for a principal place of residence from July 1, 2019 to June 30, 2023 for applicants that meet income eligibility criteria specified in HB 888. HB 888 also provides authority for VDH to establish guidelines to maintain VDH as a provider of last resort for property owners who demonstrate a specific hardship in obtaining private sector evaluation and design services associated with a building permit for a principal place of residence or the repair of a system that is for a principal place of residence.

BACKGROUND:

VDH staff have historically served as the primary provider of site and soil evaluations and designs in the Commonwealth for onsite sewage systems and private wells. However, several pieces of legislation approved in the 1990's created a process for VDH to accept evaluations and designs from private sector service providers. Since that time, two overarching principles have emerged: VDH should continue providing regulatory oversight and VDH should increase private sector participation to the extent possible. Over time, and without a specific statutory mandate to require private evaluations and designs, the use of private sector service providers gained broad acceptance in many parts of the Commonwealth.

In 2016, VDH released A Plan for the Orderly Reduction and Elimination of Evaluation and Design Services by the Virginia Department of Health for Onsite Sewage Systems and Private Wells ([HB 558 Report](#)). The HB 558 Report laid out VDH's strategic vision to shift evaluation and design services for onsite sewage systems and private wells to the private sector in an orderly manner so limited VDH resources can be focused on improving public health and the environment. The HB 558 Report presented 20 specific recommendations to implement the strategic vision, including recommendations for VDH to provide means testing of applicants over an initial transition period and to establish guidelines to serve as a provider of last resort for property owners that demonstrated specific hardships in obtaining private sector services. VDH recognized there are several geographic areas within the Commonwealth, as well as several application types, that will be particularly difficult to transition to the private sector. VDH recommended means testing and the development of guidelines to address situations in which owners could demonstrate a hardship in obtaining private sector services to ensure access to onsite sewage system and private well evaluation and design services for all Virginians.

Chapter 602 of the 2017 Virginia Acts of Assembly (HB 2477) directed VDH to take steps to begin eliminating site evaluation and design services for onsite sewage systems and private wells provided by VDH. This was accomplished by enacting recommendations from the HB 558 Report that could be done through agency policy. In 2018, the Virginia General Assembly passed HB 888 directing VDH to enact the remaining recommendation from the HB 558 Report to complete the transition of evaluation and design services to the private sector. HB 888 lays out a plan to transition onsite sewage system and private well evaluation and design services to the private sector over five years. However, HB 888 maintains the ability for VDH to provide evaluation and design services throughout the transition based on means testing of applicants. HB 888 also maintains the ability for VDH to provide evaluation and design services throughout and after the five-year transition period for property owners that demonstrate a specific hardship in obtaining private sector evaluation and design services associated with a building permit for a principal place of residence or the repair of a failing system that is for a principal place of residence.

HB 888 sets out specific income eligibility criteria for means testing of applicants from July 1, 2019 to June 30, 2023, using the federal poverty guidelines. HB 888 also directs VDH to develop guidelines for hardships, and requires that the guidelines include considerations for hardships based on (i) the availability of properly licensed service providers working within a locality or region, (ii) the disciplinary history of private sector providers, and (iii) the cost of private sector services. The hardship guidelines established by this policy set the criteria for property owners to request onsite sewage system and private well evaluation and design services from VDH as directed by HB 888.

EXCLUSIONS FROM MEANS TESTING AND HARDSHIP GUIDELINES

Pursuant to HB 888 all owners must seek private sector services for the following beginning July 1, 2018: onsite sewage system voluntary upgrades, certification letters, subdivision evaluations, and applications for new onsite sewage systems that are not for a principal place of residence. The means testing criteria and hardship guidelines outlined in this policy do not apply to these application types.

In addition, this policy does not apply to evaluations and designs that required private sector design services prior to July 1, 2018, by VDH policy. These services are any evaluation or design for: non-residential onsite sewage systems; onsite sewage systems that will use over 1,000 gallons per day; alternative onsite sewage systems; alternative discharging sewage systems; and onsite sewage system designs that require a professional engineer.

MEANS TESTING:

From July 1, 2019, to June 30, 2020, property owners with a household income at or below 400 percent of the federal poverty guidelines established by the U.S. Department of Health and Human Services (federal poverty guidelines) may receive VDH evaluation and design services for: a) new conventional onsite sewage systems serving a principal place of residence; b) private wells serving a principal place of residence; c) repair conventional onsite sewage systems serving a principal place of residence; d) and safe, adequate, and proper

evaluations for conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165). Property owners seeking such services must petition VDH to provide services using the Petition for VDH Services Form (Appendix A). Means testing of the property owner's income shall follow the same procedure as the determination of income eligibility for fee waivers (see [GMP 2016-02](#)).

From July 1, 2020, to June 30, 2021, eligibility shall be reduced to property owners with household income at or below 300 percent of the federal poverty guidelines. From July 1, 2021, to June 30, 2022, eligibility shall be reduced to property owners with household income at or below 200 percent of the federal poverty guidelines. From July 1, 2022, to June 30, 2023, eligibility shall be reduced to property owners with household income at or below 100 percent of the federal poverty guidelines. A breakdown of the specific means testing criteria in HB 888 is included in Appendix A.

In addition to the specific means testing criteria outlined in HB 888, VDH has established the following income eligibilities as hardships that will apply prior to and after July 1, 2023. Any property owner that is eligible to receive a fee waiver pursuant to section 12VAC5-620-80.A of the Regulations Governing Application Fees for Construction Permits for Onsite Sewage Disposal Systems and Private Wells (12VAC5-620, the Fee Regulations) shall be eligible to receive VDH evaluation and design services.¹ Further, any property owner with income below 200 percent of the federal poverty guidelines shall be eligible to receive VDH evaluation and design services when the application is for a pit privy or for a repair of a failing onsite sewage system. Determination of eligibility for a hardship based on income shall follow the same procedure as the determination of income eligibility for fee waivers (see [GMP 2016-02](#)).

HARDSHIP GUIDELINES:

Property owners that do not meet the means testing criteria outlined in HB 888, may still be eligible to receive services from VDH. Property owners meeting any of the following hardships shall be eligible to receive VDH evaluation and design services for: a) new conventional onsite sewage systems serving a principal place of residence; b) private wells serving a principal place of residence; c) repair conventional onsite sewage systems serving a principal place of residence; and d) safe, adequate, and proper evaluations for conventional onsite sewage systems serving a principal place of residence (as required by §32.1-165). Property owners seeking services based on the following hardship guidelines must petition VDH to provide services using the Petition for VDH Services Form.

¹ Section 12VAC5-620-80.A establishes the fee waiver when an owner whose family income is at or below the 2013 Poverty Income Guidelines for the 48 Contiguous States and the District of Columbia established by the [Department of Health and Human Services, 78FR 5182](#) (January 24, 2013), or any successor guidelines, shall not be charged a fee.

A. Replacement Wells and Well Abandonments

Any property owner that is eligible to receive a fee waiver for the replacement or abandonment of a private well pursuant to section 12VAC5-620-80.D or 12VAC5-620-80.E of the Fee Regulations shall be eligible to receive VDH evaluation and design services.²

B. Number of Private Sector Providers

Any property owner seeking evaluation and designer services in a locality with an insufficient number of private sector service providers shall be eligible to receive VDH evaluation and design services. A locality will be deemed to have an insufficient number of private sector service providers when the number of bare applications received in the locality over the previous fiscal year exceeds the estimated number of additional designs that the private sector could provide in that locality. Once a locality is determined to have a sufficient number of private sector services providers, it shall maintain that designation. VDH will estimate the number of additional designs that the private sector could provide in a locality by using the following equation:

$$(P \times A)1.25 - W = X$$

P = Number of private sector providers that submitted at least five evaluations and designs within the locality over the previous fiscal year.

A = Average number of evaluations and designs per private sector provider submitted within the region over the previous fiscal year. (A map showing the specific regions is provided below; Map 1.)

1.25 = Private sector growth factor.

W = Total number of private sector evaluations and designs submitted within the locality over the previous fiscal year.

X = Estimated number of additional evaluations and designs that could be provided by the private sector.

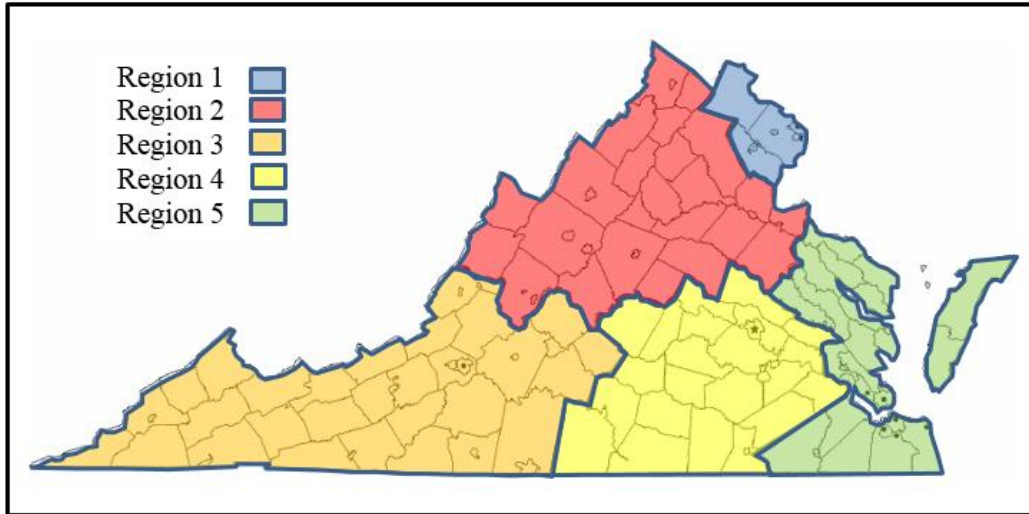
Any locality with fewer than two private sector service providers submitting at least five evaluations and designs each in the previous fiscal year will be determined to have an insufficient number of private sector service providers. Any locality receiving 10 or fewer total applications for onsite sewage system and private well evaluations and design will be determined to have a sufficient number of private sector service providers.

VDH will use the agency's statewide environmental health database to determine P, A, and W. For determining the average number of private sector designs, VDH will use Map 1 to set each region for review, and will include only private sector providers submitting at least 10 evaluations and designs within the region over the previous fiscal year. The equation will be run separately for onsite sewage system evaluations and designs, and private well evaluations and

² Section 12VAC5-620-80.D allows the fee to be waived for any person applying for a construction permit for the replacement of a private well. Section 12VAC5-620-80.E allows the fee to be waived for any person applying for a permit to properly and permanently abandon or decommission an existing well on property that is their principal place of residence.

designs. Therefore, it may be determined that a locality has an insufficient number of private sector service providers for one service, but an adequate number of private sector service providers for the other. The e

Map 1: Service Provider Regions



Example: Locality A

Local health department received 204 bare onsite sewage system applications between July 1, 2018, and June 30, 2019.

P = 4 private sector providers submitted at least 5 design within Locality A between July 1, 2018, and June 30, 2019.

A = Private sector providers submitted an average of 37 evaluations and designs within the region between July 1, 2018, and June 30, 2019.

W = Private sector submitted a total of 126 evaluations and designs within Locality A between July 1, 2018, and June 30, 2019.

$(4 \times 37)1.25 - 126 = 59$ (Estimated number of additional evaluations and designs that could be provided by the private sector in Locality A).

The number of estimated additional designs the private sector can provide in Locality A is lower than the number of bare applications received. Therefore, VDH determines Locality A to have an insufficient number of private sector services providers; property owners qualify for a hardship.

VDH will post a list of localities with an insufficient number of private sector services providers on the agency website. The list will be updated annually using information from the agencies statewide environmental health database for the previous fiscal year and posted no later than July 15th.

Private sector service providers that receive a disciplinary action against their license from the Department of Professional and Occupational Regulations (DPOR) will not be counted towards the number of private sector providers submitting evaluations and designs within a locality for one year following the disciplinary action. If the disciplinary action results in revocation or suspension of licensure, the service provider will not be counted towards the number of private sector providers submitting evaluations and designs within a locality for one year following re-issuance of their license by DPOR.

C. Availability of Private Sector Service Providers

Owners shall qualify for a hardship to receive evaluation and design services for new onsite sewage systems serving a principal place of residence when a private sector provider is not available within 15 business days of the date of application. Owners shall qualify for a hardship to receive evaluation and design services for new private wells when a private sector service provider is not available within 15 business days of the date of application.

Owners shall qualify for a hardship to receive evaluation and design services to repair onsite sewage systems when a private sector provider is not available within five business days of the date of application. Owners shall qualify for a hardship to receive safe, adequate, and proper evaluation services (as required by §32.1-165) when a private sector provider is not available within 15 business days of the date of application.

Property owners must contact at least two private sector providers prior to petitioning VDH for services. The owner must provide the names of the private sector providers contacted on the Petition for VDH Services Form and the timeline provided.

D. Further Considerations

Owners that do not qualify for a specific hardship outlined in this policy may petition the District Health Director for further consideration provided the requested evaluation and design service is not exempt from the hardship guidelines. The District Health Director may delegate review of such request to the District Environmental Health Manager. Such requests will be reviewed on a case-by-case basis, and the final determinations will be tracked by each local health district. The reviewer's evaluation shall consider the effect granting the request will have on: the agency's vision to transition evaluation and design services to the private sector; the operation of the proposed onsite sewage system or private well; and the effect on protection of public health and the environment.

F. Annual Review

VDH will conduct a review of this policy annually until at least July 1, 2023. The review shall include the following:

1. Recommendations for revisions provided by the Sewage Handling and Disposal Advisory Committee and other stakeholders.

2. Analysis of requests for VDH services pursuant to income eligibility criteria in Part 1, §4 of HB 888 to determine whether the income eligibility criteria in this policy should be revised.
3. Analysis of the estimated number of additional evaluations and designs that could be provided by the private sector within localities versus the actual increases observed over the previous fiscal year to determine whether modification to the equation in Section IV is necessary.
4. Analysis of request for consideration of hardships not specified within these Hardship Guidelines and determinations rendered for each case by District Health Directors to determine whether additional specific hardships or exclusion are necessary.
5. Analysis of the percent private sector evaluations and designs for alternative onsite sewage system and conventional onsite sewage systems to determine whether additional verification of property owner disclosure is required.³
6. To assist property owners in making informed decisions regarding onsite sewage system and private well evaluation and design services, VDH will conduct surveys regarding the cost of private sector services. Information regarding the average cost of private sector services will be posted on the agency website with breakdowns at the state, regional, and locality level.

A copy of VDH's annual review shall be posted on the agency website.

³ Private sector service providers are required to disclose to the property owner when a conventional onsite sewage system is an option.

Appendix A
Petition for VDH Services Form

I, (property owner name), am petitioning VDH to provide evaluation and design services based on (select one):

- Means test (household income at or below 400% of the federal poverty guidelines)
- VDH Hardship Guidelines

If you selected VDH Hardship Guidelines, please check all of the following guidelines that apply:

- Qualify for fee waiver pursuant to 12VAC5-620-80.A.
- Replacement well.
- Well abandonment.
- Onsite sewage system repair – income below 200% of the federal poverty guidelines.
- Pit privy – income below 200% of the federal poverty guidelines.
- Insufficient number of private sector service providers.⁴
- Fewer than 2 private sector services providers.⁵
- Private sector not available within 15 Days – new onsite sewage system, new private well, or safe, adequate, and proper evaluation. Provide the names of private sector services providers contacted and timeframe:

Private sector not available within 5 Day – repair onsite sewage system Provide the names of private sector services providers contacted and timeframe:

Other: If other, please provide a detailed description of your hardship in obtaining private sector evaluation and design services along with any relevant documents that you believe support your request. If your request is based on the cost of private sector evaluation and design services, please provide the name of at least two private sector service provider you contacted, along with written estimates provided by each. (Detailed description can be attached)

Owners Signature

Date

Petition for services Approved Denied by _____

⁴ (Insert link to VDH website – list of localities with insufficient number of private sector service providers.)

⁵ (Insert link to VDH website – list of localities with fewer than 2 private sector service providers.)

Appendix B
U.S. Department of Health and Human Services
Federal Poverty Guidelines (FPG)

Family Size	100% FPG	200% FPG	300% FPG	400% FPG
1	\$12,140	\$24,280	\$36,420	\$48,560
2	\$16,460	\$32,920	\$49,380	\$65,840
3	\$20,780	\$41,560	\$62,340	\$83,120
4	\$25,100	\$50,200	\$75,300	\$100,400
5	\$29,420	\$58,840	\$88,260	\$117,680
6	\$33,740	\$67,480	\$101,220	\$134,960
7	\$38,060	\$76,120	\$114,180	\$152,240
8	\$42,380	\$84,760	\$127,140	\$169,520

Source: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation;
<https://aspe.hhs.gov/poverty-guidelines>

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Appendix C
Hardship Guidelines Summary

Excluded from Hardship Evaluation	Qualify for Hardship
Onsite Sewage System Voluntary Upgrades	New Onsite Sewage System for a Principal Place of Residence– Owner Qualifies for Fee Waiver Under 12VAC5-620-80
Certification Letters	SAPs – Owner Qualifies for Fee Waiver Under 12VAC5-620-80
Subdivision Evaluations	Replacement Wells
New Onsite Sewage Systems Not For a Principal Place of Residence	Well Abandonments
Non-residential Onsite Sewage Systems	Conventional Onsite Sewage System Repairs – Owner income below 200% of Federal Poverty Guidelines
Onsite Sewage Systems Greater than 1,000 GPD	Pit Privy – Owner income below 200% of Federal Poverty Guidelines
Alternative Onsite Sewage Systems	VDH Determines Locality Has an Insufficient Number of Private Sector Service Providers.
Alternative Discharging Sewage Systems	Any Locality With Fewer Than 2 Private Sector Services Providers Submitting at Least 5 Evaluations and Designs Each in the Previous Fiscal Year
Systems Requiring a Professional Engineer	New Onsite Sewage System for Principal Place of Residence– Private Sector Not Available Within 15 Business Days
Localities Receiving 10 or Fewer Total Applications	New Private Well – Private Sector Not Available Within 15 Business Days
	Conventional Onsite Sewage System Repairs – Private Sector Not Available Within 5 Business Days
	SAP – Private Sector Not Available Within 15 Business Days